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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 3, 5, 6, 23, 24, 32, 34, 160, and 192

[Docket ID OCC-2018-0040

RIN 1557-AE59

FEDERAL RESERVE SYSTEM

12 CFR Parts 206, 208, 211, 215, 217, 223, 225, 238, and 251

[Regulation Q; Docket No.]

RIN [XX]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 324, 337, 347, 362, 365, and 390

RIN 3064-AE91

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations

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

ACTION: Notice of proposed rulemaking.

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

inviting public comment on a notice of proposed rulemaking (proposal) that would provide for a simple measure of capital adequacy for certain community banking organizations, consistent with section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Under the proposal, most depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets, that meet risk-based qualifying criteria, and that have a community bank leverage ratio (as defined in the proposal) of greater than 9 percent would be eligible to opt into a community bank leverage ratio framework. Such banking organizations that elect to use the community bank leverage ratio and that maintain a community bank leverage ratio of greater than 9 percent would not be subject to other risk-based and leverage capital requirements and would be considered to have met the well capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act and regulations implementing that section, as applicable, and the generally applicable capital requirements under the agencies' capital rule.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

OCC: Christine A. Smith, Risk Analyst; or David Elkes, Risk Expert; or JungSup Kim, Risk Specialist, Capital Policy (202-649-6370); or Carl Kaminski, Special Counsel; or Daniel Perez, Attorney; or Rima Kundnani, Attorney, Chief Counsel's Office, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452-5239; Juan Climent, Manager, (202) 872-7526; Sviatlana Phelan, Senior Supervisory Financial Analyst, (202) 912-

4306; Andrew Willis, Senior Supervisory Financial Analyst, (202) 912-4323; Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel, (202) 452-2036; Mark Buresh, Counsel, (202) 452-5270; or Andrew Hartlage, Counsel, (202) 452-6483; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Stephanie Lorek, Senior Capital Markets Policy Analyst, slorek@fdic.gov; Dushan Gorechan, Financial Analyst, dgorechan@fdic.gov; Kyle McCormick, Financial Analyst, kmccormick@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Catherine Wood, Counsel, cawood@fdic.gov; Alexander Bonander, Attorney, abonander@fdic.gov; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—"regulations.gov":** Go to *www.regulations.gov*. Enter "Docket ID OCC-2018-0040" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- **E-mail:** *regs.comments@occ.treas.gov*.

- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.

- **Fax:** (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0040” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- **Viewing Comments Electronically:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2018-0040” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen and then “Comments.” Comments can be filtered by clicking on “View All” and then using the filtering tools on the left side of the screen.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. Supporting materials may be viewed by clicking on “Open Docket Folder” and then clicking on “Supporting Documents.” The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- **Viewing Comments Personally**: You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by Docket No. [ ], 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 docket number in the subject line of the message.

• **FAX:** (202) 452-3819 or (202) 452-3102.

• **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from 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 form in Room 3515, 1801 K Street NW (between 18th and 19th Street NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064-AE91 by any of the following methods:

• **Agency Web Site:** https://www.FDIC.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency website.

• **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

• **Hand Delivered/Courier:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street, NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• **E-mail:** comments@FDIC.gov. Include the RIN 3064-AE91 on the subject line of the message.

Public Inspection: All comments received must include the agency name and RIN 3064-AE91 for this rulemaking. All comments received will be posted without change to https://www.fdic.gov/regulations/laws/federal/, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

SUPPLEMENTARY INFORMATION:

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I. Background

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) revised the regulatory capital rule (capital rule) to address weaknesses in the capital framework that became apparent in the financial crisis of 2007-09.[1] The capital rule strengthened the capital requirements applicable to banking organizations[2]

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[1] The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[2] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy

supervised by the agencies by improving both the quality and quantity of regulatory capital and increasing risk-sensitivity. For example, the capital rule introduced a minimum common equity tier 1 capital requirement of 4.5 percent and strengthened the qualifying criteria for regulatory capital instruments, which had the effect of making the existing capital requirements more stringent.[3] The capital rule also raised the minimum tier 1 risk-based capital requirement from 4 percent to 6 percent and, for advanced approaches banking organizations only,[4] established a supplementary leverage ratio of 3 percent.[5]

Since the issuance of the capital rule in 2013, community banking organizations have raised concerns regarding the regulatory burden, complexity, and costs associated with certain aspects of the capital rule. In March 2017, the agencies published the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) Joint Report to Congress.[6] In the EGRPRA report, the agencies stated they are considering simplifications to the capital rule with the goal of meaningfully reducing regulatory burden on community banking organizations while

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Statement (12 CFR part 225, appendix C), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

[4] A banking organization is an advanced approaches banking organization if it has consolidated assets of at least $250 billion or if it has consolidated on-balance sheet foreign exposures of at least $10 billion, or if it is a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization. See 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC). The agencies are seeking comment on the definition of an advanced approaches banking organization. See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm

[5] 12 CFR 3.10(a) (OCC); 12 CFR 217.10(a) (Board); 12 CFR 324.10(a) (FDIC).

[6] See Joint Report to Congress; Economic Growth and Regulatory Paperwork Reduction Act (March 2017), https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf. EGRPRA, Pub. L. 104-208, 110 Stat. 3009.

maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system. In September 2017, the agencies proposed simplifying certain capital requirements for all banking organizations, except advanced approaches banking organizations (simplifications proposal).[7] In an effort to provide immediate relief, the agencies also extended transition provisions for certain regulatory capital requirements that would be affected by the simplifications proposal.[8]

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[9] as well as certain other statutes administered by the agencies.[10] Section 201 of the Act, titled "Capital Simplification for Qualifying Community Banks," directs the agencies to develop a community bank leverage ratio (CBLR) of not less than 8 percent and not more than 10 percent for qualifying community banks (qualifying community banking organizations). The Act defines a qualifying community banking organization as a depository institution or depository institution holding company with total consolidated assets of less than $10 billion. A qualifying community banking organization that exceeds the CBLR level established by the agencies is considered to have met: (i) the generally applicable leverage and risk-based capital requirements under the agencies' capital rule; (ii) the capital ratio requirements in order to be considered well capitalized under the agencies' prompt corrective action (PCA) framework (in the case of insured depository institutions); and (iii) any other

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[7] 82 FR 49984 (October 27, 2017).

[8] 83 FR 55309 (November 21, 2017). The agencies continue to evaluate comments on the simplifications proposal.

[9] Pub. L. 111-203, 124 Stat. 1376.

[10] See Pub. L. 115-174, 132 Stat. 1296.

applicable capital or leverage requirements. In addition, the Act directs the agencies to establish procedures for the treatment of qualifying community banking organizations that fall below the CBLR level established by the agencies.[11]

Section 201 of the Act defines the CBLR as the ratio of a qualifying community banking organization's CBLR tangible equity to its average total consolidated assets, both as reported on the qualifying community banking organization's applicable regulatory filing. In addition, the Act states that the agencies may determine that a banking organization is not a qualifying community banking organization based on the banking organization's risk profile. The Act states that such a determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and such other factors as the agencies determine appropriate. The Act also specifies that the CBLR framework developed by the agencies does not limit the authority of the Federal banking agencies in effect as of the date of enactment of the Act.

Finally, the Act directs the agencies to consult with applicable state bank supervisors in carrying out section 201 of the Act and to notify the applicable state bank supervisor of any qualifying community banking organization that exceeds, or does not exceed after previously exceeding, the CBLR.

II. Summary of the Proposal

A. Overview of the Community Bank Leverage Ratio Framework

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[11] The agencies note that under existing legal requirements applicable to holding companies and insured depository institutions, to be considered well capitalized a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. See, e.g., 12 CFR 225.2. The same legal requirements would continue to apply under the CBLR framework.

The proposed CBLR framework, based on the requirements of section 201 of the Act, is a simple alternative methodology to measure capital adequacy for qualifying community banking organizations. The proposal together with associated reporting requirement changes that the agencies anticipate proposing would simplify regulatory requirements and provide material regulatory relief to qualifying community banking organizations that opt into the CBLR framework.

The agencies designed the CBLR framework taking into account multiple considerations, seeking to balance the simplicity of the framework with safety and soundness goals. First, the CBLR framework is intended to be available to a meaningful number of well capitalized banking organizations with less than $10 billion in total consolidated assets. Second, the CBLR should be calibrated to not reduce the amount of capital currently held by qualifying community banking organizations. Third, the agencies intend for banking organizations with higher risk profiles to remain subject to the generally applicable capital requirements[12] to ensure that such banking organizations hold capital commensurate with the risk of their exposures and activities. Fourth, consistent with the Act, the agencies would maintain the supervisory actions applicable under the PCA framework and other statutes and regulations based on the capital ratios and risk profile of a banking organization. Finally, the CBLR framework is intended to provide meaningful regulatory compliance burden relief and be relatively simple for banking organizations to implement.

Under the proposal, a qualifying community banking organization would be defined as a depository institution or depository institution holding company with less than $10 billion in total consolidated assets with limited amounts of off-balance sheet exposures, trading assets and

[12] 12 CFR 3.10(a)-(b) (OCC); 12 CFR 217.10(a)-(b) (Board); 12 CFR 324.10(a)-(b) (FDIC).

liabilities, mortgage servicing assets (MSAs), and deferred tax assets (DTAs) arising from temporary differences that a banking organization could not realize through net operating loss carrybacks (temporary difference DTAs). In addition, an advanced approaches banking organization would not be a qualifying community banking organization.

The CBLR would be calculated as the ratio of tangible equity capital (CBLR tangible equity) divided by average total consolidated assets. Under the proposal, CBLR tangible equity would be defined as total bank equity capital or total holding company equity capital, as applicable, prior to including minority interests, and excluding accumulated other comprehensive income (AOCI), DTAs arising from net operating loss and tax credit carryforwards, goodwill, and other intangible assets (other than MSAs), each as of the most recent calendar quarter and calculated in accordance with a qualifying community banking organization's regulatory reports. Average total consolidated assets would be calculated in a manner similar to the current tier 1 leverage ratio denominator in that amounts deducted from the CBLR numerator would also be excluded from the CBLR denominator.

Under the proposal, a qualifying community banking organization may elect to use the CBLR framework if its CBLR is greater than 9 percent. A CBLR greater than 9 percent, in conjunction with the proposed definitions of a qualifying community banking organization and CBLR tangible equity, should generally maintain the current level of capital held by these banking organizations, while supporting the agencies' goals of reducing regulatory burden for community banking organizations and retaining safety and soundness in the banking system.

The proposal provides a regulatory capital treatment for a qualifying community banking organization that elects to use the CBLR framework (CBLR banking organization), but whose CBLR subsequently falls to 9 percent or less, and continues to provide for the agencies' supervisory actions under PCA and other applicable statutes and regulations. Specifically, for insured depository institutions, the proposal incorporates CBLR levels as proxies for the following PCA categories: adequately capitalized, undercapitalized and significantly undercapitalized. If a CBLR banking organization's CBLR meets the corresponding CBLR levels, it would be considered to have met the capital ratio requirements within the applicable PCA category and be subject to the same restrictions that currently apply to any other insured depository institution in the same PCA category. Further, the proposal would not limit the agencies' authority to take any supervisory actions consistent with their supervisory authority under the PCA framework or other statutes or regulations.

The agencies are not proposing changes to the definition of the critically undercapitalized category under their PCA rules. Therefore, under the proposal, if an insured depository institution is considered significantly undercapitalized, based on its CBLR, the insured depository institution would be required to provide promptly to its appropriate regulators such information as is necessary to calculate the tangible equity ratio as defined under the PCA framework for insured depository institutions.

The CBLR calculation would require significantly less data than are used to calculate the generally applicable capital requirements. The agencies therefore expect that a CBLR banking organization would report its CBLR and other relevant information on a simpler regulatory capital schedule, relative to Schedules RC-R of the Consolidated Reports of Condition and Income (Call Report) and HC-R of Form FR Y-9C. The agencies are including in this Supplementary Information an illustrative CBLR reporting schedule. The illustrative schedule reflects potential reduced reporting requirements and is intended to aid commenters in understanding the proposal. The agencies intend to publish a separate information collection proposal in the Federal Register to seek comment on revising the reporting schedules and instructions for purposes of the CBLR framework.

The agencies are monitoring the impact of the upcoming implementation of the current expected credit losses methodology (CECL) on community banking organizations. In May 2018, the agencies issued a notice of proposed rulemaking to amend the capital rules in response to CECL (CECL transitions NPR).[13] The CECL transitions NPR proposed an optional three-year transition arrangement that would allow a banking organization to phase in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, DTAs, allowance for credit losses, and average total consolidated assets. These day-one regulatory capital effects would be phased in over the transition period on a straight line basis.

Question 1: The agencies invite comment on the impact to the CBLR framework due to the upcoming implementation of CECL. What changes should the agencies consider? For example, what are the advantages and disadvantages of providing CBLR banking organizations an optional transition arrangement to phase in any adverse day-one effects on the CBLR due to the implementation of CECL? How could any phase-in be included in the CBLR framework without creating undue burden?

B. Qualifying Community Banking Organization

Under the proposal, a qualifying community banking organization would be defined as a depository institution or depository institution holding company that is not an advanced approaches banking organization and that meets the following criteria (qualifying criteria), each as described further below:

- Total consolidated assets of less than $10 billion;

[13] 83 FR 22312 (May 14, 2018).

- Total off-balance sheet exposures (excluding derivatives other than credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets;
- Total trading assets and trading liabilities of 5 percent or less of total consolidated assets;
- MSAs of 25 percent or less of CBLR tangible equity; and
- Temporary difference DTAs of 25 percent or less of CBLR tangible equity.[14]

The agencies believe that banking organizations that do not meet these qualifying criteria should remain subject to the generally applicable capital requirements to ensure that such banking organizations hold capital commensurate with the risk profile of their activities. The agencies would monitor the appropriateness of the proposed qualifying criteria over time to ensure that they remain effective in excluding banking organizations with complex or potentially risky off-balance sheet activities from the CBLR framework. As mentioned previously, the agencies developed these qualifying criteria in conjunction with the proposed CBLR of greater than 9 percent and the CBLR tangible equity definition to create a simple alternative framework to the generally applicable capital requirements.

Question 2: The agencies invite comment on the definition of a qualifying community banking organization. What are the advantages and disadvantages of the qualifying criteria? What is the burden associated with determining whether a banking organization meets the

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[14] In addition, the agencies would reserve the authority to disallow the use of the CBLR framework by a depository institution or depository institution holding company, based on the risk profile of the banking organization. This authority would be reserved under the general reservation of authority included in the capital rule, in which the CBLR framework would be codified. See 12 CFR 3.1(d) (OCC); 12 CFR 217.1(d) (Board); 12 CFR 324.1(d) (FDIC). In addition, for purposes of the capital rule and section 201 of the Act, the agencies would reserve the authority to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation. See 12 CFR 3.1(b) (OCC); 12 CFR 217.1(b) (Board); 12 CFR 324.1(b) (FDIC).

proposed qualifying criteria? What other criteria, if any, should the agencies consider in the proposed definition of a qualifying community banking organization? What are commenters' views on the tradeoffs between simplicity and having additional risk profile criteria? In specifying any alternative qualifying criteria regarding a banking organization's risk profile, please provide information on how alternative qualifying criteria should be considered in conjunction with the calibration of the CBLR level and why the agencies should consider such alternative criteria.

1. Total Consolidated Assets

Under the proposal, a qualifying community banking organization would be required to have less than $10 billion in total consolidated assets as of the end of the most recent calendar quarter, in accordance with the Act. Total consolidated assets would be calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable.

2. Total Off-Balance Sheet Exposures

Under the proposal, a qualifying community banking organization would be required to have total off-balance sheet exposures of 25 percent or less of its total consolidated assets, as of the end of the most recent calendar quarter. The agencies are including this qualifying criterion in the CBLR framework because the CBLR includes only on-balance sheet assets in its denominator and thus would not require a qualifying banking organization to hold capital against its off-balance sheet exposures. This qualifying criterion is intended to reduce the likelihood that a qualifying community banking organization with significant off-balance sheet exposures would hold less capital under the CBLR framework than under the generally applicable capital requirements.

Under the proposal, total off-balance sheet exposures would be calculated as the sum of the notional amounts of certain off-balance sheet items as of the end of the most recent calendar quarter. Total off-balance sheet exposures would include the unused portions of commitments (except for unconditionally cancellable commitments); self-liquidating, trade-related contingent items that arise from the movement of goods; transaction-related contingent items (i.e., performance bonds, bid bonds and warranties); sold credit protection in the form of guarantees and credit derivatives; credit-enhancing representations and warranties; off-balance sheet securitization exposures; letters of credit; forward agreements that are not derivative contracts; and securities lending and borrowing transactions (total off-balance sheet exposures). Total off-balance sheet exposures would exclude derivatives that are not credit derivatives, such as foreign exchange swaps and interest rate swaps. The agencies believe the notional amount for such derivatives is not an appropriate indicator of credit risk and could inadvertently disqualify a banking organization from using the CBLR framework if the banking organization is appropriately hedging its credit risks.

The proposed components of total off-balance sheet exposures would be generally consistent with off-balance sheet items in the generally applicable capital requirements, except for securities lending and borrowing transactions. Securities lending and borrowing transactions would include the sum of off-balance sheet securities lent and borrowed measured in accordance with the reporting instructions for these items in Schedules RC-L of the Call Report or HC-L of Form FR Y-9C, as applicable. The proposed calculation of total off-balance sheet exposures is significantly simpler than under the generally applicable capital requirements, which require that off-balance sheet exposures be converted to on-balance sheet equivalents and assigned the appropriate risk weight.

As mentioned previously, the agencies also intend to ensure that the regulatory relief included in the CBLR framework is available to a meaningful number of community banking organizations. As a result, the agencies do not believe that traditional banking activities, such as extending loan commitments to customers, should necessarily preclude a banking organization from qualifying to use the CBLR framework. The agencies analyzed average off-balance sheet exposures, relative to total consolidated assets, for banking organizations with less than $10 billion in total consolidated assets and observed that the vast majority of such banking organizations report off-balance sheet exposures totaling less than 25 percent of total consolidated assets. Accordingly, the agencies have determined that the proposed 25 percent qualifying criterion of total off-balance sheet exposures to total consolidated assets would allow a meaningful number of banking organizations to use the CBLR framework without unduly restricting lending practices. The proposed criterion would help to prevent banking organizations from engaging in excessive off-balance sheet exposures without a commensurate capital requirement under the CBLR framework.

Question 3: The agencies invite comment on the proposed off-balance sheet qualifying criterion. What aspects of the off-balance sheet qualifying criterion, including definitions, require further clarity? For example, what aspects, if any, of the generally applicable capital requirement's definition of credit enhancing representations and warranties or the reporting instructions to Schedules RC-L of the Call Report or HC-L of Form FR Y-9C for securities lent and borrowed require further clarity? What other alternatives should the agencies consider for purposes of defining the proposed qualifying criterion? For example, what are the advantages and disadvantages of using off-balance sheet items reported on Schedules RC-L of the Call Report or HC-L of Form FR Y-9C in place of the off-balance sheet items as currently reported *on Schedules RC-R of the Call Report or HC-R of Form FR Y-9C? What impact would the proposed qualifying criterion have on a banking organization's business strategies and lending decisions?*

3. Total Trading Assets and Trading Liabilities

Under the proposal, a qualifying banking organization would be required to have total trading assets and liabilities of 5 percent or less of its total consolidated assets, each measured as of the end of the most recent calendar quarter. Total trading assets and liabilities would be calculated as the sum of those exposures, in accordance with the reporting instructions for these items on Schedules RC of the Call Report or HC of Form FR Y-9C, as applicable. A banking organization would divide the sum of its total trading assets and trading liabilities by its total consolidated assets to determine its percentage of total trading assets and liabilities.

The agencies recognize the potential elevated levels of risk and complexity that can be associated with certain trading activities. For this reason, banking organizations with significant trading assets and liabilities are subject to a market risk capital requirement under the generally applicable risk-based capital requirements.[15] In contrast, CBLR banking organizations would not be required to calculate additional market risk capital requirements and, as a result, the CBLR framework may not appropriately capitalize for material amounts of trading assets and trading liabilities. In addition, elevated levels of trading activity can produce a heightened level of earnings volatility, which has implications for capital adequacy. Therefore, the agencies have concerns about making the CBLR framework available to banking organizations with material

[15] 12 CFR Part 3, Subpart F (OCC); 12 CFR Part 217, Subpart F (Board); 12 CFR Part 324, Subpart F (FDIC).

market risk exposure. At the same time, the agencies do not believe that low levels of trading activity should preclude a banking organization from using the CBLR framework.

Based on the agencies' analysis, the vast majority of banking organizations with less than $10 billion in total consolidated assets have total trading assets and liabilities well below 5 percent of their total consolidated assets. The agencies believe that the proposed 5 percent threshold would help to ensure that banking organizations under the CBLR framework would not engage in significant trading activity. Further, this criterion is generally consistent with section 203 of the Act, which excludes a community banking organization from proprietary trading restrictions if its trading assets and liabilities are 5 percent or less of its total consolidated assets.

The agencies considered adopting an additional qualifying criterion in the CBLR framework based on a banking organization's total notional derivatives exposures. However, as described above, the agencies are concerned that such additional criterion may inadvertently disqualify a banking organization from using the CBLR framework if the banking organization engages in prudent risk management by appropriately hedging its risks associated with traditional banking activities. The agencies reviewed the notional derivative exposures reported by banking organizations with less than $10 billion in total consolidated assets and determined that a significant majority of such banking organizations currently either do not report any derivative exposure or report notional derivative amounts of less than $500 million, which would require relatively low amounts of regulatory capital under the generally applicable capital requirements. Therefore, except for the notional amount of sold credit protection in the form of a credit derivative, the agencies have not incorporated total notional derivatives exposure as a qualifying criterion under the proposed CBLR framework.

Question 4: The agencies invite comment on the proposed trading activity criterion. What other alternatives to limiting trading activity should the agencies consider for purposes of defining a qualifying community banking organization and why?

Question 5: What are the advantages and disadvantages of using total notional derivatives exposures or another measure as the basis for the qualifying criterion? If such a criterion were included in the CBLR framework, how should it be measured and why? At what level should any such qualifying criterion be set?

4. Mortgage Servicing Assets

Under the proposal, a qualifying community banking organization would be required to have MSAs of 25 percent or less of its CBLR tangible equity. This qualifying criterion would be calculated as MSAs, calculated in accordance with the reporting instructions to Schedules RC-M of the Call Report or HC-M of Form FR Y-9C, as applicable, divided by CBLR tangible equity, each measured as of the end of the most recent calendar quarter.

High concentrations in MSAs are subject to stringent capital requirements through a deduction approach under the generally applicable capital requirements.[16] The stringent capital requirements are designed to protect banking organizations from sudden fluctuations in the value of MSAs and from the potential inability of banking organizations to divest themselves of MSAs quickly at their full estimated value during periods of financial stress. The 25 percent threshold for holdings of MSAs in the CBLR framework would help to ensure that banking organizations with high concentrations of MSAs would remain subject to the generally applicable capital

[16] 12 CFR 3.22(d) (OCC); 12 CFR 217.22(d) (Board); 12 CFR 324.22(d) (FDIC).

requirements. The proposed MSA qualifying criterion is aligned with the proposed threshold for MSAs in the simplifications proposal discussed above.[17]

As an alternative to the proposed qualifying criterion for MSAs, the agencies considered an approach that would instead require a qualifying community banking organization to deduct from its CBLR tangible equity MSAs in excess of 25 percent of CBLR tangible equity. However, the agencies are concerned that such an approach would unduly complicate the CBLR framework.

Question 6: The agencies invite comment on the proposed qualifying criterion for MSAs. What are commenters' views on the inclusion of such a qualifying criterion as opposed to an alternative deduction approach from CBLR tangible equity for purposes of the CBLR?

5. Temporary Difference Deferred Tax Assets

Under the proposal, a qualifying community banking organization would have temporary difference DTAs, net of any related valuation allowances, of 25 percent or less of CBLR tangible equity. This criterion would be calculated as temporary difference DTAs, as described in the capital rule,[18] divided by CBLR tangible equity, each measured as of the end of the most recent calendar quarter. Temporary difference DTAs, net of any related valuation allowances, are assets that banking organizations may not be able to fully realize, especially under adverse financial conditions, because a banking organization's ability to realize its temporary difference

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[17] 82 Fed. Reg. 49984 (October 27, 2017).

[18] 12 CFR 3.22(d)(1)(i) (OCC); 12 CFR 217.22(d)(1)(i) (Board); 12 CFR 324.22(d)(1)(i) (FDIC). As described further below, this proposal would not include the option for netting deferred tax liabilities to maintain a simple calculation of CBLR tangible equity.

DTAs is dependent on future taxable income.[19] This concern is particularly acute when banking organizations are experiencing financial difficulty.

Question 7: The agencies invite comment on the treatment of temporary difference DTAs for purposes of the definition of a qualifying community banking organization. What are the advantages and disadvantages of the proposed qualifying criterion for temporary difference DTAs? What alternatives should the agencies consider in limiting exposures to DTAs and how would such alternatives affect the proposed calibration of the CBLR framework?

6. Advanced Approaches Banking Organizations

Under the proposal, only non–advanced approaches banking organizations would be eligible to use the CBLR framework. Advanced approaches banking organizations are generally banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure, or subsidiaries of such banking organizations.[20] As such, a depository institution with less than $10 billion in total consolidated assets may be an advanced approaches banking organization.

The agencies believe that, in general, the Act is designed to provide regulatory relief for banking organizations with less than $10 billion in total consolidated assets and that have a limited risk profile. While an advanced approaches banking organization with less than $10 billion in total consolidated assets is a relatively small banking organization, it is nonetheless part of a more complex banking organization. Consequently, such a banking organization would not be eligible to use the CBLR framework under this proposal.

[19] Temporary differences arise when financial events or transactions are recognized in one period for financial reporting purposes and in another period, or periods, for tax purposes.
[20] <u>See</u> footnote 4.

Question 8: The agencies invite comment on the exclusion of advanced approaches banking organizations from the CBLR framework. What other alternatives should the agencies consider with respect to a banking organization's affiliation with larger, more complex banking organizations?

C. CBLR Tangible Equity

Under the proposal, the numerator of the CBLR would be CBLR tangible equity. CBLR tangible equity would be calculated as a banking organization's total bank equity capital or total holding company equity capital, as applicable, determined in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, prior to including minority interests, less: (i) accumulated other comprehensive income (AOCI), (ii) all intangible assets (other than MSAs), and (iii) DTAs, net of any related valuation allowances, that arise from net operating loss and tax credit carryforwards, each as of the end of the most recent calendar quarter.[21] CBLR tangible equity would not include minority interests (equity of a consolidated subsidiary that is not owned by the qualifying community banking organization) because minority interests do not have the same loss absorption capacity as other components of CBLR tangible equity at the consolidated banking organization level. The proposed definition is intended as a prudent, simple measure of CBLR tangible equity, which CBLR banking organizations can calculate using amounts reported on regulatory reports. The agencies believe that this simpler measure of capital is consistent with the goal of providing meaningful burden relief for qualifying community banking organizations.

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[21] Solely for purposes of the FDIC's proposed definition of CBLR tangible equity, FDIC-supervised institutions that are CBLR banking organizations must deduct identified losses (to the extent that CBLR tangible equity would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the banking organization's books).

The agencies' generally applicable capital requirements have long included restrictions on the types of capital instruments that can be included in tier 1 capital. Prior to 2013, the agencies' capital rule required that voting common stock holders' equity be the dominant form of tier 1 capital and that banking organizations should avoid undue reliance on nonvoting equity and preferred stock. Furthermore, cumulative perpetual preferred securities are generally not included in tier 1 capital. The definition of tier 1 capital under the generally applicable capital requirements excludes cumulative perpetual preferred securities as such instruments allow for the accumulation of interest payable and are not likely to absorb losses to the degree appropriate for inclusion in tier 1 capital. However, consistent with the intention to maintain a simple definition of CBLR tangible equity, the proposal does not include such restrictions and thus provides more flexibility with respect to the types of capital instruments that could qualify for CBLR tangible equity. The agencies believe providing such flexibility is consistent with safety and soundness when considering the overall proposed calibration of the CBLR framework for qualifying community banking organizations.

Question 9: The agencies invite comment on the proposed definition of CBLR tangible equity. What changes, if any, would commenters suggest to the proposed definition of CBLR tangible equity? What are the advantages and disadvantages of a CBLR that closely aligns with the applicable reporting instructions to Schedules RC of the Call Report and HC of Form FR Y-9C measure of equity? What are the advantages and disadvantages of introducing additional adjustments and deductions from equity capital when defining CBLR tangible equity?

Question 10:   What are the advantages and disadvantages of not imposing specific eligibility criteria for capital instruments under the CBLR framework? If the agencies exclude certain types of capital instruments from CBLR tangible equity, how should the agencies *incorporate such criteria in a simple manner? For example, what are the advantages and disadvantages of the agencies requiring that voting common equity be the dominant form of CBLR tangible equity?*

Question 11: What other alternative definitions of CBLR tangible equity should the agencies consider with respect to the CBLR, and how should such alternatives be considered in conjunction with the proposed 9 percent CBLR calibration? Would defining CBLR tangible equity to equal a measure of capital under the generally applicable capital requirements (e.g., tier 1 capital) be more appropriate, and if so, why?

1. Minority Interests

Under the proposal, the definition of CBLR tangible equity would not include minority interests in consolidated subsidiaries because, while such minority interests are available to absorb losses at the subsidiary, they are not always available to absorb losses at the banking organization's consolidated level. To address this concern, the generally applicable capital requirements limit the amount of minority interests that a banking organization may include in its regulatory capital through a relatively complex calculation.

To balance the agencies' concern regarding the capacity of minority interests to absorb losses at the consolidated banking organization and to preserve the simplicity of the CBLR framework, the proposed definition of CBLR tangible equity would not include minority interests in consolidated subsidiaries. The agencies reviewed data regarding minority interests that banking organizations with less than $10 billion in total consolidated assets report in regulatory capital and found that only a small number of such banking organizations currently report any minority interests. Therefore, the exclusion of minority interests is not expected to have a material impact on the amount of CBLR tangible equity for the vast majority of banking organizations.

Question 12: The agencies invite comment on the proposed exclusion of minority interests from the definition of CBLR tangible equity. What are the advantages and disadvantages of this approach? If minority interests were to be included, how should the agencies limit the amount of minority interests that could count toward a banking organization's CBLR tangible equity without creating undue complexity?

2. Accumulated Other Comprehensive Income

Under the proposal, the definition of CBLR tangible equity would exclude all components of AOCI, measured in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable. Under the generally applicable capital requirements, banking organizations, other than advanced approaches banking organizations, may exclude most components of AOCI from common equity tier 1 capital. AOCI generally includes accumulated unrealized gains and losses on certain assets and liabilities that are not included in net income, yet are included in equity under U.S. GAAP (for example, unrealized gains and losses on securities designated as available-for-sale). When the agencies revised the capital rule in 2013, they noted that smaller or relatively less complex banking organizations may not have sophisticated risk management techniques to hedge interest rate risk and that including AOCI in regulatory capital could introduce significant volatility in the capital ratios due to fluctuations in benchmark interest rates. The agencies therefore included an option for non-advanced approaches banking organizations to neutralize the impact of AOCI on their regulatory capital calculations and the vast majority of banking organizations have made that election.

Consistent with the generally applicable capital requirements' treatment of AOCI for banking organizations other than advanced approaches banking organizations, the proposal would exclude all components of AOCI from CBLR tangible equity. The proposed adjustment for AOCI would be simpler than under the generally applicable capital requirements which allow certain banking organizations to neutralize some but not all AOCI, and thus should alleviate regulatory burden for banking organizations that qualify for and elect to use the CBLR, without meaningfully affecting the amount of the AOCI adjustment.

Question 13: The agencies invite comment on the proposed treatment of AOCI for purposes of the CBLR. What are the advantages and disadvantages of making adjustments to CBLR tangible equity for all components of AOCI? What alternatives, if any, to the proposed treatment of AOCI should the agencies consider for purposes of the CBLR and why?

3. Intangible Assets

Under the proposal, the definition of CBLR tangible equity would require deduction of goodwill and all other intangible assets (other than MSAs), which is consistent with long-standing requirements in the generally applicable capital requirements. This deduction would be calculated as goodwill and all other intangible assets (other than MSAs), measured in accordance with the reporting instructions to Schedules RC-M of the Call Report or HC-M of Form FR Y-9C, as applicable. All other intangible assets generally include, for example, core deposit intangibles, favorable leasehold rights, purchased credit card relationships, and non-mortgage servicing assets. During times of stress, it may be difficult to sell, or to calculate reliable values for, intangible assets. Fully deducting goodwill and all other intangible assets would help to retain the quality of CBLR tangible equity and would be consistent with safety and soundness and with the generally applicable capital requirements. Deducting these items is also consistent with section 201 of the Act, which requires the agencies to develop a CBLR using tangible equity capital.

The proposed deduction for intangible assets is gross of associated deferred tax liabilities. The generally applicable capital requirements contain an option for netting of deferred tax liabilities from the items subject to deduction, which may result in a complex calculation for banking organizations with limited deferred tax liabilities. The agencies propose to not include the same option for netting deferred tax liabilities to maintain a simple calculation of CBLR tangible equity. The agencies also analyzed the effect of netting deferred tax liabilities from intangible assets subject to deduction and observed that permitting netting of deferred tax liabilities would not meaningfully change the CBLR for qualifying banking organizations.

Question 14: The agencies invite comment on the treatment of intangible assets in the proposed definition of CBLR tangible equity for purposes of the CBLR. What are the advantages and disadvantages of the proposed approach? What are commenters' views on retaining the option to net deferred tax liabilities from items subject to deduction, as permitted under the generally applicable capital requirements? What alternatives, if any, to the proposed treatment of intangible assets should the agencies consider and why?

4. Deferred Tax Assets

Under the proposal, DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, would be deducted from CBLR tangible equity. This deduction would supplement the qualifying criterion that requires a qualifying community banking organization to have temporary difference DTAs of 25 percent or less of its CBLR tangible equity.

Under the proposal, DTAs that arise from net operating loss and tax credit carryforwards would be measured consistently with the generally applicable capital requirements;[22] except that a banking organization would not have the option to reduce the amount of the deduction by deferred tax liabilities. The proposed approach for DTAs is similar to, but simpler than, the treatment of DTAs in the generally applicable capital requirements, which requires deduction from common equity tier 1 capital of the entire amount of DTAs that arise from net operating loss and tax credit carryforwards and requires the deduction of temporary difference DTAs above certain thresholds. The proposed approach for DTAs is intended to address the concern that DTAs that are generally dependent upon future taxable income may not be realizable. This concern is particularly acute when banking organizations are experiencing financial difficulty or when broad economic conditions change.

In developing the proposal, the agencies considered alternative treatments of DTAs that arise from net operating loss and tax credit carryforwards and temporary difference DTAs that would have varying degrees of conservatism and complexity. One alternative for calculating CBLR tangible equity would be to deduct DTAs that arise from net operating loss and tax credit carryforwards from a banking organization's total equity capital, and then to deduct temporary difference DTAs that exceed 25 percent of a threshold amount equal to a banking organization's total equity capital less all other adjustments and deductions for CBLR tangible equity. The agencies decided against this alternative because such a threshold deduction would result in an unduly complex CBLR tangible equity calculation. Another alternative would be to deduct all net DTAs (i.e., DTAs that arise from net operating loss and tax credit carryforwards and temporary difference DTAs), net of any valuation allowances, measured in accordance with the

[22] 12 CFR 3.22(a)(3) (OCC); 12 CFR 217.22(a)(3) (Board); 12 CFR 324.22(a)(3) (FDIC).

reporting instructions to Schedule RC-F of the Call Report or Schedule HC-F of Form FR Y-9C, as applicable, from a banking organization's total equity capital, which would be a more conservative treatment than under the generally applicable capital requirements. The agencies have not proposed this approach based on a concern that a deduction for all temporary difference DTAs could be unduly punitive.

Question 15: The agencies invite comment on the treatment of DTAs that arise from net operating loss and tax credit carryforwardsin the proposed definition of CBLR tangible equity. What are the advantages and disadvantages of not permitting the netting of deferred tax liabilities? What are commenters' views on the complexity of netting deferred tax liabilities as compared to the simplicity of a gross deduction? What alternatives, if any, should the agencies consider and why?

Question 16: The agencies invite comment on whether it would be more appropriate to deduct all net DTAs from CBLR tangible equity. What are the advantages and disadvantages of deducting all net DTAs from CBLR tangible equity? What are commenters' views on the tradeoffs of simply deducting all net DTAs as compared to separate treatments for DTAs that arise from net operating loss and tax credit carryforwards and temporary difference DTAs? What alternatives, if any, should the agencies consider and why?

D. Average Total Consolidated Assets (CBLR Denominator)

Consistent with the Act, the proposed CBLR denominator would be based on a banking organization's average total consolidated assets. Specifically, average total consolidated assets for purposes of the CBLR denominator would be calculated in accordance with the reporting instructions to Schedules RC-K on the Call Report or HC-K on Form FR Y-9C, as applicable, less the items deducted from the CBLR numerator, except AOCI. The proposed calculation is similar to that used in determining the denominator of the tier 1 leverage ratio.

Question 17: The agencies invite comment on the proposed definition of average total consolidated assets. What, if any, alternative definitions of average total consolidated assets should the agencies consider for purposes of the CBLR and why?

E. Calibration of the Community Bank Leverage Ratio

The agencies propose that a qualifying community banking organization may elect to use the CBLR framework if the CBLR of the banking organization is greater than 9 percent at the time of election. A qualifying community banking organization with a CBLR greater than 9 percent would be considered to have met: (i) the generally applicable capital requirements; (ii) the well capitalized capital ratio requirements under the agencies' PCA framework for insured depository institutions or the well capitalized standards under the Board's regulations for holding companies, as applicable; and (iii) any other capital or leverage requirements to which the banking organization is subject. Such banking organizations would not be required to calculate capital ratios under the generally applicable capital requirements. Additionally, to be considered well capitalized under the CBLR framework, and consistent with the agencies' PCA framework, a qualifying community banking organization must not be subject to any written agreement, order, capital directive, or PCA directive to meet and maintain a specific capital level for any capital measure.

The proposed calibration of the CBLR, in conjunction with the qualifying community banking organization and CBLR tangible equity definitions, seek to strike a balance among the following objectives: maintaining strong capital levels in the banking system, ensuring safety and soundness, and providing appropriate regulatory burden relief to as many banking organizations as possible. For example, an 8 percent CBLR would allow more banking organizations to opt into the CBLR framework but could incentivize a large number of CBLR banking organizations to hold less regulatory capital than they do today. Conversely, a significant number of banking organizations would not meet a 10 percent CBLR, which could preclude the use of the CBLR framework by banking organizations that are operating in a safe and sound manner with prudent levels of capital.

The agencies estimate that as of the second quarter of 2018, the vast majority of banking organizations under $10 billion in total consolidated assets would meet the definition of a qualifying community banking organization and have a CBLR above 9 percent. Based on reported data as of June 30, 2018, there are 5,408 insured depository institutions with less than $10 billion in total consolidated assets and 151 depository institution holding companies with more than $3 billion and less than $10 billion in total consolidated assets.[23] Approximately 83 percent of such insured depository institutions and 56 percent of such depository institution holding companies would qualify to use the CBLR framework under the proposed 9 percent calibration and qualifying criteria. The agencies believe the CBLR framework, including its proposed calibration, meets the objectives described above.

Question 18: The agencies invite comment on the proposed CBLR calibration. What other factors should the agencies consider in calibrating the CBLR and why? The agencies request that commenters include discussion of how the proposed CBLR level should be affected

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[23] As of June 30, 2018, there are 4,261 depository institution holding companies with less than $10 billion in total consolidated assets. More than 95 percent of such holding companies are not subject to the capital rule because they have less than $3 billion in total consolidated assets and meet certain additional criteria to qualify for the Board's small bank holding company policy statement. See 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

by potential changes to other aspects of the proposed CBLR framework, such as the definition of CBLR tangible equity and the definition of a qualifying community banking organization.

F. Election to Use the Community Bank Leverage Ratio Framework

Under the proposal, a qualifying community banking organization with a CBLR greater than 9 percent may elect to use the CBLR framework at any time. Such a banking organization would indicate its election by completing a CBLR reporting schedule in its Call Report or Form FR Y-9C, as applicable, which will be proposed at a later date, as discussed below in this Supplementary Information.

Under the proposal, a CBLR banking organization may opt out of the CBLR framework and use the generally applicable capital requirements by completing the associated reporting requirements on Schedules RC-R of the Call Report or HC-R of Form FR Y-9C, as applicable. While the agencies would not place restrictions on the ability of qualifying community banking organizations to switch in and out of the CBLR framework, the agencies anticipate such changes to be rare and typically driven by significant changes in the banking organization's business activities. The agencies believe that some flexibility to reverse the election to use the CBLR framework is warranted to ensure that banking organizations can adjust their business strategies and activities over time. The agencies would expect a CBLR banking organization to be able to provide a rationale for opting out of the CBLR framework to its appropriate regulators, if requested.

Additionally, the agencies note that a CBLR banking organization may opt out of the CBLR framework between reporting periods by producing the capital ratios under the generally applicable capital requirements to its appropriate regulators at the time of opting out. This requirement is intended to remove any ambiguity relating to capital adequacy for either the banking organization or the appropriate regulators.

A banking organization that has opted out of the CBLR framework would need to meet the qualifying criteria included in the definition of a qualifying community banking organization and have a CBLR of greater than 9 percent to be able to opt back into the CBLR framework. This proposed approach is intended to balance the need for flexibility in applying capital requirements tailored to banking organizations' different and potentially shifting business models with the goal of discouraging arbitrage between capital frameworks.

Question 19: The agencies invite comment on the proposed procedure a banking organization would use to opt into and out of the CBLR framework. What are commenters' views on the frequency with which a qualifying community banking organizations may opt in and out of the CBLR framework? What other alternatives should the agencies consider for purposes of qualifying community banking organizations' election to use and report the CBLR and why? Do qualifying community banking organizations anticipate frequent switching between the CBLR framework and the generally applicable capital requirements, and if so, why? What are the operational or other challenges associated with frequent switching between frameworks? What are commenters' views on the loss of comparability in capital ratios over time that may result from frequent switching between frameworks? How would the changes proposed in the simplifications proposal influence whether a banking organization elects to use the CBLR framework?

G. Compliance with the Proposed CBLR Framework

1. Definition of a qualifying community banking organization

Under the proposal, a CBLR banking organization that no longer meets the proposed qualifying criteria would be required, within a limited grace period of two consecutive calendar quarters, either to once again meet the qualifying criteria or demonstrate compliance with the generally applicable capital requirements. The grace period would begin as of the end of the calendar quarter in which the CBLR banking organization ceases to satisfy the criteria to be a qualifying community banking organization and ends after two consecutive calendar quarters. During the grace period, the banking organization could continue to be treated as a qualifying community banking organization and could, therefore, continue calculating and reporting a CBLR to determine its PCA category, in the case of an insured depository institution, and compliance with other statutes and regulations.

A banking organization that grows to $10 billion or larger in total consolidated assets or no longer meets one or more of the other qualifying criteria (e.g., increased concentrations in MSAs) could use the grace period to again meet the qualifying criteria or revert to the generally applicable capital requirements. For example, if the CBLR banking organization exceeded one of the qualifying criteria as of February 15, the grace period for such a banking organization would begin as of the end of the quarter ending March 31. The banking organization could continue to use the CBLR framework as of June 30, but would need to fully comply with the generally applicable capital requirements (including the associated reporting requirements) as of September 30, unless at that time the banking organization once again met the qualifying criteria of the CBLR framework. The agencies believe that this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in risk profile.

A CBLR banking organization that ceases to meet the criteria to be a qualifying community banking organization as a result of a business combination would receive no grace period, however, and immediately would no longer be a qualifying community banking organization. The agencies believe this approach is appropriate as banking organizations would need to consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements. A CBLR banking organization that expects that it would not meet the qualifying criteria as a result of a planned business combination would need to provide its pro-forma capital ratios under the generally applicable capital requirements to its appropriate regulator as part of its merger application, if applicable, and fully comply with the generally applicable capital requirements as of the completion of the transaction.

Question 20: The agencies invite comment on the proposed treatment for a banking organization that no longer meets the definition of a qualifying community banking organization after making an election to use the CBLR framework. Specifically, what are the advantages and disadvantages of the proposed period of time a banking organization that no longer meets the qualifying criteria would be provided to transition to the generally applicable capital requirements? What other alternatives should the agencies consider with respect to a banking organization that no longer meets the definition of a qualifying community banking organization and why?

2. Treatment of a community banking organization that falls below the CBLR requirement

Under the proposal, a CBLR banking organization that has a CBLR greater than 9 percent would be considered well capitalized. In addition, a CBLR banking organization would be considered to have met the minimum capital requirements under the agencies' capital rule if its CBLR is 7.5 percent or greater.[24]

The Act requires that the agencies establish procedures for the treatment of a CBLR banking organization that experiences a decline in its CBLR below the percentage set by the agencies after exceeding such percentage. A CBLR banking organization's CBLR may deteriorate due to a decline in its level of CBLR tangible equity, growth in its average total consolidated assets, or a combination of both. As described above, a CBLR banking organization may choose to stop using the CBLR framework and instead become subject to the generally applicable capital requirements. However, the agencies recognize that some banking organizations may find it unduly burdensome to begin complying with the more complex risk-based capital reporting requirements at the same time that the organization is experiencing a decline in its CBLR. Accordingly, in the case of CBLR banking organizations that are insured depository institutions and that no longer exceed the 9 percent CBLR, the agencies are proposing to establish the following CBLR levels to serve as proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories and be deemed to satisfy statutory capital requirements:[25]

- Adequately capitalized – CBLR of 7.5 percent or greater;
- Undercapitalized – CBLR of less than 7.5 percent; and
- Significantly undercapitalized – CBLR of less than 6 percent.

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[24] A CBLR banking organization that is a depository institution holding company would no longer be considered well capitalized if the holding company had a CBLR of 9 percent or less.

[25] See, for example, 12 U.S.C. 5371 (establishing a capital floor for insured depository institutions and depository institution holding companies); section 201 of the Act (requiring development of a community bank leverage ratio for which a depository institution exceeding that ratio would be considered to meet the requirements to be treated as well capitalized under PCA); and 12 U.S.C. 1831o (PCA).

The definition of critically undercapitalized would remain the same as under the PCA framework and the generally applicable capital requirements. The agencies are not proposing a proxy CBLR level for the critically undercapitalized category, which would continue to be calculated as the ratio of tangible equity to total assets (as defined under the PCA framework) of 2 percent or below. As discussed above, the agencies are proposing a CBLR level of greater than 9 percent for the well capitalized capital category pursuant to section 201 of the Act.

a. CBLR Levels for Certain PCA Categories

Under the proposal, the CBLR levels for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories would serve as proxies for the existing risk-based and leverage capital ratios that currently define these PCA capital categories. In setting the proposed proxy levels, the agencies sought to provide sufficient separation across categories such that a banking organization would not face frequent changes to its PCA category without a corresponding significant change in its CBLR. For reference, the agencies note that under the current PCA rules, there is a 2 percentage point difference between the risk-based capital ratios for the corresponding PCA capital categories and a 1 percentage point difference between the tier 1 leverage ratios for the corresponding PCA capital categories.

The agencies performed data analysis on 5,408 insured depository institutions under $10 billion in total consolidated assets as of June 30, 2018, to calibrate the CBLR levels for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories, of which 4,469 insured depository institutions meet all the proposed qualifying criteria (eligible IDIs).

The agencies' data analysis has demonstrated that at the proposed PCA adequately capitalized requirement of 7.5 percent, about 0.5 percent of eligible IDIs would require less capital – in order to be deemed adequately capitalized – under the CBLR framework than under the generally applicable capital requirements. Thus, the data analysis by the agencies supports a conclusion that 7.5 percent results in an appropriate balance between the two considerations of (1) serving as an appropriate proxy for the adequately capitalized PCA ratio in the risk-based and leverage capital rules, and (2) providing sufficient separation between the adequately capitalized PCA ratio and the well capitalized and the undercapitalized PCA ratios.

Similarly, at the proposed PCA significantly undercapitalized requirement of 6 percent, about 0.4 percent of eligible IDIs would require less capital – in order to be considered undercapitalized – under the CBLR framework than under the generally applicable capital requirements. Therefore, the agencies believe that the proposed 6 percent level would represent an appropriate balance between (1) serving as an appropriate proxy for the significantly undercapitalized PCA ratio in the risk-based and leverage capital rules, and (2) providing sufficient separation between the significantly undercapitalized and the undercapitalized and critically undercapitalized PCA ratios.

Under the proposal, a CBLR banking organization that maintains a CBLR of 7.5 percent or greater but less than or equal to 9 percent would be deemed to have met the minimum capital requirements and all of the capital ratio requirements for the adequately capitalized capital category under the PCA framework and therefore, treated as adequately capitalized. A CBLR banking organization whose CBLR falls below 7.5 percent but is greater than or equal to 6 percent would be deemed to have met all of the capital ratio requirements for the undercapitalized capital category under the PCA framework and therefore, treated as undercapitalized. A CBLR banking organization whose CBLR falls below 6 percent and tangible equity ratio is above 2 percent would be deemed to have met all of the capital ratio requirements for the significantly undercapitalized capital category under the PCA framework and therefore, considered and treated as significantly undercapitalized. The definition of critically undercapitalized would remain the same as under the PCA framework and the generally applicable capital requirements. Specifically, the critically undercapitalized category would continue to include banking organizations with a ratio of tangible equity to total assets (as defined under the PCA framework) of 2 percent or below.

b. Critically Undercapitalized Capital Category

Section 38 of the Federal Deposit Insurance Act[26] specifies that the critically undercapitalized capital category must be set at no less than 2 percent of the tangible equity ratio. Therefore, a CBLR depository institution with a ratio of tangible equity to total assets (as provided for under the agencies PCA framework) of 2 percent or below would be classified as critically undercapitalized. Because the information necessary to calculate the PCA tangible equity ratio under the current capital rule may not be readily available to a CBLR banking organization, a CBLR banking organization with a CBLR of less than 6 percent would be required to provide promptly to its appropriate regulators such information as is necessary to calculate the PCA tangible equity ratio so that the regulators may calculate and monitor the banking organization's tangible equity ratio in the event that its condition deteriorates. Such deterioration can occur quickly depending on the particular circumstances and economic environment. Under the proposal and consistent with the current authorities, the appropriate regulators also may request the information necessary to determine the tangible equity ratio at any time, and the CBLR banking organization must provide it.

[26] 12 U.S.C. 1831*o*.

The agencies considered proposing a CBLR level for the critically undercapitalized capital category. However, allowing two definitions for the critically undercapitalized capital category would create potential arbitrage between the generally applicable capital requirements and CBLR framework and legal uncertainty as to when a bank is critically undercapitalized for purposes of the FDIC being appointed as a conservator or receiver for a failing banking organization.

c. Effect of CBLR Levels on Other Regulations

The agencies would use the proxies described in the previous section to apply the regulatory, supervisory, and enforcement authorities under PCA and other statutes to CBLR banking organizations.[27] A CBLR banking organization would be subject to all of the requirements and restrictions, including any capital restoration plan requirement and mandatory and discretionary supervisory actions, applicable to a banking organization in its PCA category. Similarly, agencies expect to continue applying the current supervisory standards for examining banking organizations for capital adequacy.

For example, if a CBLR banking organization becomes less than well capitalized, it would become subject to applicable regulatory restrictions. For a CBLR banking organization that is a depository institution, these restrictions would include the brokered deposit and interest rate restrictions.[28] For a CBLR banking organization that is a depository institution holding company, these restrictions would include limitations on financial activities under the Bank Holding Company Act and Regulation Y. A CBLR banking organization's capital category can also affect various applications' standards, procedures, and processing in the same way as a banking organization's current PCA category based on the generally applicable capital

[27] See section 201(c)(2) of the Act.
[28] 12 U.S.C 1831f; 12 CFR 337.6.

requirements. These include the ability to conduct interstate mergers and to establish interstate branches, as well as eligibility for expedited applications processing.

d. Alternative Approach

Consistent with the treatment of a CBLR banking organization that no longer meets the definition of a qualifying community banking organization, the agencies considered proposing to require CBLR banking organizations to report capital ratios under the generally applicable capital requirements if their CBLR fell to 9 percent or below, subject to a transition period. On the one hand, this approach is straightforward, avoids any potential ambiguity with respect to a banking organization's capital category when it is less than well capitalized, and is consistent with the CBLR framework being available for highly capitalized community banking organizations. On the other hand, this approach is relatively inflexible compared to the proposal. The agencies believe that some additional flexibility in the implementation of the CBLR framework is not inconsistent with the Act's purpose of relieving qualifying community banking organizations.

Question 21: The agencies invite comment on the proposed treatment for a CBLR banking organization that no longer exceeds the 9 percent CBLR level. Specifically, what are commenters' views on the proposed CBLR levels for all other PCA capital categories except for the critically undercapitalized capital category? What are the advantages and disadvantages of establishing proxies for the identified PCA capital categories?

Question 22: The agencies invite comment on the proposal to require a CBLR banking organization to provide the information necessary for its regulators to calculate the banking organization's tangible equity once the banking organization's CBLR falls below 6 percent.

What, if any, would be the burden of gathering and providing such information and how long would it take to generate such information?

Question 23: What alternative procedures should the agencies consider with respect to the treatment of a CBLR banking organization whose CBLR has fallen to 9 percent or less and why?

Question 24: The agencies invite comment on the proposed implementation of section 201 of the Act. How does the proposed definition of CBLR tangible equity interact with the risk profile criteria and the proposed CBLR ratio requirement?

H. Other Affected Federal Regulations

Under the proposal, a CBLR banking organization would no longer be required to calculate or report the components of capital used in the calculation of risk-based capital ratios or the tier 1 leverage ratio, such as tier 1 capital, total capital, or risk-weighted assets. Various Federal banking regulations outside of the regulatory capital rule (non-capital rules) contain references to these regulatory capital terms and therefore would need to be updated to reflect the components of capital and related capital measures under the CBLR framework. To ensure that these non-capital rules continue to operate as intended, the agencies propose that standards using tier 1 capital or total capital be amended so that a CBLR banking organization would use CBLR tangible equity instead of tier 1 capital or total capital. The agencies propose that where applicable, standards referencing risk-weighted assets be amended so that a CBLR banking organization would use average total consolidated assets (i.e., the CBLR denominator) instead of risk-weighted assets.

In addition, certain of the agencies' non-capital rules refer to "capital stock and surplus" (or similar items), which is generally defined as tier 1 and tier 2 capital plus the amount of allowance for loan and lease losses not included in tier 2 capital.[29] The agencies propose that a CBLR banking organization would calculate capital stock and surplus as CBLR tangible equity plus allowances for loan and lease losses. Thus, for example, for purposes of compliance with section 23A of the Federal Reserve Act, the proposal would amend the Board's Regulation W to provide that, for a CBLR banking organization, "capital stock and surplus" would mean CBLR tangible equity plus allowance for loan and lease losses.[30]

At this time, the agencies are not proposing changes to their supervisory guidance which uses these capital terms. The agencies will consider how best to address affected supervisory guidance in conjunction with comments received on this proposal.

Question 25: The agencies invite comment on the proposed amendments to their affected non-capital rules that would apply to CBLR banking organizations under the CBLR framework. What are commenters' views or concerns with the proposed amendments, including with regard to any unintended consequences? What are the advantages and disadvantages of retaining the current tier 1 capital measure for purposes of the other regulations that would be revised under this proposal or within the CBLR framework itself? What other approaches should the agencies consider in amending the affected regulations? Which other additional non-capital rules should the agencies consider and amend as a result of the CBLR framework and why?

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[29] See e.g., 12 CFR 223.3(d).

[30] The agencies issued a proposal in May 2018 to address pending changes to U.S. GAAP related to accounting for allowances under the agencies' rules. See 83 FR 22312 (May 14, 2018). For purposes of any final rule, the agencies expect to match the treatment and terminology related to allowances under the agencies' rules under this proposal and the May 2018 proposal.

I. Deposit Insurance Assessments Regulations

FDIC assessments regulations also would be affected by the proposed CBLR framework. For example, CBLR banking organizations would no longer be required to report tier 1 capital or the tier 1 leverage ratio. The FDIC, however, uses these measures as part of its deposit insurance assessment system. For established small institutions, the tier 1 leverage ratio is one of eight measures used to determine an institution's assessment rate.[31] For all institutions, tier 1 capital is used to determine an institution's assessment base.[32]

The FDIC plans to publish a separate notice of proposed rulemaking to address the application of the CBLR framework as it relates to the deposit insurance assessment system. The rulemaking would address, among other things, how the CBLR framework can be applied in lieu of the tier 1 leverage ratio and in lieu of tier 1 capital when calculating a bank's assessment. The FDIC plans to consider and discuss in the rulemaking reasonable and possible options that address the application of the CBLR framework in the assessment system. The FDIC does not expect that any changes to its deposit insurance assessment system would have a material impact on aggregate assessment revenue or on rates paid by individual institutions.

J. Illustrative Reporting Form

The agencies intend to separately seek comment on the proposed changes to regulatory reports for qualifying community banking organizations that elect to use the CBLR framework.

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[31] For assessments purposes, an established small bank is generally defined as one that has been federally insured for at least five years and has less than $10 billion in assets. 12 CFR 327.8(v). A bank no longer qualifies as a small bank once it reports assets of $10 billion of more in its quarterly reports of condition for four consecutive quarters.

[32] The Dodd-Frank Act required the FDIC to amend its regulations to generally define an institution's assessment base as average consolidated total assets of the institution minus average tangible equity during the assessment period. The FDIC chose to use tier 1 capital in lieu of tangible equity when implementing this requirement in part because it required no additional reporting. See, 12 CFR 327.5(a)(2); 76 Fed. Reg. 10673, 10678 (Feb. 25, 2011).

To provide an indication of the potential reporting format and potential reporting burden relief relative to the regulatory reporting requirements under the generally applicable capital requirements for those banking organizations that elect to use the proposed CBLR framework, the agencies include an illustrative reporting form below, using the Call Report as an example.

CBLR Tangible Equity (CBLR numerator)

		Percent	Amount
1	Total bank equity capital (Schedule RC, item 27.a)		
2	LESS: Accumulated other comprehensive income (Schedule RC, item 26.b)		
3	LESS: Goodwill (Schedule RC-M, item 2.b)		
4	LESS: All other intangible assets (Schedule RC-M, item 2.c)		
5	LESS: Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances		
6	Total adjustments and deductions for CBLR tangible equity (sum of items 2 through 5)		
7	CBLR tangible equity (item 1 minus item 6)		

Average Total Consolidated Assets for the Community Bank Leverage Ratio (CBLR denominator)

		Percent	Amount
8	Total assets (Schedule RC-K, item 9)		
9	Deductions from CBLR tangible equity (sum of items 3, 4, and 5, above)		
10	Average total consolidated assets (item 8 minus item 9)		

Community Bank Leverage Ratio

		Percent	Amount
11	Community bank leverage ratio (item 7 divided by item 10)		

Qualifying Criteria for Using the CBLR framework

		Percent	Amount
12	Total assets (from Schedule RC, item 12); (must be less than $10 billion)		
13	MSAs (from Schedule RC-M, item 2.a.) as a percentage of CBLR tangible equity (25% limit)		
14	DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of any related valuation allowances as a percentage of CBLR tangible equity (25% limit)		
15	Trading Assets and Trading Liabilities (Schedule RC , sum of items 5 and 15) as a percentage of total consolidated assets (5% limit)		
16	Off-balance sheet exposures		
a	Unused portion of conditionally cancellable commitments		
b	Off-balance sheet securitizations		
c	Securities lent and borrowed (Schedule RC-L, sum of items 6.a and 6.b)		
d	Other off-balance sheet exposures		
e	Total off-balance sheet exposures (sum of items 16a through 16d) as a percentage of total consolidated assets (25% limit)		
17	Memo item: Unconditionally cancellable commitments		

K. Consultation with State Bank Supervisors

The agencies have had discussions with state bank supervisors and staff of the Conference of State Bank Supervisors, during which the agencies received helpful input in connection with this proposal. The agencies expect to continue engaging with the state bank supervisors during the rulemaking process, in accordance with section 201 of the Act.

Section 201 also requires that the agencies notify the applicable state bank supervisor if a qualifying community banking organization exceeds the CBLR established by the agencies or ceases to exceed the CBLR after having previously exceeded it. The agencies plan to incorporate the CBLR into the Call Report and Form FR Y-9C so that qualifying community banking organizations report their CBLR levels on a quarterly basis. These reports are, and would continue to be, released to the public. The agencies believe that this public release of the CBLR would provide an operable means of notifying the applicable state bank supervisor of the relevant information about a CBLR banking organization's CBLR.

Question 26: What other considerations should the agencies contemplate to help ensure that the applicable state bank supervisor is notified when supervised qualifying community banking organizations exceed or cease to exceed the CBLR and why?

III. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557-0318, Board is 7100-0313, and FDIC is 3064-0153. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

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

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

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

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

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to

(202) 395-6974; or e-mail to oira_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Capital Adequacy.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, state member banks, state nonmember banks, and state and federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

FDIC: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

Current Actions: The proposal would revise sections __.2 and __.10 of the capital rule, add a new section __.12 to the capital rule, and revise the agencies' PCA rules, to implement the community bank leverage ratio in accordance with the Act. These changes will not, however, result in changes to the burden. Nevertheless, in order to be consistent across the agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies are also updating the number of respondents based on the current number of supervised entities even though this proposal only affects a limited number of entities. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and updates to the respondent count and not the result of the proposed rule changes.

PRA Burden Estimates:

OCC

[OMB control number: 1557-0318.

Estimated number of respondents: [1,365] (of which 18 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios *(1,365 institutions affected)*

Recordkeeping (Ongoing) – 16.

Standardized Approach *(1,365 institutions affected)*

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

Advanced Approach *(18 institutions affected)*

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 280.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 35.

Estimated annual burden hours: [1,136] hours initial setup, [64,929] hours for ongoing.]

Board

Agency form number: FR Q.

OMB control number: 7100-0313.

Estimated number of respondents: [1,431] (of which 17 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios *(1,431institutions affected)*

Recordkeeping (Ongoing) – 16.

Standardized Approach *(1,431institutions affected)*

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

Advanced Approach *(17institutions affected)*

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 280.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 35.

Disclosure (Table 13 quarterly) – 5.

Risk-based Capital Surcharge for GSIBs *(21 institutions affected)*

Recordkeeping (Ongoing) – 0.5.

Estimated annual burden hours: [1,136] hours initial setup, [78,183] hours for ongoing.]

FDIC

OMB control number: 3064-0153.

Estimated number of respondents: 3,575 (of which 2 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios *(3,575 institutions affected)*

Recordkeeping (Ongoing) – 16.

Standardized Approach *(3,575 institutions affected)*

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

Advanced Approach *(2 institutions affected)*

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 280.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 35.

Estimated annual burden hours: 1,088 hours initial setup, 130,758 hours for ongoing.

The proposed rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 1557-0081 (OCC), 7100-0036 (Board), and 3064-0052 (FDIC)), Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 1557-0239 (OCC), 7100-0319 (Board), and 3064-0159 (FDIC)), Consolidated Financial Statements for Holding Companies (Form FR Y-9C; OMB No. 7100-0128 (Board)), and Capital Assessments and Stress Testing (Form FR Y-14A and Q; OMB No. 7100-0341 (Board)), which will be addressed in one or more separate *Federal Register* notices.]

B. **Regulatory Flexibility Act**

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of June 30, 2018, the OCC supervises 886 small entities,[33] of which 860 could be impacted by the proposed rule. Thus, a substantial number of small entities could be impacted by the proposed rule.

OCC staff also consider whether the proposed rule would result in a significant economic impact on affected small entities. OCC staff believe the primary cost to small institutions that elect to adopt the CBLR framework would be administrative costs that arise from modifying policies and procedures and reporting the new CBLR schedule, rather than the existing RC-R schedule. OCC staff estimates that each national bank or Federal savings association would spend no more than 320 hours to modify their policies and procedures and switch to reporting the CBLR schedule. To estimate this cost, OCC staff used a compensation rate of $117 per hour.[34] Therefore, OCC staff estimate the cost per institution would not exceed $37,440 (320 hours x $117 per hour). In general, OCC staff classifies the economic impact of expected cost (to comply with a rule) on an individual national bank or Federal savings association as significant if the total estimated monetized costs in one year are greater than (1) 5 percent of the national bank's or Federal savings association's total annual salaries and benefits or (2) 2.5 percent of the

[33] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

[34] The OCC's cost estimate includes an estimate of the time required to implement the mandates and the estimated average hourly wage of the bank employees who might be responsible for tasks associated with achieving compliance with the proposal and other rules that would be affected by implementation of the proposal. To estimate average hourly wages, OCC staff reviewed data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, OCC staff used $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation, plus an additional 34.2 percent to cover private sector benefits.

national bank's or Federal savings association's total annual non-interest expense. Based on this criteria, the estimated cost of the rule would impose a significant economic impact at only one of the 860 affected small institutions, which is not a substantial number.

Additionally, a critical element of the proposed rule is its inherent optionality. OCC staff believe CBLR eligible national banks and Federal savings associations would only choose to use the CBLR framework if the benefits outweighed the costs.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[35] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of

[35] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks.

the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

As discussed in detail above, the proposed rule would establish a community bank leverage ratio for qualifying community banking organizations. Qualifying community banking organizations would consist of insured depository institutions, bank holding companies, and savings and loan holding companies with total consolidated assets of less than $10 billion that also satisfy certain qualifying criteria. The qualifying criteria are designed to ensure that qualifying community banking organizations do not have significant levels of assets that would make the community bank leverage ratio a less appropriate capital standard for the risks presented by the firms’ portfolios. Qualifying community banking organizations that elect to be under the community bank leverage ratio generally would be exempt from the Board’s current capital framework, including risk-based capital requirements and capital conservation buffer requirements.[36] The CBLR would be calibrated such that qualifying community banking organizations would not be required to raise significant additional capital and would not face materially less stringent capital requirements. The primary benefit of the CBLR for qualifying community banking organizations is therefore expected to be reduced calculation and reporting burdens.

The Board has broad authority under the International Lending Supervision Act of 1983 (ILSA)[37] and the Prompt Corrective Action (PCA) provisions of the Federal Deposit Insurance Act[38] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[39] The PCA provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[40] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies, savings and loan holding companies,

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[36] Nearly all small bank holding companies and small savings and loan holding companies are currently exempt from the Board's capital rule and are instead covered by the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. The policy statement applies to bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets that also satisfy specified eligibility criteria. See 12 CFR 217.1(c)(1)(ii)–(iii); 12 CFR part 225 app. C. The proposal is not expected to impact small bank holding companies and small savings and loan holding companies that are subject to the policy statement.

[37] 12 U.S.C. 3901–3911.

[38] 12 U.S.C. 1831o.

[39] 12 U.S.C. 3907(a)(1).

[40] 12 U.S.C. 1831o(c)(2).

and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act of 1956, the Home Owners' Loan Act, and the Dodd-Frank Act.[41]

The proposed rule would be an optional framework that qualifying community banking organizations could choose to apply instead of the Board's current capital rule. A qualifying community banking organization would be able to remain subject to the current capital rule if it chose to do so. The proposed rule therefore would not impose mandatory requirements on any small entities. However, the proposal would allow Board-regulated institutions that are qualifying community banking organizations to elect to be under the community bank leverage ratio framework. Small entities that are subject to the Board's capital rule could make such an election, which would require immediate changes to reporting, recordkeeping, and compliance systems.

Further, as discussed previously in the Paperwork Reduction Act section, the proposal would make changes to the projected reporting, recordkeeping, and other compliance requirements of the rule by impacting the information that qualifying community banking organizations that elect to use the community bank leverage ratio would be required to collect.

The agencies anticipate making changes through a separate notice to regulatory reporting forms that currently collect regulatory capital information (the Call Report (FFIEC 031, 041, and 051) and the Consolidated Financial Statements for Holding Companies (Form FR Y-9C)). Firms would be required to update their systems to implement these changes to reporting forms. Systems changes would be predominantly due to changes to the applicable reporting forms that are expected to be released in the near future, rather than the proposal described in this notice. The Board does not expect that the compliance, recordkeeping, and reporting updates from this

[41] See 12 U.S.C. 1467a, 1844, 5365, 5371.

proposal would impose a significant cost on small Board-regulated institutions. These changes would only impact small entities that elect to use the community bank leverage ratio and, while there would be limited upfront costs to update systems, an overall reduction in burden is expected. However, the reduction in burden will be predominantly due to changes in regulatory reporting forms, and these burden changes therefore are expected to be discussed in a regulatory reporting notice in the near future. In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC: The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rulemaking on small entities.[42] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" to include banking organizations with total assets less than or equal to $550 million.[43] The FDIC supervises 3,575 depository

[42] 5 U.S.C. 601 *et seq.*

[43] The SBA defines a small banking organization as having $550 million or less in assets, where "a financial institution's assets are determined by averaging the assets reported on its four

institutions,[44] of which 2,763 are defined as small banking entities by the terms of the RFA.[45] Based on its analysis and for the reasons stated below, the FDIC believes that this proposal would not have a significant economic impact on a substantial number of small entities.

Description of Need and Policy Objectives

The policy objective of the proposed rule is to conform the FDIC's regulations to the statutory language established by the Act. On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[46] as well as certain other statutes administered by the agencies.[47] Section 201 of the Act, titled "Capital Simplification for Qualifying Community Banks," directs the agencies to develop a community bank leverage ratio (CBLR) of not less than 8 percent and not more than 10 percent for "qualifying community banks" (qualifying community banking organizations). The Act defines a qualifying community banking organization as a depository institution or depository institution holding company with total consolidated assets of less than $10 billion.

Other Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between the proposal and any Federal rule.

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quarterly financial statements for the preceding year." 13 CFR 121.201 n.8 (2018). "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . ." 13 CFR 121.103(a)(6) (2018). Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

[44] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[45] Call Report: June 30, 2018.

[46] Pub. L. 111-203, 124 Stat. 1391, 12 U.S.C. 5301 et seq.

[47] Pub. L. 115-174 (May 24, 2018).

Economic Impacts on Small Entities

As discussed previously in section II: Summary of the Proposal, a depository institution that is not an advanced approaches banking organization could be eligible to opt into the CBLR framework, if they meet the following criteria:

- Have total consolidated assets of less than $10 billion;
- Have total off-balance sheet exposures (excluding derivatives that are not credit derivatives and unconditionally cancelable commitments), of 25 percent or less of total consolidated assets;
- Have total trading assets and trading liabilities of 5 percent or less of total consolidated assets;
- Have MSAs of 25 percent or less of CBLR tangible equity; and
- Have temporary difference DTAs of 25 percent or less of CBLR tangible equity.

As of June 30, 2018, there were 2,713 small, FDIC-supervised depository institutions who would be qualifying community banking organizations under the proposed rule. They comprise approximately 98 percent of small, FDIC-supervised depository institutions. Therefore, the proposed rule could affect an estimated 98 percent of small, FDIC-supervised institutions.

Utilizing the CBLR framework is expected to reduce reporting costs for small, FDIC-supervised institutions. Opting into the CBLR framework would enable institutions to no longer report Schedule RC-R of the Call Report, resulting in a reduction in reporting costs for institutions. As described in section II.J. of this preamble,. Illustrative Reporting Form, the agencies intend to separately seek comment on the proposed changes to regulatory reports for qualifying community banking organizations that opt into the CBLR framework. To provide an indication of the potential reporting format and potential reporting burden relief for qualifying community banking organizations that opt into the proposed CBLR framework, the agencies included an illustrative report with this rulemaking, using the Call Report as an example. Depository institutions that may benefit from reduced reporting costs because of the proposed rule could employ those resources in ways the institution believes is more beneficial. It is difficult to accurately estimate the size of this potential effect because it depends on the characteristics of the individual institution and the future decisions of senior management.

As noted previously, by opting into the CBLR framework, the capital levels of some small, FDIC-supervised institutions could be marginally affected, but it is unlikely to significantly affect the quantity of regulatory capital in the banking system. The FDIC estimates that 2,296 small, FDIC-supervised institutions are qualifying community banking organizations. Of those entities, 2,027 report holding a volume of CBLR tangible equity to total consolidated assets in excess of nine percent, plus an additional buffer of 50 basis points. Some eligible small, FDIC-supervised institutions that opt into the CBLR framework could employ any CBLR tangible equity in excess of the level required to achieve nine percent of total consolidated assets in other ways the institution decides is more beneficial. It is difficult to accurately estimate what these institutions will do with the tangible equity that exceeds nine percent because it depends on the characteristics of each individual institution, the decisions of senior management, current and future economic conditions, as well as current and future financial conditions. Additionally, some institutions who are not qualifying community banking organizations because their CBLR tangible equity is less than nine percent of total consolidated assets may elect to raise additional tangible equity in order to become eligible. In such cases, each entity will have determined that the value of attaining a level of CBLR tangible equity necessary to meet or exceed nine percent of total consolidated assets outweighs the cost incurred in doing so. However, the statutory changes established by the Act will enable certain institutions to utilize the CBLR framework. The proposed rule amends the FDIC's regulations to conform with the CBLR framework authorized under the Act. Therefore, this component of the proposal would not have a direct effect on small, FDIC-supervised institutions.

As noted previously, the proposed rule could affect the deposit insurance assessments of qualifying small, FDIC-supervised institutions that elect to use the CBLR framework. The extent of this effect is difficult to quantify with available information. The proposed rule removes the requirement for small, FDIC-supervised institutions that opt into the CBLR framework from reporting tier 1 capital or the tier 1 leverage ratio. The FDIC, however, uses these measures as part of its deposit insurance assessment system. The FDIC plans to publish a separate notice of proposed rulemaking to address the application of the CBLR framework as it relates to the deposit insurance assessment system. The rulemaking would address, among other things, how the CBLR framework can be applied in lieu of the leverage ratio and in lieu of tier 1 capital when calculating a bank's assessment. However, since the final form of that rule is unknown, the potential effects on small, FDIC-supervised institutions is unknown. As one option, the FDIC may consider using the definitions in this proposal in the deposit insurance assessment system. For most qualifying community banking organizations, pursuing this option would result in no change, or would result in a reduction, in an institution's assessment. In particular, based on June 30, 2018 Call Report data, replacing the leverage ratio with the CBLR, and replacing tier 1 capital with CBLR tangible equity in the calculation of the assessment base, would result in the same or lower assessments for more than 90 percent of institutions that could be qualifying community banking organizations under this proposal. For other institutions, application of the CBLR framework to deposit insurance assessments would result in higher assessments; however, for over three-quarters of those institutions, that increase would represent less than one percent of their deposit insurance assessment for the second quarter of 2018.

Alternatives Considered

As previously discussed in section II.E. Calibration of the Community Bank Leverage Ratio, other alternatives including calibrating the CBLR to eight percent were considered by the FDIC. This alternative would allow more banking organizations to opt into the CBLR framework but would potentially allow a large number of CBLR banking organizations to hold less capital than under the generally applicable capital requirements. The proposed calibration of the CBLR, in conjunction with the qualifying community banking organization and CBLR tangible equity definitions, seeks to strike a balance among the following objectives: maintaining strong capital levels in the banking system, ensuring safety and soundness, and providing appropriate regulatory burden relief to as many banking organizations as possible.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposal have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach Bliley Act[48] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies invite comments on how to make these notices of proposed rulemaking easier to understand. For example:

- Have the agencies presented the material in an organized manner that meets your needs? If not, how could this material be better organized?

[48] Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

- Are the requirements in the notice of proposed rulemaking clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposal contain language that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposal easier to understand? If so, what changes to the format would make the proposal easier to understand?
- What else could the agencies do to make the proposal easier to understand?

D. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation).

The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[49] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider,

[49] 12 U.S.C. 4802(a).

consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[50]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects in 12 CFR

Part 1

Banks, banking, National banks, Reporting and recordkeeping requirements, Securities.

Part 3

Administrative practice and procedure, Federal Reserve System, National banks, Reporting and recordkeeping requirements.

Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Part 6

Federal Reserve System, National banks.

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[50] Id.

Part 23

National banks.

Part 24

Community development, Credit, Investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

Part 32

National banks, Reporting and recordkeeping requirements.

Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 206

Banks, Banking, Interbank liability, Lending limits, Savings associations.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 223

Banks, Banking, Federal Reserve System.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 251

Administrative practice and procedure, Banks, banking, Concentration Limit, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, State non-member banks, Savings associations.

12 CFR Part 324

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

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Investments, Reporting and recordkeeping requirements.

12 CFR Part 365

Banks, banking, Mortgages.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the Supplementary Information, Chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1 – INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

2. Section 1.2 is amended by revising paragraph (a) to read as follows:

§ 1.2 Definitions.

(a) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under 12 CFR 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowance for loan and lease losses as reported in the bank's Consolidated Report of Condition and Income (Call Report); or

(2) For all other banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable (or comparable capital guidelines of the appropriate Federal banking agency), as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 3 – CAPITAL ADEQUACY STANDARDS

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

AUTHORITY: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

4. Section 3.10 (a), is revised to read as follows:

§ 3.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A national bank or Federal savings association must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in 12 CFR 3.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 3.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization maintains a community bank leverage ratio of at least 7.5 percent.

* * * * *

5. Add section 3.12 to read as follows:

§ 3.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under section 10 of this subpart B, the capital ratio requirements for the well capitalized capital category under 12 CFR part 6, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9.0 percent.

(2) For purposes of this section, a qualifying community banking organization means a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed below in subparagraphs (A) through (I), divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through

(1) Guarantees; and

(2) Credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC-L of the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report of 5 percent or less of the national bank's or Federal savings association's total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC-M of the Call Report, of 25 percent or less of the national bank's or

Federal savings association's CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the national bank's or Federal savings association's CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3) (i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of paragraph (a)(3) of this section, a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report.

(iv) (A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt-out of using the community bank leverage ratio by completing Schedule RC-R in its Call Report or by otherwise providing the information required in Schedule RC-R to the OCC.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with section 10 of this subpart immediately.

(b) *Calculation of the community bank leverage ratio*. (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's

CBLR tangible equity as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, before the inclusion of non-controlling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, other than mortgage servicing assets; and

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances.

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC-K of the Call Report as of the end of the most recent calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) and (iii) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as provided in paragraph (c)(4) of this section, if a national bank or Federal savings association ceases to meet the definition of a qualifying community banking organization, the national bank or Federal savings association has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with section 10 of this subpart and report the required capital measures under section 10 on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the national bank or Federal savings association ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the national bank or Federal savings association continues to be a qualifying community banking organization for the purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the national bank or Federal savings association has opted out of using the community bank leverage ratio under paragraph (a)(3) of this section.

(4) Notwithstanding paragraph (c)(1) through (3), a national bank or Federal savings association that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a national bank or Federal savings association must comply with section 10 of this subpart and must report the required capital measures under section 10 on its next Call Report.

(d) *Tangible equity information*. (1) A qualifying community banking organization, that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6.0 percent, must promptly provide to the OCC the information necessary for the calculation of its tangible equity, as defined under 12 CFR 6.2, for purposes of determining the capital category of the national bank or Federal savings association under 12 CFR part 6.

(2) Notwithstanding paragraph (d)(1), upon request by the OCC, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under 12 CFR part 6, to the OCC.

* * * * *

PART 5 – RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

6. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 93a, 215a-2, 215a-3, 481, 1462a, 1463, 1464, 2901 *et seq.*, 3907, and 5412(b)(2)(B).

7. Section 5.3 is amended by revising paragraph (e) to read as follows:

§ 5.3 Definitions.

* * * * *

(e) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC’s Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization’s tangible equity capital, as calculated under § 3.12(b)(2); plus

(ii) A qualifying community banking organization’s allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association’s Consolidated Report of Condition and Income (Call Report); or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of the national bank's or Federal savings association's allowance for loan and lease losses not included in the institution's tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(2)(i) of this section.

*   *   *   *   *

8. Section 5.37 is amended by revising paragraph (c)(3) to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

*   *   *   *   *

(c) *   *   *

(3) *Capital and surplus* means:

(i) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC’s Capital Adequacy Standards set forth at 12 CFR part 3:

(A) A qualifying community banking organization’s tangible equity capital, as calculated under § 3.12(b)(2); plus

(B) A qualifying community banking organization’s allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(ii) For all other national banks and Federal savings associations:

(A) A national bank's or Federal savings association's tier 1 and tier 2 capital calculated under 12 CFR part 3, as applicable, as reported in the national bank's or Federal savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(B) The balance of a national bank's or Federal savings association's allowance for loan and lease losses not included in the bank's or savings association's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(ii)(A) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

* * * * *

9. Section 5.58 is amended by revising paragraph (h)(2) to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

* * * * *

(h) * * *

(2) The Federal savings association is not investing more than 10 percent of its total capital (in the case of a Federal savings association that is a qualifying community banking organization that has elected to use the community bank leverage ratio framework, 10 percent of its tangible equity capital, calculated under 12 CFR 3.12) in one company;

* * * * *

PART 6 – PROMPT CORRECTIVE ACTION

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

Authority: 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

11. Section 6.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 6.4 Capital measures and capital categories.

(a) *Capital measures*. (1) For purposes of section 38 of the FDI Act and this part, the relevant capital measures shall be:

(i) Total Risk-Based Capital Measure: the total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: the tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: the common equity tier 1 risk-based capital ratio;

(iv) The Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the supplementary leverage ratio; and

(2) For a qualifying community banking organization (as defined in 12 CFR 3.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 3.12), the community bank leverage ratio, as defined under 12 CFR 3.12 is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this part, a national bank or Federal savings association shall be deemed to be:

(1) (i) “Well capitalized” if it:

(A) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 10.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 8.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater;

(D) Leverage Measure:

(1) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(2) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than $700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y-9C) or more than $10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Form FR Y-15), on Jan. 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The national bank or Federal savings association is not subject to any written agreement, order or capital directive, or prompt corrective action directive issued by the OCC pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), the Home Owners' Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(2) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, greater than 9.0 percent, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) – (iv)(D) of this section.

(2) (i) “Adequately capitalized” if it:

(A) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of 8.0 percent or greater;

(B) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of 6.0 percent or greater;

(C) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater;

(D) Leverage Measure:

(1) The national bank or Federal savings association has a leverage ratio of 4.0 percent or greater; and

(2) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018 and thereafter, the national bank or Federal savings association has an supplementary leverage ratio of 3.0 percent or greater; and

(E) The national bank or Federal savings association does not meet the definition of a “well capitalized” national bank or Federal savings association.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of 7.5 percent or greater, shall be considered to have met the requirements for the adequately capitalized capital category in paragraph (b)(2)(i)(A) through (D) of this section.

(3) (i) "Undercapitalized" if it:

(A) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 8.0 percent;

(B) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 6.0 percent;

(C) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(D) Leverage Measure:

(1) The national bank or Federal savings association has a leverage ratio of less than 4.0 percent; or

(2) With respect to an advanced approaches national bank or advanced approaches Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of less than 7.5 percent, shall be considered to have met the requirements for the undercapitalized capital category in paragraph (b)(3)(1)(A) through (D) of this section.

(4) (i) "Significantly undercapitalized" if it has:

(A) Total Risk-Based Capital Measure: the national bank or Federal savings association has a total risk-based capital ratio of less than 6.0 percent;

(B) Tier 1 Risk-Based Capital Measure: the national bank or Federal savings association has a tier 1 risk-based capital ratio of less than 4.0 percent;

(C) Common Equity Tier 1 Capital Measure: the national bank or Federal savings association has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(D) Leverage Ratio: the national bank or Federal savings association has a leverage ratio of less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under 12 CFR 3.12, that has elected to use the community bank leverage ratio framework under section 12 CFR 3.12 and that has a community bank leverage ratio, as defined under 12 CFR 3.12, of less than 6.0 percent, shall be considered to have met the requirements for the significantly undercapitalized capital category in paragraph (b)(4)(i)(A) through (D) of this section.

(5) "Critically undercapitalized" if the insured depository institution has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.

*** * * * ***

PART 23 – LEASING

12. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 24(Tenth), and 93a.

13. Section 23.2 is amended by revising paragraph (b) to read as follows:

§ 23.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under §ion 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowance for loan and lease losses not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Consolidated Report of Condition and Income filed under 12 U.S.C. 161.

* * * * *

PART 24 – COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

14. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

15. Section 24.2 is amended by revising paragraph (b) to read as follows:

§ 24.2 Definitions.

* * * * *

(b) Capital and surplus means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under § 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Consolidated Reports of Condition and Income (Call Report) as filed under 12 U.S.C. 161; plus

(ii) The balance of a bank's allowance for loan and lease losses not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(2)(i) of this section, as reported in the bank's Call Report as filed under 12 U.S.C. 161.

* * * * *

PART 32 – LENDING LIMITS

16. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

17. Section 32.2 is amended by revising paragraph (c) to read as follows:

§32.2 Definitions.

* * * * *

(c) *Capital and surplus* means—

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under § 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the national bank's or Federal savings association's Call Report; or

(2) For all other national banks and Federal savings associations:

(i) A national bank's or savings association's Tier 1 and Tier 2 capital calculated under the risk-based capital standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Report); plus

(ii) The balance of a national bank's or Federal savings association's allowance for loan and lease losses not included in the bank's or savings association's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(2)(i) of this section, as reported in the national bank's or savings association's Call Report.

* * * * *

PART 34 – REAL ESTATE LENDING AND APPRAISALS

18. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 25b, 29, 93a, 371, 1462a, 1463, 1464, 1465, 1701j-3, 1828(o), 3331 et seq., 5101 et seq., and 5412(b)(2)(B) and 15 U.S.C. 1639h.

19. Section 34.81 is amended by revising paragraph (a) to read as follows:

§ 34.81 Definitions.

(a) *Capital and surplus* means:

(1) For qualifying community banking organizations that have elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3:

(i) A qualifying community banking organization's tangible equity capital, as calculated under § 3.12(b)(2); plus

(ii) A qualifying community banking organization's allowance for loan and lease losses, or allowance for credit losses, as applicable, as reported in the national bank's Call Report; or

(2) For all other national banks:

(i) A bank's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's Call Report; plus

(ii) The balance of a bank's allowance for loan and lease losses, or allowance for credit losses, as applicable, not included in the bank's tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(2)(i) of this section, as reported in the bank's Call Report.

* * * * *

PART 160 – LENDING AND INVESTMENT

20. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j-3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

21. Section 160.3 is amended by adding the definition of *total capital* in alphabetical order to read as follows:

* * * * *

Total capital means:

(1) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3, *total capital* refers to the qualifying community banking organization's tangible equity capital, as calculated under § 3.12(b)(2);

(2) For all other Federal savings associations, *total capital* means the sum of tier 1 capital and tier 2 capital, as calculated under 12 CFR part 3.

* * * * *

PART 192 – CONVERSIONS FROM MUTUAL TO STOCK FORM

22. The authority citation for part 192 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

23. Section 192.500 is amended by adding (a)(3)(iii)to read as follows:

§ 192.500 What management stock benefit plans may I implement?

(a) * * *

(3) * * *

(iii) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards set forth at 12 CFR part 3, the term tangible capital, as it is used in this paragraph (a)(3), refers to the qualifying community banking organization's tangible equity capital, as calculated under § 3.12(b)(2).

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 206 – LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

[X]. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 371b-2.

[X]. Section 206.2, paragraph (g) is revised to read as follows:

§206.2 Definitions.

*   *   *   *   *

(g) *Total capital* means the total of a bank's Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank's primary federal supervisor. For a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), total capital means the bank's CBLR tangible equity (as defined in 12 CFR 217.12). For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basel Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basel Capital Accord, "total capital" means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

*   *   *   *   *

[X]. Section 206.5, paragraph (a) is revised to read as follows:

§206.5 Capital levels of correspondents.

(a) *   *   *

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is adequately capitalized if it has a community bank leverage ratio of 7.5 percent or greater.

*   *   *   *   *

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

[X]. The authority citation for part 208 is revised 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, 3905-3909, and 5371; 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; Pub. L. 115-174 §201.

[X]. Section 208.2, paragraph (d) is revised to read as follows:

§208.2 Definitions.

* * * * *

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute, tier 1 and tier 2 capital included in a member bank's risk-based capital (as defined in §217.2 of Regulation Q) and the balance of a member bank's allowances for loan and lease losses not included in its tier 2 capital for calculation of risk-based capital, based on the bank's most recent Report of Condition and Income filed under 12 U.S.C. 324. For a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), capital stock and surplus means the bank's CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

* * * * *

[X]. Section 217.43(a) and (b) is revised to read as follows:

§208.43 Capital measures and capital category definitions.

(a) Capital measures. (1) For purposes of section 38 of the FDI Act and this subpart, the relevant capital measures are:

(i) Total Risk-Based Capital Measure: The total risk-based capital ratio;

(ii) Tier 1 Risk-Based Capital Measure: The tier 1 risk-based capital ratio;

(iii) Common Equity Tier 1 Capital Measure: The common equity tier 1 risk-based capital ratio; and

(iv) Leverage Measure:

(A) The leverage ratio; and

(B) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the supplementary leverage ratio.

(C) With respect to any bank that is a subsidiary (as defined in §217.2 of Regulation Q (12 CFR 217.2)) of a global systemically important BHC, on Jan. 1, 2018, and thereafter, the supplementary leverage ratio.

(2) For a qualifying community banking organization (as defined in 12 CFR 217.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), the community

bank leverage ratio is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this subpart, a member bank is be deemed to be:

(1) (i) “Well capitalized” if:

(A) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: he bank has a tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of 6.5 percent or greater; and

(D) Leverage Measure:

(1) The bank has a leverage ratio of 5.0 percent or greater; and

(2) Beginning on Jan. 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of “subsidiary” in section 217.2 of Regulation Q (12 CFR 217.2), the bank has a supplementary leverage ratio of 6.0 percent or greater; and

(E) The bank is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or section 38 of the FDI Act, or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio greater than 9 percent, is considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) through (D) of this section.

(2) (i) "Adequately capitalized" if:

(A) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of 8.0 percent or greater; and

(B) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of 6.0 percent or greater; and

(C) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of 4.5 percent or greater; and

(D) Leverage Measure:

(1) The bank has a leverage ratio of 4.0 percent or greater; and

(2) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of 3.0 percent or greater; and

(E) The bank does not meet the definition of a "well capitalized" bank.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of 7.5 percent or greater, is considered to have met the requirements for the adequately capitalized capital category in paragraphs (b)(2)(i)(A) through (D) of this section.

(3) (i) "Undercapitalized" if:

(A) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of less than 8.0 percent; or

(B) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 6.0 percent; or

(C) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of less than 4.5 percent; or

(D) Leverage Measure:

(1) The bank has a leverage ratio of less than 4.0 percent; or

(2) With respect to an advanced approaches bank, on January 1, 2018, and thereafter, the bank has a supplementary leverage ratio of less than 3.0 percent.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of less than 7.5 percent, is considered to have met the requirements for the undercapitalized capital category in paragraphs (b)(3)(i)(A) through (D) of this section.

(4) (i) "Significantly undercapitalized" if:

(A) Total Risk-Based Capital Measure: the bank has a total risk-based capital ratio of less than 6.0 percent; or

(B) Tier 1 Risk-Based Capital Measure: the bank has a tier 1 risk-based capital ratio of less than 4.0 percent; or

(C) Common Equity Tier 1 Capital Measure: the bank has a common equity tier 1 risk-based capital ratio of less than 3.0 percent; or

(D) Leverage Measure: the bank has a leverage ratio of less than 3.0 percent.

(ii) A bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that has elected to use the community bank leverage ratio (as defined in 12 CFR 217.12) and that has a community bank leverage ratio of less than 6 percent, is considered to have met the requirements for the significantly undercapitalized capital category in paragraphs (b)(4)(i)(A) through (D) of this section.

(5) “Critically undercapitalized” if the bank has a ratio of tangible equity, as defined in section 208.41, to total assets that is equal to or less than 2.0 percent.

* * * * *

[X]. Section 208.73 is revised to remove paragraph (a), redesignate paragraphs (b), (c), (d), (e), and (f) as paragraphs (a), (b), (c), (d), and (e), and to revise redesignated paragraph (a) to read as follows:

§208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital requirements for state member banks.* A state member bank other than a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) that controls or holds an interest in a financial subsidiary must comply with the rules set forth in §217.22(a)(7) of Regulation Q (12 CFR 217.22(a)(7)) in determining its compliance with applicable regulatory capital standards (including the well capitalized standard of §208.71(a)(1)).

* * * * *

PART 211 – INTERNATIONAL BANKING OPERATIONS (REGULATION K)

[X]. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*, and 5101 *et seq.;* 15 U.S.C. 1681s, 1681w, 6801 and 6805.

[X]. In part 211, remove each occurrence of "Capital Adequacy Guidelines" and insert "capital rule" in the place of each removal.

[X]. Section 211.2, paragraphs (b), (c), and (x) are revised to read as follows:

§211.2 Definitions.

* * * * *

(b) *Capital rule* means 12 CFR Part 217.

(c) * * *

(1) For organizations subject to the capital rule (other than qualifying community banking organizations (as defined in 12 CFR 217.12) that are subject to the community bank leverage ratio (as defined in 12 CFR 217.12)):

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital ratios (under the capital rule); and

(ii) The balance of allowances for loan and lease losses not included in an organization's tier 2 capital for calculation of risk-based capital ratios, based on the organization's most recent consolidated Report of Condition and Income.

(2) For qualifying community banking organizations (as defined in 12 CFR 217.12) that are subject to the community bank leverage ratio (as defined in 12 CFR 217.12), CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and lease losses (as defined in 12 CFR 217.2).

(3) For all other organizations, paid-in and unimpaired capital and surplus, and includes undivided profits but does not include the proceeds of capital notes or debentures.

* * * * *

(x) *Tier 1 capital* has the same meaning as provided under 12 CFR Part 217, except that for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), tier 1 capital means CBLR tangible equity (as defined in 12 CFR 217.12).

* * * * *

[X]. Section 211.9, paragraph (a)(1) is revised to read as follows:

§211.9 Investment procedures.

(a) * * *

(1) *Minimum capital adequacy standards.* Except as the Board may otherwise determine, in order for an investor to make investments pursuant to the procedures set out in this section, the investor, the bank holding company, and the member bank shall be in compliance with applicable minimum standards for capital adequacy set out in the capital rule; provided that, if

the investor is an Edge or agreement corporation, the minimum capital required is total and tier 1 capital ratios of 8 percent and 4 percent, respectively.

* * * * *

PART 215 – LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

[X]. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102-242, 105 Stat. 2236 (1991).

[X]. Section 215.2, paragraph (i) is revised to read as follows:

(i) * * *

(1) The bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of the bank's allowances for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3).

(3) Notwithstanding paragraphs (i)(1) through (2) of this section, for a member bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), unimpaired capital and unimpaired surplus equals CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and leases losses (as defined in 12 CFR 217.2).

* * * * *

PART 217 – CAPITAL ADEQUACY OF BANKING HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

[X]. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-l, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371, Pub. Law 115-174 §201.

[X]. Section 217.10, paragraph (a) is revised to read as follows:

§ 217.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) A Board-regulated institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches Board-regulated institutions, a supplementary leverage ratio of 3 percent.

(2) A qualifying community banking organization (as defined in 12 CFR 217.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization has a community bank leverage ratio of at least 7.5 percent or more.

* * * * *

[X]. A new section 217.12 is added as follows:

§ 217.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under section 10 of this subpart B, the capital ratio requirements for the well capitalized capital category under 12 CFR 208.43(b)(1), and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means an Board-regulated institution that is not an advanced approaches Board-regulated institution and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable, as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed below in paragraphs (A) through (I), divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC-L of the Call Report or Schedule HC-L of Form FR Y-9C, as applicable;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable, of 5 percent or less of the Board-regulated institution's total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC-M of the Call Report or Schedule HC-M of Form FR Y-9C, as applicable, of 25 percent or less of the Board-regulated institution's CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the Board-regulated institution's CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3) (i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report or Form FR Y-9C, as applicable.

(iv) (A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt out of using the community bank leverage ratio by completing Schedule RC-R in its Call Report or Schedule HC-R of Form FR Y-9C, as applicable, or by otherwise providing the information required in Schedule RC-R or Schedule HC-R, as applicable, to the Board.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with section 10 of this subpart immediately.

(b) *Calculation of the community bank leverage ratio*. (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's CBLR tangible equity, as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable, before the inclusion of noncontrolling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y-9C, as applicable, other than mortgage servicing assets; and

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances.

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC-K of the Call Report or Schedule HC-K of Form FR Y-9C, as applicable, as of the end of the most recent calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) and (iii) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as provided in paragraph (c)(4) of this section, if an Board-regulated institution ceases to meet the definition of a qualifying community banking organization, the Board-regulated institution has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with section 10 of this subpart and report the required capital measures under section 10 on its Call Report or Form FR Y-9C, as applicable.

(2) The grace period begins as of the end of the calendar quarter in which the Board-regulated institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the Board-regulated institution continues to be a qualifying community banking organization for purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the Board-regulated institution has opted out of using the community bank leverage ratio under paragraph (a)(3).

(4) Notwithstanding paragraph (c)(1) through(3), an Board-regulated institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an Board-regulated institution comply with section 10 of this

subpart and must report the required capital measures under section 10 on its next Call Report or Form FR Y-9C.

(d) *Tangible equity information*. (1) A qualifying community banking organization that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6 percent, must promptly provide to the Board the information necessary for the calculation of its tangible equity, as defined under section 12 CFR 208.41, for purposes of determining the capital category of the banking organization under 12 CFR 208.43.

(2) Notwithstanding paragraph (d)(1), upon request by the Board, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under 12 CFR 208.41, to the Board. * * * * *

PART 223 – TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

[X]. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c-1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

[X]. Section 223.3, paragraph (d) is revised to read as follows:

§223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

*   *   *   *   *

(d) *   *   *

(4) Notwithstanding paragraphs (d)(1) through (3) of this section, for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), capital stock and surplus equals CBLR tangible equity (as defined in 12 CFR 217.12) plus allowances for loan and leases losses (as defined in 217.2).

*   *   *   *   *

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

[X]. The authority citation 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, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

[X]. Amend §225.2 by:

a. Revising paragraph (h); and

b. Adding paragraph (r)(4).

The revision and addition read as follows:

§225.2 Definitions.

*   *   *   *   *

(h) *Lead insured depository institution* means the largest insured depository institution controlled by the bank holding company as of the quarter ending immediately prior to the proposed filing, based on a comparison of the average total risk-weighted assets controlled during the previous 12-month period be each insured depository institution subsidiary of the holding company. For purposes of this paragraph, for a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), average total risk-weighted assets equal the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12).

*   *   *   *   *

(r) *   *   *

(4) Notwithstanding paragraphs (r)(1) through (3) of this section:

(i) A bank holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), is well capitalized if:

(*1*) It has a community bank leverage ratio greater than 9.0 percent; and

(*2*) It satisfies the requirements of paragraph (r)(1)(iii) of this section.

(ii) A depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) is well capitalized if it has a community bank leverage ratio greater than 9.0 percent.

* * * * *

[X]. Amend §225.14 by:

a. Revising paragraph (a)(1)(v)(A);

b. Adding paragraphs (a)(1)(v)(A)(*1*) and (*2*);

c. Adding paragraph (a)(1)(v)(B);

d. Revising paragraph (a)(1)(vii);

e. Adding paragraphs (a)(1)(vii)(A) and (B);

f. Revising paragraph (c)(6)(i)(A);

g. Adding paragraph (c)(6)(iii); and

f. Adding paragraph (f).

The revisions and additions read as follows:

§225.14 Expedited action for certain bank acquisitions by well-run bank holding companies.

(a) * * *

(1) * * *

(v) * * *

(A) If the bank holding company is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), and:

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a *pro forma* parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, and a description of the purchase price, the terms and sources of funding for the transaction, and the sources and schedule for retiring any debt incurred in the transaction;

(B) If the bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), an abbreviated consolidated *pro forma* balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated *pro forma* community bank leverage ratio for the acquiring bank holding company as of the most recent quarter, and a description of the purchase price and the terms and sources of funding for the transaction;

* * * * *

(vii)(A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets, and CBLR tangible equity of the institution on a *pro forma* basis; and

* * * * *

(c) * * *

(6) * * *

(i) * * *

(A) *Limited Growth.* Except as provided in paragraphs (c)(6)(ii) and (iii) of this section, the sum of the aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph *other qualifying transactions* means any transaction approved under this section or §225.23 during the 12 months prior to filing the notice under this section; and

(B) *Individual size limitation.* Except as provided in paragraph (c)(6)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations*. Paragraphs (c)(6)(i)(A) and (B) of this section shall not apply if:

(*1*) The acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12);

(*2*) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as defined in 12 CFR 217.12) of the acquiring bank holding company as last reported to the Board. For purposes of this paragraph *other qualifying transactions* means any transaction approved under this section or §225.23 during the 12 months prior to filing the notice under this section; and

(*3*) The total assets to be acquired do not exceed $7.5 billion;

* * * * *

(f) *Qualifying community banking organizations*. For purposes of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12) as last reported to its primary banking supervisor.

[X]. Amend §225.22 by adding paragraph (d)(8)(vi) as follows:

§225.22 Exempt nonbanking activities and acquisitions.

* * * * *

(d) * * *

(8) * * *

(vi) *Qualifying community banking organizations*. For purposes of paragraph (d)(8)(ii) of this section, a lending company or industrial bank that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), or is a subsidiary of such a qualifying community banking organization, has risk-weighted assets equal to its average total consolidated assets (as defined in 12 CFR 217.12) as most recently reported to its primary banking supervisor (as defined in §225.14(d)(5)); or (B) its total assets, if the company or industrial bank does not report such average total consolidated assets.

* * * * *

[X]. Amend §225.23 by:

a. Revising paragraph (a)(1)(iii)(A);

b. Adding paragraphs (a)(1)(iii)(A)(*1*) and (*2*);

c. Revising paragraphs (a)(1)(iii)(B) and (C);

d. Adding paragraphs (a)(1)(iii)(D);

e. Revising paragraphs (c)(5)(i)(A), (B), and (C);

f. Adding paragraph (c)(5)(iii); and

g. Adding paragraph (e).

The revisions and additions read as follows:

§225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies.

(a) * * *

(1) * * *

(iii) * * *

(A) If the acquiring bank holding company is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12):

(*1*) If the bank holding company has consolidated assets of $3 billion or more, an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma risk-based capital ratios for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired; or

(*2*) If the bank holding company has consolidated assets of less than $3 billion, a pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, a description of the purchase price and the terms and sources of funding for the transaction and the sources and schedule for retiring any debt incurred in the transaction, and the total assets, off-balance sheet items, revenue and net income of the company to be acquired;

(B) If the acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), an abbreviated consolidated pro forma balance sheet for the acquiring bank holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction, consolidated pro forma community bank leverage ratio for the acquiring bank holding company as of the most recent quarter, a description of the purchase price and the terms and sources of funding for the transaction, and the total revenue and net income of the company to be acquired;

(C) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(D) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a *pro forma* basis;

* * * * *

(c) * * *

(5) * * *

(i) * * *

(A) *Limited growth.* Except as provided in paragraphs (c)(5)(ii) and (iii) of this section, the sum of aggregate risk-weighted assets to be acquired in the proposal and the aggregate risk-weighted assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the consolidated risk-weighted assets of the acquiring bank holding company. For purposes of this paragraph, “other qualifying transactions” means any transaction approved under this section or §225.14 during the 12 months prior to filing the notice under this section;

(B) *Consideration paid.* Except as provided in paragraph (c)(5)(iii) of this section, the gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company; and

(C) *Individual size limitation.* Except as provided in paragraph (c)(5)(iii) of this section, the total risk-weighted assets to be acquired do not exceed $7.5 billion;

* * * * *

(iii) *Qualifying community banking organizations*. Paragraphs (c)(5)(i)(A), (B), and (C) of this section shall not apply if:

(*1*) The acquiring bank holding company is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12); and

(*2*) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as defined in 12 CFR 217.12) of the acquiring bank holding company as last reported to the Board. For purposes of this paragraph “other qualifying transactions” means any transaction approved under this section or §225.14 during the 12 months prior to filing the notice under this section;

(*3*) The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the CBLR tangible equity (as defined in 12 CFR 217.12) of the acquiring bank holding company; and

(*4*) The total assets to be acquired do not exceed $7.5 billion;

*   *   *   *   *

(e) *Qualifying community banking organizations*. For purposes of this section, a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) controls total risk-weighted assets equal to the qualifying community banking organization's average total consolidated assets (as defined in 12 CFR 217.12) as last reported to its primary banking supervisor.

[X]. Amend §225.24 by:

a. Revising paragraph (a)(2)(iv)(B);

b. Revising paragraph (a)(2)(vi); and

c. Adding paragraphs (a)(2)(vi)(A) and (B).

The revisions and additions read as follows:

§225.24 Procedures for other nonbanking proposals.

(a) *   *   *

(2) *   *   *

(iv) *   *   *

(B) Consolidated *pro forma* risk-based capital and leverage ratio calculations for the acquiring bank holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated *pro forma* community bank leverage ratio calculations for the acquiring bank holding company as of the most recent quarter); and

* * * * *

(vi) (A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a *pro forma* basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a *pro forma* basis;

* * * * *

[X]. Amend §225.87 by adding paragraph (b)(4)(iv) to read as follows:

§225.87 Is notice to the Board required after engaging in a financial activity?

* * * * *

(b) * * *

(4) * * *

(iv) For purposes of paragraph (b)(4) of this section, a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

[X]. Amend §225.174 by adding paragraph (d) as follows:

§225.174 What aggregate thresholds apply to merchant banking investments?

* * * * *

(d) *Qualifying community banking organizations*. For purposes of this section, a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

[X]. Amend §225.175 by adding paragraph (c)(3) to read as follows:

§225.175 What risk management, record keeping and reporting policies are required to make merchant banking investments?

* * * * *

(c) * * *

(3) *Qualifying community banking organizations*. For purposes of this paragraph (c), a financial holding company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12) has Tier 1 capital equal to its CBLR tangible equity (as defined in 12 CFR 217.12).

PART 238 – SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

[X]. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78 *l*.

[X]. Amend §238.53 by:

a. Revising paragraph (c)(2)(iii)(B);

b. Revising paragraph (c)(2)(v); and

c. Adding paragraphs (c)(2)(v)(A) and (B).

The revisions and additions read as follows:

§238.53 Prescribed services and activities of savings and loan holding companies.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter (or, in the case of a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated pro forma community bank leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter); and

* * * * *

(v) (A) For each insured depository institution (that is not a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)) whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(B) For each insured depository institution that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), whose CBLR tangible equity (as defined in 12 CFR 217.12) or total assets change as a result of the transaction, the total assets and CBLR tangible equity of the institution on a pro forma basis;

* * * * *

PART 251 – CONCENTRATION LIMIT (REGULATION XX)

[X]. The authority citation for part 251 continues to read as follows:

Authority: 12 U.S.C. 1818, 1844(b), 1852, 3101 *et seq*.

[X]. Amend §251.3 by:

a. Revising paragraph (c)(2); and

b. Adding paragraph (c)(3).

The revision and addition read as follows:

§251.3 Concentration limit.

* * * * *

(c) * * *

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules (other than a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12)), consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(3) *Qualifying community banking organizations*. For a U.S. company that is a qualifying community banking organization (as defined in 12 CFR 217.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 217.12), consolidated liabilities are equal to:

(i) Average total consolidated assets (as defined in 12 CFR 217.12) of the company as last reported on the qualifying community banking organization's applicable regulatory filing with the qualifying community banking organization's appropriate Federal banking agency; minus

(ii) The company's CBLR tangible equity (as defined in 12 CFR 217.12).

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 324 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

[X]. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414; 15 U.S.C. 1601–1607.

[X]. Section 303.2, paragraph (ee) is revised to read as follows:

§ 303.2 Definitions.

*   *   *   *   *

(ee) Tier 1 capital shall have the same meaning as provided in § 324.2 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier 1 capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

*   *   *   *   *

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

[X]. The authority citation for part 324 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; 5371; 5412; Pub.L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub.L. 102–242, 105 Stat. 2236, 2355, as amended by Pub.L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub.L. 102–242, 105 Stat. 2236, 2386, as amended by Pub.L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub.L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115-174 §201.

[X]. Section 324.10, paragraph (a), is revised to read as follows:

§ 324.10 Minimum capital requirements.

(a) *Minimum capital requirements.* (1) An FDIC-supervised institution must maintain the following minimum capital ratios:

(i) A common equity tier 1 capital ratio of 4.5 percent.

(ii) A tier 1 capital ratio of 6 percent.

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

(vi) For state savings associations, a tangible capital ratio of 1.5 percent.

(2) A qualifying community banking organization (as defined in 12 CFR 324.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), is considered to have met the minimum capital requirements in this paragraph (a) only if the qualifying community banking organization has a community bank leverage ratio of at least 7.5 percent or more.

* * * * *

[X]. Add a new section 324.12 to read as follows:

§ 324.12 Community bank leverage ratio.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under section 10 of this subpart B, the capital ratio requirements for the well capitalized capital category under section 324.403(b)(1)(i)(A)-(D) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a community bank leverage ratio greater than 9 percent.

(2) For purposes of this section, a qualifying community banking organization means an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that satisfies all of the following criteria:

(i) Has total consolidated assets of less than $10 billion, calculated in accordance with the reporting instructions to Schedule RC of the Call Report as of the end of the most recent calendar quarter;

(ii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed below in subparagraphs (A)-(I), divided by total consolidated assets, each as of the end of the most recent calendar quarter:

(A) The unused portion of commitments (except for unconditionally cancellable commitments);

(B) Self-liquidating, trade-related contingent items that arise from the movement of goods;

(C) Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby letters of credit;

(D) Sold credit protection through guarantees and credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to Schedule RC-L of the Call Report;

(G) Financial standby letters of credit;

(H) Forward agreements that are not derivative contracts; and

(I) Off-balance sheet securitization exposures;

(iii) Has total trading assets and trading liabilities, calculated in accordance with the reporting instructions to Schedule RC of the Call Report of 5 percent or less of the FDIC-supervised institution’s total consolidated assets, each as of the end of the most recent calendar quarter;

(iv) Has mortgage servicing assets, calculated in accordance with the reporting instructions to Schedule RC-M of the Call Report, of 25 percent or less of the FDIC-supervised institution’s CBLR tangible equity, each as of the end of the most recent calendar quarter; and

(v) Has DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances, of 25 percent or less of the FDIC-supervised institution’s CBLR tangible equity, each as of the end of the most recent calendar quarter.

(3) (i) A qualifying community banking organization may elect to use the community bank leverage ratio framework if it makes an opt-in election under this paragraph (a)(3).

(ii) A qualifying community banking organization may elect to use the community bank leverage ratio framework only if it has a community bank leverage ratio that exceeds 9 percent at the time of the election.

(iii) For purposes of this paragraph (a)(3), a qualifying community banking organization makes an election to use the community bank leverage ratio framework by completing the community bank leverage ratio reporting schedule in its Call Report.

(iv) (A) A qualifying community banking organization that has elected to use the community bank leverage ratio may opt out of using the community bank leverage ratio by completing Schedule RC-R in its Call Report or by otherwise providing the information required in Schedule RC-R to the FDIC.

(B) A qualifying community banking organization that opts out of using the community bank leverage ratio pursuant to paragraph (a)(3)(iv)(A) of this section must comply with section 10 of this subpart immediately.

(b) *Calculation of the community bank leverage ratio*. (1) A qualifying community banking organization's community bank leverage ratio is the ratio of the banking organization's CBLR tangible equity, as defined in paragraph (b)(2) of this section, to its average total consolidated assets, as defined in paragraph (b)(3) of this section.

(2) CBLR tangible equity means total bank equity capital, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, before the inclusion of noncontrolling (minority) interests in consolidated subsidiaries, as of the end of the most recent calendar quarter less the following (each as of the end of the most recent calendar quarter):

(i) Accumulated other comprehensive income calculated in accordance with the reporting instructions to Schedule RC of the Call Report;

(ii) Intangible Assets, calculated in accordance with the reporting instructions to Schedule RC of the Call Report, other than mortgage servicing assets;

(iii) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances; and

(iv) Identified losses. A qualifying community banking organization must deduct identified losses (to the extent that CBLR tangible equity would have been reduced if the appropriate accounting entries to reflect the identified losses had been recorded on the banking organization's books).

(3) Average total consolidated assets means total assets calculated in accordance with the reporting instructions to Schedule RC-K of the Call Report as of the end of the most recent

calendar quarter less the amounts deducted from CBLR tangible equity under paragraphs (b)(2)(ii) through (iv) of this section.

(c) *Treatment when ceasing to be a qualifying community banking organization requirements.* (1) Except as provided in paragraph (c)(4) of this section, if an FDIC-supervised institution ceases to meet the definition of a qualifying community banking organization, the FDIC-supervised institution has two reporting periods (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with section 10 of this subpart and report the required capital measures under section 10 on its Call Report.

(2) The grace period begins as of the end of the calendar quarter in which the FDIC-supervised institution ceases to satisfy the criteria to be a qualifying community banking organization provided in paragraph (a)(2) of this section. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(3) During the grace period, the FDIC-supervised institution continues to be a qualifying community banking organization for purposes of this part and must continue calculating and reporting its community bank leverage ratio unless the FDIC-supervised institution has opted out of using the community bank leverage ratio under paragraph (a)(3).

(4) Notwithstanding paragraph (c)(1) through (3), an FDIC-supervised institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an FDIC-supervised institution comply with section 10 of this subpart and must report the required capital measures under section 10 on its next Call Report.

(d) *Tangible equity information*. (1) A qualifying community banking organization that has elected to use the community bank leverage ratio under this section and has a community bank leverage ratio that falls below 6 percent, must promptly provide to the FDIC the information necessary for the calculation of its tangible equity, as defined under section 324.2, for purposes of determining the capital category of the banking organization under subpart H of this part.

(2) Notwithstanding paragraph (d)(1), upon request by the FDIC, a qualifying community banking organization must provide the information necessary for the calculation of its tangible equity, as defined under section 324.2, to the FDIC.

3. Section 324.403(a) and (b) is revised to read as follows:

(a) Capital measures. (1) For purposes of section 38 of the FDI Act and this subpart H, the relevant capital measures shall be:

(i) The total risk-based capital ratio;

(ii) The Tier 1 risk-based capital ratio;

(iii) The common equity tier 1 ratio;

(iv) The leverage ratio;

(v) The tangible equity to total assets ratio; and

(vi) Beginning January 1, 2018, the supplementary leverage ratio calculated in accordance with § 324.11 for advanced approaches FDIC–supervised institutions that are subject to subpart E of this part.

(2) For a qualifying community banking organization (as defined in 12 CFR 324.12), that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), the community bank leverage ratio (as defined in 12 CFR 324.12), is used to determine the applicable capital category under paragraphs (b)(1) through (4) of this section.

(b) Capital categories. For purposes of section 38 of the FDI Act and this subpart, an FDIC–supervised institution shall be deemed to be:

(1) (i) “Well capitalized” if it:

(A) Has a total risk-based capital ratio of 10.0 percent or greater; and

(B) Has a Tier 1 risk-based capital ratio of 8.0 percent or greater; and

(C) Has a common equity tier 1 capital ratio of 6.5 percent or greater; and

(D) Has a leverage ratio of 5.0 percent or greater; and

(E) Is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the FDIC pursuant to section 8 of the FDI Act (12 U.S.C. 1818), the International Lending Supervision Act of 1983 (12 U.S.C. 3907), or the Home Owners’ Loan Act (12 U.S.C. 1464(t)(6)(A)(ii)), or section 38 of the FDI Act (12 U.S.C. 1831o), or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

(ii) Beginning on January 1, 2018 and thereafter, an FDIC–supervised institution that is a subsidiary of a covered BHC will be deemed to be well capitalized if the FDIC–supervised institution satisfies paragraphs (b)(1)(i)(A) through (E) of this section and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than $700 billion in total assets as reported on the company’s most recent Consolidated Financial Statement for Bank Holding Companies (Form FR Y–9C) or more than $10 trillion in assets under custody as reported on the company’s most recent Banking Organization Systemic Risk Report (Form FR Y–15).

(iii) A qualifying community banking organization, as defined under §324.12, that has elected to use the community bank leverage ratio framework under section §324.12 and that has a community bank leverage ratio, as defined under §324.12, greater than 9 percent, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraphs (b)(1)(i)(A) through (D) of this section.

(2) (i) “Adequately capitalized” if it:

(A) Has a total risk-based capital ratio of 8.0 percent or greater; and

(B) Has a Tier 1 risk-based capital ratio of 6.0 percent or greater; and

(C) Has a common equity tier 1 capital ratio of 4.5 percent or greater; and

(D) Has a leverage ratio of 4.0 percent or greater; and

(E) Does not meet the definition of a well capitalized bank.

(ii) Beginning January 1, 2018, an advanced approaches FDIC–supervised institution will be deemed to be “adequately capitalized” if it satisfies paragraphs (b)(2)(i)(A) through (E) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with § 324.11 of subpart B of this part.

(iii) A qualifying community banking organization, as defined under §324.12, that has elected to use the community bank leverage ratio framework under section §324.12 and that has a community bank leverage ratio, as defined under §324.12, of 7.5 percent or greater, shall be considered to have met the requirements for the adequately capitalized capital category in paragraph (b)(2)(i)(A) through (D) of this section.

(3) (i) “Undercapitalized” if it:

(A) Has a total risk-based capital ratio that is less than 8.0 percent; or

(B) Has a Tier 1 risk-based capital ratio that is less than 6.0 percent; or

(C) Has a common equity tier 1 capital ratio that is less than 4.5 percent; or

(D) Has a leverage ratio that is less than 4.0 percent.

(ii) Beginning January 1, 2018, an advanced approaches FDIC–supervised institution will be deemed to be "undercapitalized" if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with § 324.11.

(iii) A qualifying community banking organization, as defined under §324.12, that has elected to use the community bank leverage ratio framework under section §324.12 and that has a community bank leverage ratio, as defined under §324.12, of less than 7.5 percent, shall be considered to have met the requirements for the undercapitalized capital category in paragraph (b)(3)(i)(A) through (D) of this section.

(4) (i) "Significantly undercapitalized" if it has:

(A) A total risk-based capital ratio that is less than 6.0 percent; or

(B) A Tier 1 risk-based capital ratio that is less than 4.0 percent; or

(C) A common equity tier 1 capital ratio that is less than 3.0 percent; or

(D) A leverage ratio that is less than 3.0 percent.

(ii) A qualifying community banking organization, as defined under §324.12, that has elected to use the community bank leverage ratio framework under section §324.12 and that has a community bank leverage ratio, as defined under §324.12, of less than 6 percent, shall be considered to have met the requirements for the significantly undercapitalized capital category in paragraph (b)(4)(i)(A)-(D) of this section.

(5) "Critically undercapitalized" if the insured depository institution has a ratio of tangible equity, as defined in section 324.2, to total assets that is equal to or less than 2.0 percent.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

[X]. The authority citation for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1), 1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

[X]. In § 337.3, revise footnote 3 to read as follows:

*   *   *   *   *

3 For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (12 CFR 215.2(f). For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), capital and unimpaired surplus shall mean the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12) plus allowances for loan and lease losses (as defined in 12 CFR 324. 2).

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PART 347—INTERNATIONAL BANKING

[X]. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78*o*–7 note).

§ 347.102 [Amended]

[X]. Section 347.102, paragraph (u) is revised to read as follows:

§ 347.102 Definitions.

* * * * *

(u) Tier 1 capital means Tier 1 capital as defined in § 324.2 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier 1 capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

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PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

[X]. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(j), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l).

[X]. Section 362.2, paragraph (s) is revised to read as follows:

§ 362.2 Definitions.

* * * * *

(s) Tier one capital has the same meaning as set forth in part 324 of this chapter for an insured State nonmember bank or insured state savings association. For other state-chartered depository institutions, the term "tier one capital" has the same meaning as set forth in the capital regulations adopted by the appropriate Federal banking agency. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), Tier one capital means the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

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PART 365—REAL ESTATE LENDING STANDARDS

[X]. The authority citation for part 365 continues to read as follows:

Authority: 12 U.S.C. 1828(o) and 5101 et seq.

11. In Appendix A to subpart A of part 365, revise footnote 2 to read as follows:

* * * * *

2 For state non-member banks and state savings associations, "total capital" refers to that term described in 12 CFR 324.2. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), "total capital" refers to the FDIC-supervised institution's CBLR tangible equity (as defined in 12 CFR 324.12).

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

[X]. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

[X]. In the Appendix to § 390.265, revise footnote 4 to read as follows:

* * * * *

4 For the state member banks, the term "total capital" is defined at 12 CFR 217.2. For insured state non-member banks, the term "total capital" is defined at 12 CFR 324.2. For national banks, the term "total capital" is defined at 12 CFR 3.2. For

state savings associations, the term “total capital” is defined at 12 CFR 324.2. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), “total capital” means the FDIC-supervised institution’s CBLR tangible equity (as defined in 12 CFR 324.12).

*   *   *   *   *

[X]. Section 390.344, is revised to read as follows:

*   *   *   *   *

§ 390.344 Definitions applicable to capital distributions.

*   *   *   *   *

Capital means total capital, as computed under part 324 of this chapter. For a qualifying community banking organization (as defined in 12 CFR 324.12) that is subject to the community bank leverage ratio (as defined in 12 CFR 324.12), total capital means the FDIC-supervised institution’s CBLR tangible equity (as defined in 12 CFR 324.12).

*   *   *   *   *

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED "REGULATORY CAPITAL RULE: CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKING ORGANIZATIONS."]

Dated:

Joseph M. Otting
Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REGULATORY CAPITAL RULE: CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKING ORGANIZATIONS.”]

By order of the Board of Governors of the Federal Reserve System, __________, 2018.

Ann E. Misback,
Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REGULATORY CAPITAL RULE: CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKING ORGANIZATIONS.”]

Dated at Washington, D.C. on [date] 2018.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

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Robert E. Feldman,
Executive Secretary.