Otherwise, the Board will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may check the status of their FOIA request(s) by contacting the FOIA Officer at *FOIA@ratb.gov* or (202) 254–7900.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. E9–27877 Filed 11–19–09; 8:45 am]

BILLING CODE 6820–GA–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2009–0018]

RIN 1557–AD25

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1361]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AD42

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. OTS–2009–0020]

RIN 1550–AC34

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital—Residential Mortgage Loans Modified Pursuant to the Home Affordable Mortgage Program

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Department of the Treasury (the agencies).

ACTION: Final rule.

SUMMARY: The agencies have adopted a final rule to allow banks, savings associations, and bank holding companies (collectively, banking organizations) to risk weight for purposes of the agencies' capital guidelines mortgage loans modified pursuant to the Home Affordable Mortgage Program (Program) implemented by the U.S. Department of the Treasury (Treasury) with the same risk weight assigned to the loan prior to the modification so long as the loan continues to meet other applicable prudential criteria.

DATES: The final rule becomes effective December 21, 2009.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Senior Risk Expert, Capital Policy Division, (202) 874–6022, or Carl Kaminski, Senior Attorney, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Barbara J. Bouchard, Associate Director, (202) 452–3072, or William Tiernay, Senior Supervisory Financial Analyst, (202) 872–7579, Division of Banking Supervision and Regulation; or April Snyder, Counsel, (202) 452–3099, or Benjamin W. McDonough, Counsel, (202) 452–2036, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Ryan Sheller, Senior Capital Markets Specialist, (202) 898–6614, Capital Markets Branch, Division of Supervision and Consumer Protection; or Mark Handzlik, Senior Attorney, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision Branch, Legal Division.

OTS: Teresa A. Scott, Senior Policy Analyst, (202) 906–6478, Capital Risk, or Marvin Shaw, Senior Attorney, (202) 906–6639, Legislation and Regulation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Under the agencies' general risk-based capital rules, loans that are fully secured by first liens on one-to-four family residential properties, that are either owner-occupied or rented, and that meet certain prudential criteria (qualifying mortgage loans) are risk-weighted at 50 percent.[1] If a banking organization holds both a first-lien and a junior-lien mortgage on the same property, and no other party holds an intervening lien, the loans are treated as a single loan secured by a first-lien mortgage and risk-weighted at 50 percent if the two loans, when aggregated, meet the conditions to be a qualifying mortgage loan. Other junior-lien mortgage loans are risk-weighted at 100 percent.[2]

In general, to qualify for a 50 percent risk weight, a mortgage loan must have been made in accordance with prudent underwriting standards and may not be 90 days or more past due. Mortgage loans that do not qualify for a 50 percent risk weight are assigned a 100 percent risk weight. Each agency has additional provisions that address the risk weighting of mortgage loans. Under the OCC's general risk-based capital rules for national banks, to receive a 50 percent risk weight, a mortgage loan must ''not [be] on nonaccrual or restructured.'' [3] Under the Board's general risk-based capital rules for bank holding companies and state member banks, mortgage loans must be ''performing in accordance with their original terms'' and not carried in nonaccrual status in order to receive a 50 percent risk weight.[4] Generally, mortgage loans that have been modified are considered to have been restructured (OCC), or are not considered to be performing in accordance with their original terms (Board). Therefore, under the OCC's and Board's general risk-based capital rules, such loans generally must be risk weighted at 100 percent. Under the FDIC's general risk-based capital rules, a state nonmember bank may assign a 50 percent risk weight to any modified mortgage loan, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight.[5] Under the OTS's general risk-based capital rules, a savings association may assign a 50 percent risk weight to any modified residential mortgage loan, so long as the loan, as modified, is not 90 days or more past due and meets other applicable criteria for a 50 percent risk weight.[6]

On June 30, 2009, the agencies published in the **Federal Register** an interim final rule (interim rule) to allow banking organizations to risk weight mortgage loans modified under the Program using the same risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other applicable

[1] *See* 12 CFR Part 3, Appendix A, section 3(a)(3)(iii) (OCC); 12 CFR parts 208 and 225.

[2] *See* 12 CFR Part 3, Appendix A, section 3(a)(3)(iii) (OCC); 12 CFR parts 208 and 225, Appendix A, section III.C.4. (Board); 12 CFR part 325, Appendix A, section II.C. (FDIC); and 12 CFR 567.6(1)(iv) (OTS).

[3] 12 CFR Part 3, Appendix A, section 3(a)(3)(iii) (OCC).

[4] 12 CFR parts 208 and 225, Appendix A, section III.C.3. (Board).

[5] 12 CFR Part 325, Appendix A, section II.C. (FDIC).

[6] 12 CFR 567.1, 12 CFR 567.6(a)(1)(iii) (OTS).

prudential criteria.[7] In many circumstances, this means that an eligible mortgage loan modified in accordance with the Program will continue to receive a 50 percent risk weight for purposes of the agencies' general risk-based capital guidelines. The agencies are now adopting the interim rule as a final rule (final rule) with changes that clarify the regulatory capital treatment of mortgage loans during the Program's trial modification period (trial period). The revisions provided under the final rule relative to the FDIC's and OTS' general risk-based capital rules are clarifying in nature.

Home Affordable Mortgage Program

On March 4, 2009, Treasury announced guidelines under the Program to promote sustainable loan modifications for homeowners at risk of losing their homes due to foreclosure.[8] The Program provides a detailed framework for servicers to modify mortgages on owner-occupied residential properties and offers financial incentives to lenders and servicers that participate in the Program.[9] The Program also provides financial incentives for homeowners whose mortgages are modified pursuant to Program guidelines to remain current on their mortgages after modification.[10] Taken together, these incentives are intended to help responsible homeowners remain in their homes and avoid foreclosure, which is in turn intended to help ease the current downward pressures on house prices and the costs that families, communities, and the economy incur from unnecessary foreclosures.

Under the Program, Treasury has partnered with lenders and loan servicers to offer at-risk homeowners loan modifications under which the homeowners may obtain more affordable monthly mortgage payments. The Program applies to a spectrum of outstanding loans, some of which meet all of the prudential criteria under the agencies' general risk-based capital rules and receive a 50 percent risk weight and some of which otherwise receive a 100 percent risk weight under the agencies' general risk-based capital rules.[11] Servicers who elect to participate in the Program are required to apply the Program guidelines to all eligible loans[12] unless explicitly prohibited by the governing pooling and servicing agreement and/or other lender servicing agreements. If a mortgage loan qualifies for modification under the Program, the Program guidelines require the lender to first reduce payments on eligible first-lien loans to an amount representing no greater than a 38 percent initial front-end debt-to-income ratio.[13] Treasury then will match further reductions in monthly payments with the lender dollar-for-dollar to achieve a 31 percent front-end debt-to-income ratio on the first-lien mortgage.[14] Borrowers whose back-end debt-to-income ratio exceeds 55 percent must agree to work with a foreclosure prevention counselor approved by the Department of Housing and Urban Development.[15]

In addition to the incentives for lenders, servicers are eligible for other incentive payments to encourage participation in the Program. Servicers receive an up-front servicer incentive payment of $1,000 for each eligible first-lien modification. Lenders and servicers are eligible for one-time incentive payments of $1,500 and $500, respectively, for early modifications of first-lien mortgages—that is, modifications made while the borrower is still current on mortgage payments but at risk of imminent default. To encourage ongoing performance of modified loans, servicers also will receive ''Pay for Success'' incentive payments of up to $1,000 per year for up to three years for first-lien mortgages as long as borrowers remain in the Program. A borrower can likewise receive ''Pay for Performance Success'' incentive payments that reduce the principal balance on the borrower's first-lien mortgage up to $1,000 per year for up to five years if the borrower remains current on monthly payments on the modified first-lien mortgage. Lenders also may receive a home price depreciation reserve payment to offset certain losses if a modified loan subsequently defaults.

For second-lien mortgages, lenders are eligible to receive incentive payments based on the difference between the interest rate on the modified first-lien mortgage and the reduced interest rate (either 1 percent or 2 percent) on the second-lien mortgage following modification.[16] Servicers may receive a one-time $500 incentive payment for successful second-lien modifications, as well as additional incentive payments of up to $250 per year for up to three years for second-lien mortgages as long as both the modified first-lien and second-lien mortgages remain current. A borrower also may receive incentive payments of up to $250 per year for a modified second-lien mortgage loan for up to five years for remaining current on the loan, which will be paid to reduce the unpaid principal of the first-lien mortgage. However, second-lien modification incentives only will be paid with respect to a given property if the first-lien mortgage on the property also is modified under the Program.[17]

Before a loan may be modified under the Program, a borrower must successfully complete a trial period of at least 90 days. During the trial period, a borrower makes payments on the eligible mortgage loan under modified terms. To complete the trial period successfully, the borrower must be current at the end of the trial period and provide certain information.[18] The Program provides no incentive payments to the lender, servicer, or

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[7] 74 FR 31160 (June 30, 2009); 74 FR 34499 (July 16, 2009) (OCC technical correction).

[8] Further details about the Program, including Program terms and borrower eligibility criteria, are available at *http://www.makinghomeaffordable.gov*.

[9] For ease of reference, the term ''servicer'' refers both to servicers that service loans held by other entities and to lenders who service loans that they hold themselves. The term ''lender'' refers to the beneficial owner or owners of the mortgage.

[10] A separate aspect of the Program, the Home Affordable Refinance Program, also provides incentives for refinancing certain mortgage loans owned or guaranteed by Fannie Mae or Freddie Mac. This final rule does not apply to mortgage loans refinanced under the Home Affordable Refinance Program.

[11] *See* 12 CFR Part 3, Appendix A, sections 3(a)(3)(iii) and 3(a)(4) (OCC); 12 CFR parts 208 and 225, Appendix A, sections III.C.3. and III.C.4. (Board); 12 CFR part 325, Appendix A, section II.C. (FDIC); and 12 CFR 567.1 and 567.6 (OTS).

[12] For a mortgage to be eligible for the Program, the property securing the mortgage loan must be a one-to-four family owner-occupied property that is the primary residence of the mortgagee. The property cannot be vacant or condemned, and the mortgage must have an unpaid principal balance (prior to capitalization of arrearages) at or below the Fannie Mae conforming loan limit for the type of property.

[13] A front-end debt-to-income ratio measures how much of the borrower's gross (pretax) monthly income is represented by the borrower's required payment on the first-lien mortgage, including real estate taxes and insurance.

[14] To qualify for the Treasury match, servicers must follow an established sequence of actions (capitalize arrearages, reduce interest rate, extend term or amortization period, and then defer principal) to reduce the front-end debt-to-income ratio on the loan from 38 percent to 31 percent. Servicers may reduce principal on the loan at any stage during the modification sequence to meet affordability targets.

[15] A back-end debt-to-income ratio measures how much of a borrower's gross (pretax) monthly income would go toward monthly mortgage and nonmortgage debt service obligations.

[16] Participating servicers are required to follow certain steps in modifying amortizing second-lien mortgages, including reducing the interest rate to 1 percent or 2 percent. Lenders may receive an incentive payment from Treasury equal to half of the difference between (i) the interest rate on the first lien as modified and (ii) 1 percent, subject to a floor.

[17] In some cases, servicers may choose to accept a lump-sum payment from Treasury to extinguish some or all of a second-lien mortgage under a pre-set formula.

[18] Under the Program, borrowers in certain states with unique foreclosure law requirements (foreclosure restart states) will be considered to have failed the trial period if they are not current at the time the foreclosure sale is scheduled.

borrower during the trial period and no payments if the borrower does not successfully complete the trial period.

Comments on the Interim Rule

The agencies received six comments on the interim rule, one from a banking organization, four from trade groups representing the financial industry, and one from an individual. The commenters that addressed the interim final rule unanimously supported it, asserting that it is consistent with the important policy objectives of the Program and does not compromise the goals of safety and soundness. Commenters requested that the agencies clarify whether the rule's capital treatment is available for a mortgage loan that has been modified on a preliminary basis under the Program, but which still is within the trial period (and, thus, has not been permanently modified). Commenters also requested clarification regarding the circumstances under which a mortgage loan that was risk-weighted at 100 percent immediately prior to modification under the Program could receive a 50 percent risk weight. Some commenters suggested that such a loan should receive a 50 percent risk weight following completion of the trial period or following receipt of the first pay-for-performance incentive payments. Other commenters requested that the agencies clarify that a sustained period of repayment performance could include payments made after a loan had been modified under the Program. The agencies also received a comment on the interaction between private mortgage insurance and loan modifications, which was beyond the scope of the interim rule.

Based on an analysis of the comments, the agencies have modified the rule to specify that a mortgage modified on a permanent or trial basis pursuant to the Program and that was risk-weighted at 50 percent may continue to receive a 50 percent risk weight provided it meets other prudential criteria.[19]

As noted in the preamble to the interim rule, under the agencies' existing practice, past due and nonaccrual loans that receive a 100 percent risk weight may return to a 50 percent risk weight under certain circumstances, including after demonstration of a sustained period of repayment performance. Because borrower characteristics, such as debt service capacity, impact a borrower's creditworthiness, the degree of appropriate reliance on a fixed period of payment performance may vary for different borrowers.[20] For these reasons, the agencies have not established a specific period of repayments that would constitute a ''sustained period of performance'' for a particular loan. The agencies confirm that a borrower's payments on a mortgage loan modified under the Program, including during the trial period, may be considered in assessing whether the borrower has demonstrated a sustained period of repayment performance.

Commenters also requested that the agencies (1) allow a banking organization to risk weight at 50 percent, rather than 100 percent, a second-lien mortgage loan that is modified under the Program if the first-lien mortgage loan on the property is owned by another entity, that first-lien mortgage is also modified under the Program, and there is no intervening lien; and (2) allow loans modified pursuant to the Program or similar programs that continue to qualify for 50 percent risk weight to be excluded from troubled debt restructurings reported in quarterly bank regulatory reports. Under the general risk-based capital rules all second-lien mortgage loans receive a 100 percent risk weight, unless the banking organization that holds the loan also holds the first lien, there is no intervening lien, and the loan meets other prudential criteria. The agencies believe this treatment is commensurate with the risks of junior positions, as lenders have limited access to collateral in the event of default. Therefore, the agencies have determined that allowing a banking organization to risk weight junior-lien mortgage loans at less than 100 percent is not appropriate other than in those circumstances already permitted by the agencies general risk-based capital rules. With respect to whether mortgage loans modified under the Program are considered troubled debt restructurings, the question of how these loans should be classified and reported will be determined under generally accepted accounting principles.

Final Rule

Based on the above considerations, the agencies have adopted the interim rule in final form with the modification discussed above. Under the final rule as under the interim rule mortgage loans modified under the Program will retain the risk weight appropriate to the mortgage loan prior to modification, as long as other applicable prudential criteria remain satisfied. Accordingly, under the final rule, a qualifying mortgage loan appropriately risk weighted at 50 percent before modification under the Program would continue to be risk weighted at 50 percent during the trial period and after modification, provided it meets other prudential criteria. If a borrower does not successfully complete the trial period and the loan is not modified under the Program on a permanent basis, the loan would qualify for the 50 percent risk weight category if it meets the conditions to be a qualifying mortgage loan under the general risk-based capital rules. If the loan does not meet the conditions, it would receive a 100 percent risk weight. A mortgage loan appropriately risk weighted at 100 percent prior to modification under the Program would continue to be risk weighted at 100 percent during and after the trial period.

Consistent with the OCC's and the Board's general risk-based capital rules, if a mortgage loan were to become 90 days or more past due or carried in non-accrual status or otherwise restructured after being modified under the Program, the loan would be assigned a risk weight of 100 percent. Consistent with the FDIC's general risk-based capital rules, if a mortgage loan were to again be restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets the other applicable criteria for a 50 percent risk weight. Consistent with the OTS's general risk-based capital rules, if a mortgage loan were to again be restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due and meets the other applicable criteria for a 50 percent risk weight.

Additionally, in certain circumstances under the general risk-based capital rules (as with, for example, a direct credit substitute or recourse obligation), a banking organization is permitted to look through an exposure to the risk

[19] The agencies intended the interim rule to apply to loans modified on both a trial and permanent basis under the Program. Accordingly, the modifications to the final rule are clarifying in nature.

[20] The instructions for the Consolidated Reports of Condition and Income (Call Report) and the Thrift Financial Report (TFR) define a sustained period of repayment performance as a period generally lasting ''* * * a minimum of six months and would involve payments of cash or cash equivalents. (In returning the asset to accrual status, sustained historical repayment performance for a reasonable time prior to the restructuring may be taken into account.)'' Call Reports instructions are available at *http://www.federalreserve.gov/reportforms/CategoryIndex.cfm?WhichCategory=3* and TFR instructions are available at *http://files.ots.treas.gov/4210058.pdf*.

weight of a residential mortgage loan underlying that exposure. In such cases, the banking organizations would follow the capital treatment provided for in the agencies' general risk-based capital rules, as modified by the final rule, when the underlying residential mortgage loan has been modified pursuant to the Program.

The agencies believe that treating mortgage loans modified under the Program in the manner described above is appropriate in light of the special and unique incentive features of the Program and the fact that the Program is offered by the federal government in order to achieve the public policy objective of promoting sustainable loan modifications for homeowners at risk of foreclosure in a way that balances the interests of borrowers, servicers, and lenders. As previously described, the Program requires that a borrower's front-end debt-to-income ratio on a first-lien mortgage modified under the Program be reduced to no greater than 31 percent, which should improve the borrower's ability to repay the modified loan, and, importantly, provides for Treasury to match reductions in monthly payments dollar-for-dollar to reduce the borrower's front-end debt-to-income ratio from 38 percent to 31 percent. In addition, as described above, the Program provides material financial incentives for servicers and lenders to take actions to reduce the likelihood of defaults, as well as incentives for servicers and borrowers designed to help borrowers remain current on modified loans. The structure and amount of these cash payments meaningfully align the financial incentives for servicers, lenders, and borrowers to encourage and increase the likelihood of participating borrowers remaining current on their mortgages. Each of these incentives is important to the agencies' determination with respect to the appropriate regulatory capital treatment of mortgage loans modified under the Program.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[21] Under regulations issued by the Small Business Administration,[22] a small entity includes a commercial bank, bank holding company, or savings association with assets of $175 million or less (a small banking organization). As of June 30, 2009, approximately 2,533 small bank holding companies, 386 small savings associations, 749 small national banks, 432 small state member banks, and 3,040 small state nonmember banks existed. As a general matter, the Board's general risk-based capital rules apply only to a bank holding company that has consolidated assets of $500 million or more. Therefore, the changes to the Board's capital adequacy guidelines for bank holding companies will not affect small bank holding companies.

This rulemaking does not involve the issuance of a notice of proposed rulemaking and, therefore, the requirements of the RFA do not apply. However, the agencies note that the rule does not impose any additional obligations, restrictions, burdens, or reporting, recordkeeping or compliance requirements on banks or savings associations, including small banking organizations, nor does it duplicate, overlap or conflict with other federal rules. The rule also will benefit small banking organizations that are subject to the agencies' general risk-based capital rules by allowing mortgage loans modified under the Program to retain the risk weight assigned to the loan prior to the modification.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the agencies have reviewed the final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule.

OCC/OTS Executive Order 12866

Executive Order 12866 requires federal agencies to prepare a regulatory impact analysis for agency actions that are found to be "significant regulatory actions." Significant regulatory actions include, among other things, rulemakings that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities." The OCC and the OTS each determined that its portion of the final rule is not a significant regulatory action under Executive Order 12866.

OCC/OTS Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act of 1995[23] (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS each have determined that its final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225

Administrative Practice and Procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

[21] *See* 5 U.S.C. 603(a).

[22] *See* 13 CFR 121.201.

[23] *See* Public Law 104–4.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons stated in the common preamble, the Office of the Comptroller of the Currency amends Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In appendix A to Part 3, in section 3, revise paragraph (a)(3)(iii) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(3) * * *

(iii) Loans secured by first mortgages on one-to-four family residential properties, either owner occupied or rented, provided that such loans are not otherwise 90 days or more past due, or on nonaccrual or restructured. It is presumed that such loans will meet the prudent underwriting standards. For the purposes of the risk-based capital guidelines, a loan modified on a permanent or trial basis solely pursuant to the U.S. Department of Treasury's Home Affordable Mortgage Program will not be considered to have been restructured. If a bank holds a first lien and junior lien on a one-to-four family residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of both determining the loan-to-value ratio and assigning a risk weight to the transaction. Furthermore, residential property loans made for the purpose of construction financing are assigned to the 100% risk category of section 3(a)(4) of this appendix A; however, these loans may be included in the 50% risk category of this section 3(a)(3) of this appendix A if they are subject to a legally binding sales contract and satisfy the requirements of section 3(a)(3)(iv) of this appendix A.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons stated in the common preamble, the Board of Governors of Federal Reserve System amends parts 208 and 225 of Chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9),1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3905–3909; 15 U.S.C. 78b, 78I(b), 78l(i),780–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

■ 4. In appendix A to part 208, revise Section III. C.3., to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

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III. * * *

C. * * *

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [41] on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,[42] that meet certain criteria.[43] Loans included in this category must have been made in accordance with prudent underwriting standards; [44] be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. For purposes of this 50 percent risk weight category, a loan modified on a permanent or trial basis solely pursuant to the U.S. Department of Treasury's Home Affordable Mortgage Program will be considered to be performing in accordance with its original terms. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection

[41] If a bank holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the loan-to-value ratio and assigning a risk weight.

[42] Loans that qualify as loans secured by 1- to 4-family residential properties or multifamily residential properties are listed in the instructions to the commercial bank Call Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. Such loans to builders will be considered prudently underwritten only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (*i.e.,* has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.,* has a firm written commitment for permanent financing of the home upon completion).

The instructions to the Call Report also discuss the treatment of loans, including multifamily housing loans, that are sold subject to a pro rata loss sharing arrangement. Such an arrangement should be treated by the selling bank as sold (and excluded from balance sheet assets) to the extent that the sales agreement provides for the purchaser of the loan to share in any loss incurred on the loan on a pro rata basis with the selling bank. In such a transaction, from the standpoint of the selling bank, the portion of the loan that is treated as sold is not subject to the risk-based capital standards. In connection with sales of multifamily housing loans in which the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis, these other loss sharing arrangements are taken into account for purposes of determining the extent to which such loans are treated by the selling bank as sold (and excluded from balance sheet assets) under the risk-based capital framework in the same as prescribed for reporting purposes in the instructions to the Call Report.

[43] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[44] Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the bank's own appraisal guidelines.

to the institution. Also included in this category are privately-issued mortgage-backed securities provided that:

(1) The structure of the security meets the criteria described in section III(B)(3) above;

(2) If the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;

(3) If the security is backed by privately issued mortgage-backed securities, *each* underlying security qualifies for the 50 percent risk category; and

(4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due.

Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 5. The authority for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 6. In Appendix A to part 225, revise section III.C.3., to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

III. * * *

C. * * *

3. *Category 3: 50 percent.* This category includes loans fully secured by first liens [48] on 1- to 4-family residential properties, either owner-occupied or rented, or on multifamily residential properties,[49] that meet certain criteria.[50] Loans included in this category must have been made in accordance with prudent underwriting standards; [51] be performing in accordance with their original terms; and not be 90 days or more past due or carried in nonaccrual status. For purposes of this 50 percent risk weight category, a loan modified on a permanent or trial basis solely pursuant to the U.S. Department of Treasury's Home Affordable Mortgage Program will be considered to be performing in accordance with its original terms. The following additional criteria must also be applied to a loan secured by a multifamily residential property that is included in this category: all principal and interest payments on the loan must have been made on time for at least the year preceding placement in this category, or in the case where the existing property owner is refinancing a loan on that property, all principal and interest payments on the loan being refinanced must have been made on time for at least the year preceding placement in this category; amortization of the principal and interest must occur over a period of not more than 30 years and the minimum original maturity for repayment of principal must not be less than 7 years; and the annual net operating income (before debt service) generated by the property during its most recent fiscal year must not be less than 120 percent of the loan's current annual debt service (115 percent if the loan is based on a floating interest rate) or, in the case of a cooperative or other not-for-profit housing project, the property must generate sufficient cash flow to provide comparable protection to the institution. Also included in this category are privately-issued mortgage-backed securities provided that:

(1) The structure of the security meets the criteria described in section III(B)(3) above;

(2) if the security is backed by a pool of conventional mortgages, on 1- to 4-family residential or multifamily residential properties, each underlying mortgage meets the criteria described above in this section for eligibility for the 50 percent risk category at the time the pool is originated;

(3) If the security is backed by privately-issued mortgage-backed securities, each underlying security qualifies for the 50 percent risk category; and

(4) If the security is backed by a pool of multifamily residential mortgages, principal and interest payments on the security are not 30 days or more past due. Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight are generally assigned to the 100 percent risk category.

Also assigned to this category are *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or other political subdivisions of the U.S. (for example, municipal revenue bonds) or other countries of the OECD-based group, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds.

Credit equivalent amounts of derivative contracts involving standard risk obligors (that is, obligors whose loans or debt securities would be assigned to the 100 percent risk category) are included in the 50 percent category, unless they are backed by collateral or guarantees that allow them to be placed in a lower risk category.

* * * * *

[48] If a banking organization holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the loan-to-value ratio and assigning a risk weight.

[49] Loans that qualify as loans secured by 1- to 4-family residential properties or multifamily residential properties are listed in the instructions to the FR Y–9C Report. In addition, for risk-based capital purposes, loans secured by 1- to 4-family residential properties include loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits. Such loans to builders will be considered prudently underwritten only if the bank holding company has obtained sufficient documentation that the buyer of the home intends to purchase the home (*i.e.,* has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.,* has a firm written commitment for permanent financing of the home upon completion).

[50] Residential property loans that do not meet all the specified criteria or that are made for the purpose of speculative property development are placed in the 100 percent risk category.

[51] Prudent underwriting standards include a conservative ratio of the current loan balance to the value of the property. In the case of a loan secured by multifamily residential property, the loan-to-value ratio is not conservative if it exceeds 80 percent (75 percent if the loan is based on a floating interest rate). Prudent underwriting standards also dictate that a loan-to-value ratio used in the case of originating a loan to acquire a property would not be deemed conservative unless the value is based on the lower of the acquisition cost of the property or appraised (or if appropriate, evaluated) value. Otherwise, the loan-to-value ratio generally would be based upon the value of the property as determined by the most current appraisal, or if appropriate, the most current evaluation. All appraisals must be made in a manner consistent with the Federal banking agencies' real estate appraisal regulations and guidelines and with the banking organization's own appraisal guidelines.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority for Issuance

■ For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends Part 325 of Chapter III of Title 12, Code of the Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

■ 7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Public Law 102–233, 105 Stat. 1761, 1789, 1790, (12 U.S.C. 1831n note); Public Law 102–242, 105 Stat. 2236, as amended by Public Law 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Public Law 102–242, 105 Stat. 2236, 2386, as amended by Public Law 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 8. Amend Appendix A to part 325 by revising footnote 39 to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II * * *

C.* * *

* * * * *

[39] This category would also include a first-lien residential mortgage loan on a one-to-four family property that was appropriately assigned a 50 percent risk weight pursuant to this section immediately prior to modification (on a permanent or trial basis) under the Home Affordable Mortgage Program established by the U.S. Department of Treasury, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight. In addition, real estate loans that do not meet all of the specified criteria or that are made for the purpose of property development are placed in the 100 percent risk category.

* * * * *

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

■ For reasons set forth in the common preamble, the Office of Thrift Supervision amends part 567 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

■ 9. The authority for citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note)

PART 567—CAPITAL

■ 10. Section 576.1 is amended in the definition *Qualifying mortgage loan* by revising paragraph (4) to read as follows

§ 567.1 Definitions.

* * * * *

Qualifying mortgage loan

* * * * *

(4) A loan that meets the requirements of this section prior to modification on a permanent or trial basis under the U.S. Department of Treasury's Home Affordable Mortgage Program may be included as a *qualifying mortgage loan,* so long as the loan is not 90 days or more past due.

* * * * *

Dated: November 10, 2009.

John C. Dugan,

Comptroller of Currency.

By order of the Board of Governors of the Federal Reserve System, November 12, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington DC, this 12th day of November 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 29, 2009.

By the Office of the Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–27776 Filed 11–19–09; 8:45 am]

BILLING CODE 6714–01–P; 6210–01–P; 4810–33–P; 6720–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1378]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is publishing for public comment an interim final rule amending Regulation Z (Truth in Lending). The interim rule implements Section 131(g) of the Truth in Lending Act (TILA), which was enacted on May 20, 2009, as Section 404(a) of the Helping Families Save Their Homes Act. TILA Section 131(g) became effective immediately upon enactment and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures in writing no later than 30 days after the date on which the loan is sold or otherwise transferred or assigned. The Board is issuing this interim rule, effective immediately upon publication, so that parties subject to the statutory requirement have guidance on how to comply. However, to allow time for any necessary operational changes, compliance with the interim final rule is optional for 60 days from the date of publication; during this period, covered persons would continue to be subject to the statute's requirements. The Board seeks comment on all aspects of the interim rule.

DATES: This interim final rule is effective November 20, 2009; however, to allow time for any necessary operational changes, compliance with this interim final rule is optional until January 19, 2010. Comments must be received on or before January 19, 2010.

ADDRESSES: You may submit comments, identified by Docket No. R– 1378, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.,) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Paul Mondor, Senior Attorney, or Stephen Shin, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. TILA directs the Board to prescribe regulations to carry out its purposes and specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such