

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

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**FEDERAL RESERVE SYSTEM**

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**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 324**

**RIN 3064-AE59**

**Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996**

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

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule (final rule) to simplify certain aspects of the capital rule. The

final rule is responsive to the agencies' March 2017 report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, in which the agencies committed to meaningfully reduce regulatory burden, especially on community banking organizations. The key elements of the final rule apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Under the final rule, non-advanced approaches banking organizations will be subject to simpler regulatory capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions than those currently applied. The final rule also simplifies, for non-advanced approaches banking organizations, the calculation for the amount of capital issued by a consolidated subsidiary of a banking organization and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital. In addition, the final rule makes technical amendments to, and clarifies certain aspects of, the agencies' capital rule for both non-advanced approaches banking organizations and advanced approaches banking organizations (technical amendments). Revisions to the definition of high-volatility commercial real estate exposure in the agencies' capital rule are being addressed in a separate rulemaking.

**DATES:** The portions of the final rule related to simpler requirements for mortgage servicing assets, certain deferred tax assets, investments in the capital of unconsolidated financial institutions, and minority interest (incorporated in the amendatory instructions 7, 8, 24, 30, 31, 47.b, 53, 54, and 70) are effective on April 1, 2020. The portions of the final rule related to the technical amendments (incorporated in the amendatory instructions 1-6, 9-23, 25-29, 32-46, 47.a, 48-52, and 55-69) are effective October 1, 2019. Any banking organization subject to the capital

rule may elect to adopt the technical amendments that are effective October 1, 2019, prior to that date.

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## **I. Introduction**

On October 27, 2017, 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) published a notice of proposed rulemaking (simplifications proposal)<sup>1</sup> with the goal of reducing regulatory compliance burden, particularly on community banking organizations, by simplifying certain aspects of the agencies' risk-based and leverage capital requirements (capital rule).<sup>2</sup>

The agencies had previously adopted in 2013 rules designed to strengthen the capital rule's requirements and improve risk sensitivity. These rules were intended to address weaknesses that became apparent during the financial crisis of 2007-08. Since 2013, the quality of banking organizations' capital has significantly improved and the quantity of capital has increased.

The capital rule adopted in 2013 provides two methodologies for determining risk-weighted assets: (i) a standardized approach and (ii) a more complex, models-based approach, which includes both the internal ratings-based approach for measuring credit risk exposure and the advanced measurement approach for measuring operational risk exposure (advanced

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<sup>1</sup> 82 FR 49984 (October 27, 2017).

<sup>2</sup> The Board and the 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). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

approaches).<sup>3</sup> The standardized approach applies to all banking organizations that are subject to the agencies' risk-based capital rule, whereas the advanced approaches apply only to certain large or internationally active banking organizations (advanced approaches banking organizations).<sup>4</sup>

In connection with the agencies' review of all the banking regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>5</sup> the agencies received over 230 comment letters from depository institutions and their holding companies, trade associations, consumer and community groups, and other interested parties.<sup>6</sup> The agencies also received numerous oral and written comments at public outreach meetings.<sup>7</sup> Many of the commenters stated that certain aspects of the capital rule are unduly burdensome and complex. After reviewing the comments, the agencies issued a Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act (the 2017 EGRPRA report) in March 2017,<sup>8</sup> highlighting the agencies' intent to meaningfully reduce regulatory burden, especially on

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<sup>3</sup> 12 CFR part 3, Subparts D & E (OCC); 12 CFR part 217, subparts D & E (Board); 12 CFR part 324, Subparts D & E (FDIC).

<sup>4</sup> 12 CFR 3.1(c), 12 CFR 3.100(b) (OCC); 12 CFR 217.1(c), 12 CFR 217.100(b) (Board); 12 CFR 324.1(c), 12 CFR 324.100(b) (FDIC). Advanced approaches banking organizations are required to calculate capital ratios under both the standardized and advanced approaches in the capital rule and are subject to whichever ratio is lower between the two approaches.

<sup>5</sup> EGRPRA requires that regulations prescribed by the agencies be reviewed at least once every 10 years. The purpose of this review is to identify, with input from the public, outdated or unnecessary regulations and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system. Pub. L. 104-208, 110 Stat. 3009 (1996).

<sup>6</sup> 79 FR 32172 (June 4, 2014); 80 FR 7980 (February 13, 2015); 80 FR 32046 (June 5, 2015); and 80 FR 79724 (December 23, 2015).

<sup>7</sup> Comments received during the EGRPRA review process and transcripts of outreach meetings can be found at <http://egrpra.ffiec.gov/>.

<sup>8</sup> 82 FR 15900 (March 30, 2017).

community banking organizations, while maintaining safety and soundness in the banking system and retaining the quality and quantity of regulatory capital.

In particular, the agencies indicated in the 2017 EGRPRA report their intent to issue a rule that would simplify, for non-advanced approaches banking organizations, (i) the current regulatory capital treatment for concentrations of mortgage servicing assets (MSAs), deferred tax assets (DTAs) arising from temporary differences that an institution could not realize through net operating loss carrybacks (temporary difference DTAs), and investments in the capital of unconsolidated financial institutions; and (ii) the calculation for the amount of minority interest includable in regulatory capital.<sup>9</sup> <sup>10</sup> The 2017 EGRPRA report also highlighted the agencies' intent to replace the capital rule's treatment of high volatility commercial real estate (HVCRE) exposures with a simpler treatment for most acquisition, development, or construction exposures.

#### **A. Related Rulemakings**

The agencies have issued several other rulemakings over the last two years to simplify certain aspects of the capital rule. For example, the capital rule included transitional arrangements for certain requirements. Under such transitional arrangements in the capital rule, any amount of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that a banking organization did not deduct from common equity tier 1 capital was risk weighted at 100 percent until January 1, 2018. In 2017, the agencies adopted a rule (transition rule) to allow non-advanced approaches banking organizations to continue to apply the transition treatment in effect in 2017 (including the 100

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<sup>9</sup> 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.

<sup>10</sup> Minority interest is the amount of capital that can count toward regulatory requirements in cases in which a banking organization's consolidated subsidiary has issued capital that is held by third parties.

percent risk weight for MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions) while the agencies considered the simplifications proposal. This final rule supersedes the transition rule and eliminates the transition provisions that are no longer operative.<sup>11</sup>

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)<sup>12</sup> became law. As described in more detail below, section 214 of EGRRCPA amended the capital treatment for HVCRE exposures. Accordingly, the agencies proposed changes to the regulatory capital treatment of HVCRE exposures to implement section 214 through a separate rulemaking.<sup>13</sup>

Additionally, consistent with section 201 of EGRRCPA,<sup>14</sup> the agencies issued a notice of proposed rulemaking providing an optional simple leverage-based measure of capital adequacy for certain community banking organizations (community bank leverage ratio (CBLR) proposal).<sup>15</sup> Under the CBLR proposal, certain qualifying community banking organizations that maintain a community bank leverage ratio above 9 percent would be considered to have met the well capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act, as applicable, and the generally applicable capital requirements under the capital rule.<sup>16</sup>

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<sup>11</sup> 82 FR 55309 (Nov. 21, 2017). These changes to the capital rule's transition provisions did not apply to advanced approaches banking organizations.

<sup>12</sup> Pub. L. 115-174 (May 24, 2018).

<sup>13</sup> 83 FR 48990 (September 28, 2018).

<sup>14</sup> Pub. L. 115-174, § 201; 84 FR 3062 (February 8, 2019).

<sup>15</sup> 84 FR 3062 (February 8, 2019).

<sup>16</sup> *See* 12 CFR 3.10(a) (OCC); 12 CFR 217.10(a) (Board); 12 CFR 324.10(a) (FDIC).



The agencies recently published two notices of proposed rulemakings on frameworks that would more closely match the regulatory capital and liquidity requirements for certain large banking organizations with their risk profiles (tailoring proposals).<sup>17</sup> The tailoring proposals, which are consistent with changes mandated by section 401 of EGRRCPA, would revise the scope of which banking organizations meet the definition of advanced approaches banking organizations, thereby potentially affecting which banking organizations would be able to apply the final rule. Each of these related rulemakings and their interactions are described in further detail in various sections of this Supplementary Information.

## **B. Current capital treatment**

### *1. MSAs, Temporary Difference DTAs, and Investments in the Capital of Unconsolidated Financial Institutions*

Under the current capital rule, a banking organization must deduct from common equity tier 1 capital amounts of MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock (collectively, threshold items) that individually exceed 10 percent of the banking organization's common equity tier 1 capital.<sup>18</sup> In addition, a banking organization must also deduct from its common equity tier 1 capital the aggregate amount of threshold items not deducted under the 10 percent threshold deduction but that nonetheless exceeds 15 percent of the banking organization's common equity tier 1 capital minus certain deductions from and adjustments to common equity

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<sup>17</sup> 83 FR 61408 (November 29, 2018); 83 FR 66024 (December 21, 2018). *See also* <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190408a.htm>.

<sup>18</sup> A significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the banking organization owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution. 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

tier 1 capital (15 percent common equity tier 1 capital deduction threshold). In the absence of the agencies' transition rule described above, any amount of these three items that a banking organization did not deduct from common equity tier 1 capital was risk weighted at 100 percent until December 31, 2017 and at 250 percent thereafter.<sup>19,20</sup>

In addition to deductions for the threshold items, the capital rule requires deductions from regulatory capital if a banking organization holds (i) non-significant investments in the capital of an unconsolidated financial institution above a certain threshold<sup>21</sup> or (ii) significant investments in the capital of an unconsolidated financial institution that are not in the form of common stock. Specifically, the capital rule requires that a banking organization deduct from its regulatory capital any amount of the organization's non-significant investments in the capital of unconsolidated financial institutions that exceeds 10 percent of the banking organization's common equity tier 1 capital (the 10 percent threshold for non-significant investments)<sup>22</sup> in accordance with the corresponding deduction approach of the capital rule.<sup>23</sup> In addition, significant investments in the capital of unconsolidated financial institutions not in the form of

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<sup>19</sup> In addition, the calculation of the aggregate 15 percent common equity tier 1 capital deduction threshold for these items was to become stricter as any amount above 15 percent of common equity tier 1, less the amount of those items already deducted as a result of the 10 percent common equity tier 1 capital deduction threshold, would be deducted from a banking organization's common equity tier 1 capital. 12 CFR 3.22(d) (OCC); 12 CFR 217.22(d) (Board); 12 CFR 324.22(d) (FDIC).

<sup>20</sup> See 82 FR 55309 (Nov. 21, 2017).

<sup>21</sup> A non-significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution (non-significant investment in the capital of an unconsolidated financial institution). 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

<sup>22</sup> 12 CFR 3.22(c)(4) (OCC); 12 CFR 217.22(c)(4) (Board); 12 CFR 324.22(c)(4) (FDIC).

<sup>23</sup> 12 CFR 3.22(c)(2) (OCC); 12 CFR 217.22(c)(2) (Board); 12 CFR 324.22(c)(2) (FDIC).

common stock also must be deducted from regulatory capital in their entirety in accordance with the capital rule's corresponding deduction approach.<sup>24</sup>

## *2. Minority interest*

Because minority interest is generally not available to absorb losses at the banking organization's consolidated level, the capital rule limits the amount of minority interest that a banking organization may include in regulatory capital. For example, tier 1 minority interest is created when a consolidated subsidiary of the banking organization issues tier 1 capital to third parties. The restrictions in the capital rule relating to minority interest are currently based on the amount of capital held by a consolidated subsidiary relative to the amount of capital the subsidiary would need to hold to avoid any restrictions on capital distributions and certain discretionary bonus payments under the capital rule's capital conservation buffer framework. Many community banking organizations have asserted that the capital rule's current calculation of the minority interest limitation is complex and results in burdensome regulatory capital calculations and confusing regulatory capital reporting instructions.

## **II. Summary of the Simplifications Proposal**

### **A. Proposed Simplifications to the Capital Rule**

Consistent with the 2017 EGRPRA report, the agencies issued the simplifications proposal with the aim of simplifying the capital rule and reducing regulatory burden for certain banking organizations. Specifically, for non-advanced approaches banking organizations, the simplifications proposal would have eliminated: (i) the 10 percent common equity tier 1 capital deduction threshold, which applies individually to holdings of MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the

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<sup>24</sup> 12 CFR 3.22(c)(5) (OCC); 12 CFR 217.22(c)(5) (Board); 12 CFR 324.22(c)(5) (FDIC).

form of common stock; (ii) the 15 percent common equity tier 1 capital deduction threshold, which applies to the aggregate amount of such items; (iii) the 10 percent threshold for non-significant investments, which applies to holdings of regulatory capital of unconsolidated financial institutions; and (iv) the deduction treatment for significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.<sup>25</sup> Under the simplifications proposal, for non-advanced approaches banking organizations, the capital rule would have no longer applied distinct treatments to significant and to non-significant investments in the capital of unconsolidated financial institutions. Rather, the regulatory capital treatment for an investment in the capital of unconsolidated financial institutions would be based on the type of instrument underlying the investment.

Instead of the current capital rule's complex treatments for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions, the simplifications proposal would have required non-advanced approaches banking organizations to deduct from common equity tier 1 capital any amount of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that individually exceed 25 percent of common equity tier 1 capital of the banking organization (the 25 percent common equity tier 1 capital deduction threshold). The simplifications proposal would have required a banking organization to apply a 250 percent risk weight to MSAs or temporary difference DTAs<sup>26</sup> not

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<sup>25</sup> 12 CFR 3.22(c) and (d) (OCC); 12 CFR 217.22(c) and (d) (Board); 12 CFR 324.22 (c) and (d) (FDIC).

<sup>26</sup> The agencies note that they are not proposing to change the current treatment of DTAs arising from timing differences that could be realized through net operating loss carrybacks. Such DTAs are not subject to deduction and are assigned a 100 percent risk weight.

deducted from capital.<sup>27</sup> For investments in the capital of unconsolidated financial institutions, the simplifications proposal would have required a banking organization to risk weight each exposure not deducted according to the risk weight applicable to the exposure category of the investment.

Second, the simplifications proposal would have introduced a significantly simpler methodology for non-advanced approaches banking organizations to calculate minority interest limitations.<sup>28</sup> The existing capital rule's limitations for common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest are based on the capital requirements and capital ratios of each of the banking organization's consolidated subsidiaries that have issued capital instruments held by third parties. The proposal would have simplified the minority interest limitations for non-advanced approaches banking organizations by basing such limitations on the parent banking organization's capital levels rather than on the amount of capital its subsidiaries would need to meet the minimum capital requirements on their own. Specifically, under the proposal, a non-advanced approaches banking organization would have been allowed to include common equity tier 1, tier 1, and total capital minority interest up to 10 percent of the banking organization's common equity tier 1, tier 1, and total capital (before the inclusion of any minority interest), respectively.

Third, the simplifications proposal would have replaced the existing HVCRE exposure category as applied in the standardized approach with a newly defined exposure category titled

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<sup>27</sup> As noted, on November 21, 2017, the agencies finalized a rule applicable to non-advanced approaches banking organizations to maintain the transition provisions in the capital rule in effect during 2017 for several regulatory capital deductions and for minority interest while the agencies considered the simplifications proposal. 82 FR 55309. *See* 12 CFR 3.300(b)(4)-(5) and (d) (OCC); 12 CFR 217.300(b)(4)-(5) and (d) (Board); 12 CFR 324.300(b)(4)-(5) and (d) (FDIC).

<sup>28</sup> 12 CFR 3.21 (OCC); 12 CFR 217.21(Board); 12 CFR 324.21 (FDIC).

high volatility acquisition, development, or construction (HVADC) exposure. The simplifications proposal introduced the HVADC exposure in an effort to simplify and clarify the capital requirements for acquisition, development, and construction exposures. Given its broader proposed scope of application, the simplifications proposal would have introduced a reduced risk weight for HVADC exposures relative to the current risk weight for HVCRE exposures under the capital rule's standardized approach. Subsequent to the proposal, on May 24, 2018, section 214 of EGRRCPA became law, which provides a statutory definition of a high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan.<sup>29</sup> On September 18, 2018, the agencies published a proposed rule to conform the capital rule with the statutory definition of HVCRE ADC, which superseded the aspect of the simplifications proposal that would have replaced the HVCRE exposure definition with HVADC exposure definition.<sup>30</sup> The agencies are finalizing the statutorily mandated revisions to the capital rule's definition of HVCRE exposure in a separate rulemaking.

Under the simplifications proposal, advanced approaches banking organizations would not have been permitted to apply the simplified treatment for MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions and minority interest. These banking organizations would continue to apply the more risk sensitive treatments included in the capital rule.

The simplifications proposal also would have made certain technical changes to the capital rule, including some changes to the advanced approaches, to clarify certain provisions, update cross-references, and correct typographical errors.

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<sup>29</sup> 12 U.S.C. § 1831bb.

<sup>30</sup> 83 FR 48990 (Sept. 28, 2018).

## **B. Summary of Comments**

Collectively, the agencies received nearly 100 comment letters on the simplifications proposal from banking organizations, trade associations, public interest groups, and individuals. This summary excludes any comments pertaining to the proposed revisions to the definition of HVCRE exposure, as such matters are being addressed in a different rulemaking.

As described in further detail in subsequent sections of this Supplementary Information, commenters generally supported the simplifications proposal. Several commenters, however, requested that the agencies apply the proposed simplifications to a broader set of banking organizations. A number of commenters believed the proposed simplifications were insufficient with respect to the threshold deductions for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions. Some commenters favored increasing or removing the 25 percent common equity tier 1 capital deduction threshold while other commenters disagreed with the proposed 250 percent risk weight for these exposures. While commenters expressed general support for the simplifications proposal's simpler regulatory capital limitations for minority interest, a few commenters asserted this revision could result in unintended consequences. The agencies also received comments related to potential additional technical amendments and simplifications to the capital rule, which are also described below.

## **III. Final Rule**

### **A. MSAs, Temporary Difference DTAs, and Investments in the Capital of Unconsolidated Financial Institutions**

The simplification proposal would have set the 25 percent common equity tier 1 capital deduction threshold for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions to prevent, in a simple manner, unsafe and unsound

concentration levels of these exposure categories in regulatory capital. The agencies believe that the 25 percent common equity tier 1 capital deduction threshold would have appropriately balanced risk-sensitivity and complexity for non-advanced approaches banking organizations.

The agencies received various comments that generally supported the proposed revisions to the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions. Several commenters requested that the scope of these proposed simplifications be applied universally to all banking organizations, including advanced approaches banking organizations. Many commenters favored the increased 25 percent deduction threshold, while other commenters requested higher deduction limits (e.g., 50 percent or 100 percent of tier 1 capital). Some commenters requested the full removal of the deduction threshold while others suggested that such treatment be required only for banking organizations meeting certain size and/or capital levels.

Numerous commenters requested that a 100 percent risk weight be applied to non-deducted MSAs, arguing that this lower risk weight is consistent with historical practice and evolving risk-management policies. These commenters stated that the proposed 250 percent risk weight would place banking organizations at a competitive disadvantage, potentially driving their MSA business line out of the banking sector and leading to increased MSA concentrations among mortgage servicers that are not subject to the same prudential requirements as banking organizations. Several commenters were particularly concerned that the proposed 250 percent risk weight would reduce aggregate demand for MSAs, create a less liquid market for MSAs and result in fewer mortgages being sold in the secondary market and higher rates for mortgage borrowers. Many of the commenters requested that more liberal deduction thresholds and risk weights be applied to banking organizations with consolidated assets below a certain amount



(e.g., \$50 billion). Some commenters argued that instead of applying a 250 percent risk weight for MSAs, the agencies should apply a 250 percent risk weight for MSAs associated with holdings of subprime mortgages. A few commenters questioned the agencies' analysis in support of the proposal, arguing that it overstated the risks posed by MSAs and that corrections to the agencies' analysis would lead to the potential conclusion that any deduction threshold for MSAs is unnecessary.

Some of the comments regarding the proposal on temporary difference DTAs and investments in the capital of unconsolidated financial institutions overlapped with comments on the proposed revisions to MSAs. For instance, while there was general support for the proposed deduction threshold for those items, some commenters favored higher thresholds and a reduced risk weight (e.g., a 100 percent risk weight instead of the proposed 250 risk weight). Regarding temporary difference DTAs, several commenters cited other factors such as the U.S. generally accepted accounting principles (GAAP) current expected credit loss framework (CECL)<sup>31</sup> and changes to the tax code as support for a more favorable capital treatment for such exposures. These commenters stated that a higher capital threshold and lower risk weight should be applied to temporary difference DTAs because these external factors affect the size and volatility of DTAs. Regarding the proposed revisions for investments in the capital of unconsolidated financial institutions, several commenters specified that, for smaller banking organizations, the threshold deduction should be 50 percent of common equity tier 1 capital rather than the proposed 25 percent limit, and that the agencies should retain the existing 100 percent risk weight for certain non-deducted investments in the capital of unconsolidated financial

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<sup>31</sup> See Joint statement on New Accounting Standard on Financial Instruments – Credit Loss, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20160617b1.pdf>

institutions. One commenter suggested that further increases may be appropriate if certain long-term debt instruments issued by global systemically important bank holding companies (GSIBs) are within the scope of investments in the capital of unconsolidated financial institutions.

As discussed below, the agencies have considered the concerns raised by commenters and believe that the proposed treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions provides an appropriate balance of burden relief while maintaining safety and soundness in the banking industry. As such, the agencies are finalizing these proposed simplifications, without modification. The agencies expect that these changes will reduce regulatory compliance burden, but will not have a significant impact on the capital ratios for most non-advanced approaches firms. Some non-advanced approaches banking organizations with substantial holdings of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions may experience a capital benefit.

a. *MSAs and temporary difference DTAs*

The agencies have long limited the inclusion of intangible and higher-risk assets, such as MSAs and DTAs, in regulatory capital due to the relatively high level of uncertainty regarding the ability of banking organizations to both value and realize value from these assets, especially under adverse financial conditions. The agencies believe that it is therefore important to limit the inclusion of MSAs and temporary difference DTAs in regulatory capital. In addition, the agencies believe that the uncertainty regarding the ability of banking organizations to realize value from MSAs and temporary difference DTAs warrants an elevated risk weight for the amount of these assets not deducted from regulatory capital.

In June 2016, the agencies, together with the National Association of Credit Unions, submitted a Report to the Congress entitled *The Effect of Capital Rules on Mortgage Servicing*

Assets (MSA report).<sup>32</sup> One of the key conclusions of the MSA report is that MSA valuations are inherently subjective and subject to uncertainty, as they rely on assessments of future economic variables. This reliance can lead to variance in MSA valuations across banking organizations. Moreover, adverse financial conditions may cause liquidity strains for banking organizations seeking to sell or transfer their MSAs.

The concerns that led to the conclusion in the MSA report that MSAs are inherently subject to valuation risk remain valid. MSAs do not trade in active, open markets with readily available and observable prices. In addition, MSA portfolios typically do not share homogenous risk characteristics. As noted in the MSA report, the factors that make MSAs challenging to value, including predicting changes in market interest rates and default rates, also make it challenging to successfully hedge MSAs. The MSA report also noted that the profitability of banking organizations can be affected by holdings of MSAs because of the business risk related to litigation and compliance costs associated with mortgage servicing.

The final rule's revised treatment for MSAs should continue to protect banking organizations from the uncertainty arising from the liquidity risk, valuation risk, and business risks described above. Moreover, during periods of financial stress, MSAs may be subject to sudden and large fluctuations in value and to limited marketability that calls into question the ability to quickly divest of MSAs at their full estimated value during periods of financial stress.

The regulatory capital framework in effect prior to 2013 permitted limited recognition of qualifying intangible assets, including MSAs, in regulatory capital. In addition, that framework required banking organizations to value each intangible asset included in tier 1 capital at least

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<sup>32</sup> *Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets* (June 2016).

quarterly at the lesser of 90 percent of the fair value of each intangible asset, or 100 percent of the remaining unamortized book value. The fair value limitation for MSAs was consistent with section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which states that the amount of readily marketable purchased mortgage servicing assets (PMSAs) that an insured depository institution may include in regulatory capital cannot be more than 90 percent of the PMSAs' fair value.<sup>33</sup>

The capital rule requires deduction of all intangible assets except MSAs, which are deducted when the amount exceeds certain thresholds, as described above. However, since 2013, the capital rule removed the 90 percent fair value limitation on MSAs. Section 475 of FDICIA provides the agencies with the authority to remove the 90 percent limitation on PMSAs, subject to a joint determination by the agencies that its removal would not have an adverse effect on the deposit insurance fund or the safety and soundness of insured depository institutions. The agencies determined that the treatment of MSAs (including PMSAs) under the capital rule was consistent with a determination that the 90 percent limitation could be removed because the treatment under the capital rule (that is, applying a 250 percent risk weight to any non-deducted MSAs) was more conservative than the FDICIA fair value limitation and a 100 percent risk weight, which was the risk weight applied to MSAs under the regulatory capital framework prior to 2013.<sup>34</sup>

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<sup>33</sup> 12 U.S.C. 1828 note.

<sup>34</sup> As noted in the MSA Report, the limitation of MSAs to 90 percent of their fair value under the previous regulatory capital framework could result in an effective risk weight of up to 215 percent for MSAs to the extent that a banking institution either (1) used the fair value measurement method to determine the carrying amount of the MSAs or (2) used the amortization method and took an impairment on the MSAs to bring the carrying amount down to fair value.

The treatment of MSAs under the final rule is consistent with a determination that the 90 percent fair value limitation is not necessary given the 25 percent common equity tier 1 capital deduction threshold for MSAs in addition to the requirement that any non-deducted MSA exposures (including PMSAs) be risk weighted at 250 percent. The agencies believe that risk-weighting non-deducted MSAs at less than 250 percent, e.g., 100 percent, would require the agencies to reevaluate the need for a fair value limitation to mitigate the additional risk, which would introduce additional complexity.

Temporary difference DTAs are assets from which banking organizations may not be able to realize value, especially under adverse financial conditions. A banking organization's ability to realize its temporary difference DTAs is dependent on future taxable income; thus, the revised deduction threshold, together with a 250 percent risk weight for non-deducted temporary difference DTAs, will continue to protect banking organization capital against the possibility that the banking organization would need to establish or increase valuation allowances for DTAs during periods of financial stress. Relative to the treatment in the current rule, the 25 percent common equity tier 1 capital deduction threshold in the final rule may also serve to mitigate the adverse effects of potential increases in temporary difference DTAs stemming from CECL or from changes to the tax code.

*b. Investments in the capital of unconsolidated financial institutions*

As noted, the agencies proposed removing, for non-advanced approaches banking organizations, the distinct treatment for the capital rule's different categories of investments in the capital of unconsolidated financial institutions in the capital rule (i.e., non-significant investments in the capital of unconsolidated financial institutions, significant investments in the capital of unconsolidated financial institutions that are in the form of common stock, and

significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock). Commenters generally supported the proposed removal of this distinction, and the agencies are finalizing the revision as proposed. In order to avoid adding complexity and regulatory burden, the final rule does not dictate which specific investments a non-advanced approaches banking organization must deduct and which it must risk weight in cases where the banking organization exceeds the 25 percent common equity tier 1 capital deduction threshold for investments in the capital of unconsolidated financial institutions. Consistent with the proposal, the final rule will provide banking organization with flexibility when deciding which investments in the capital of unconsolidated financial institutions to risk weight and which to deduct. The agencies would be able to address any potential safety and soundness concerns that may arise from this flexible treatment through the supervisory process.

The final rule's treatment of investments in the capital of unconsolidated financial institutions should reduce complexity while maintaining appropriate incentives to reduce interconnectedness among financial companies. Under the final rule, and consistent with the proposal, non-advanced approaches banking organizations are required to risk weight any investments in the capital of unconsolidated financial institutions that are not deducted according to the relevant treatment for the exposure category of the investment.

One commenter asked that the agencies clarify whether a non-advanced approaches banking organization will be able to include significant equity investments in the capital of unconsolidated financial institutions in the 100 percent risk weight category similar to non-significant equity exposures under section 52(b)(3)(iii).

Under the final rule, non-advanced approaches banking organizations will not be required to differentiate among categories of investments in the capital of unconsolidated financial

institutions. The risk weight for such equity exposures generally will be 100 percent, provided the exposures qualify for this preferential risk weight.<sup>35</sup> For non-advanced approaches banking organizations, the final rule eliminates the exclusion of significant investments in the capital of unconsolidated financial institutions in the form of common stock from being eligible for a 100 percent risk weight.<sup>36</sup> The application of the 100 percent risk weight (i) requires a banking organization to follow an enumerated process for calculating adjusted carrying value and (ii) mandates the equity exposures that must be included in determining whether the threshold has been reached. Equity exposures that do not qualify for a preferential risk weight will generally receive risk weights of either 300 percent or 400 percent, depending on whether the equity exposures are publicly traded.

This revised approach is intended to balance simplicity and risk-sensitivity for non-advanced approaches banking organizations by applying a single definition of investments in the capital of unconsolidated financial institutions, and simplifying the capital requirements for investments in the capital of unconsolidated financial institutions.

One commenter asked that the agencies clarify the definition of financial institution, and within that definition, explain what is meant by financial instruments, asset management

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<sup>35</sup> 12 CFR 3.52 and .53 (OCC); 12 CFR 217.52 and .53 (Board); 12 CFR 324.52 and .53 (FDIC). Note that for purposes of calculating the 10 percent non-significant equity bucket, the capital rule excludes equity exposures that are assigned a risk weight of zero percent and 20 percent, and community development equity exposures and the effective portion of hedge pairs, both of which are assigned a 100 percent risk weight. In addition, the 10 percent non-significant bucket excludes equity exposures to an investment firm that would not meet the definition of traditional securitization were it not for the application of criterion 8 of the definition of traditional securitization, and has greater than immaterial leverage.

<sup>36</sup> Equity exposures that exceed, in the aggregate, 10 percent of a non-advanced approaches banking organization's total capital would then be assigned a risk weight based upon the approaches available in sections 52 and 53 of the capital rule. 12 CFR 3.52 and .53 (OCC); 12 CFR 217.52 and .53 (Board); 12 CFR 324.52 and .53 (FDIC).

activities, and investment or financial advisory activities. This issue is beyond the scope of the final rule; however, the agencies will consider if clarifications to the capital rule's definition of financial institution are necessary.

## **B. Minority Interest**

Under the simplifications proposal, the agencies would have simplified, for non-advanced approaches banking organizations, the calculations limiting the inclusion of minority interest in regulatory capital. Specifically, the proposal would have allowed non-advanced approaches banking organizations to include: (i) common equity tier 1 minority interest comprising up to 10 percent of the parent banking organization's common equity tier 1 capital; (ii) tier 1 minority interest comprising up to 10 percent of the parent banking organization's tier 1 capital; and (iii) total capital minority interest comprising up to 10 percent of the parent banking organization's total capital. In each case, the parent banking organization's regulatory capital for purposes of these limitations would be measured before the inclusion of any minority interest and after the deductions from and adjustments to the regulatory capital of the parent banking organization described in sections 22(a) and (b) of the capital rule.<sup>37</sup>

Many commenters expressed general support for the proposed revisions to simplify the regulatory capital limitations for minority interest. A few commenters, however, asserted that the proposal could result in unintended consequences. For example, one commenter stated that determining the amount of includable minority interest solely based on the capital level of the banking organization parent without reference to its subsidiary's regulatory capital levels and risk-weighted assets could amplify the effects of a decrease in capital levels, particularly in a

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<sup>37</sup> 12 CFR 3.22(a) and (b) (OCC); 12 CFR 217.22(a) and (b) (Board); 12 CFR 324.22 (a) and (b) (FDIC).



stressed environment. While the agencies are concerned with capital at each level of the banking organization structure, in developing a more simplified calculation, emphasis was placed on the parent and its ability to support the entire organization. At present, few institutions have minority interest holdings that are significant enough to be adversely affected by such a scenario. However, the agencies will continue monitor banks' positions through their respective supervisory processes and will address any concerns at individual banking organizations on a case-by-case basis, as appropriate. Another commenter favored an alternative method for calculating includable minority interest that would vary depending on each measure of regulatory capital (e.g., 80 percent of banking organization parent's common equity tier 1 capital, 85 percent of its tier 1 capital, and 115 percent of its total capital), arguing that a banking organization's total capital ratio at the consolidated level is likely to decline more rapidly than its other capital ratios when in stress. The agencies do not see any particular advantage to this alternative method and maintain that capital levels of the parent are of paramount importance, particularly in a stressed environment.

One commenter asserted that the proposal may create an undue incentive to issue tier 2 capital instruments at the holding company level rather than at the subsidiary bank level, thereby potentially increasing funding costs. Again, in a stressed environment the parent's soundness and its capital strength is of paramount importance and by action of the final rule, the agencies limit the amount of includable capital instruments that have been issued to minority investors from subsidiaries.

As with other areas of the simplifications proposal, some commenters objected to the scope of the proposal related to minority interest and requested that all banking organizations, including advanced approaches banking organizations, be allowed to apply the proposed

revisions when calculating capital ratios under the capital rule's generally applicable capital requirements. One commenter requested that when a non-advanced approaches banking organization becomes an advanced approaches banking organization, the banking organization should be given three years to transition to the more complex approach for minority interest. Another commenter favored the complete removal of all minority interest limitations for all non-advanced approaches banking organizations.

After considering all the comments on this issue, the agencies continue to have the view that removing the current complex calculation for the amount of includable minority interest will reduce regulatory burden without reducing the safety and soundness of non-advanced approaches banking organizations. In addition, the regulatory capital of a banking organization should not reflect unlimited amounts of minority interest because equity and other investments made by a third party in a consolidated subsidiary of a banking organization merely supports the separate risks inherent in the subsidiary, and therefore that capital cannot be expected to be available to fully support risks in the consolidated organization. In other words, losses within the consolidated banking organization, outside of the subsidiary, will not be absorbed by minority interest as it is not freely available to absorb losses throughout the consolidated banking organization. Therefore, the minority interest limitation will help to ensure that a consolidated banking organization's regulatory capital ratios are more reflective of the loss absorbency of the organization's capital base. The agencies believe that the minority interest limitations in the final rule are simpler to calculate than those in the capital rule but are still appropriately restrictive for non-advanced approaches banking organizations. These revisions to the treatment of minority interest are expected to not have a significant impact on the capital ratios for most non-advanced approaches banking organizations.

The agencies remain focused on ensuring that the capital requirements applied to banking organizations are appropriately tailored to an organization's size, complexity, and risk profile. As described above, the final rule will continue to apply the more risk-sensitive minority interest calculation to advanced approaches banking organizations because the agencies believe the largest and most internationally active banking organizations should be required to comply with regulations that are commensurate with their size, complexity, and risk profile. Given the potential complexity in the capital structures of the largest and most systemically important institutions, the agencies believe that maintaining the more risk-sensitive approach for advanced approaches banking organizations better ensures these organizations do not overstate capital ratios at the consolidated level as a result of capital held at subsidiaries that might not be fully available to the parent, thereby protecting the safety and soundness of the banking sector. For these reasons, consistent with the proposal, the agencies are finalizing the proposed revisions to the regulatory capital limitations for minority interest without revision.

### **C. Capital treatment for advanced approaches banking organizations**

Under the proposal, the regulatory treatment for advanced approaches banking organizations would have continued to apply the capital rule's current treatment for MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions, and minority interest. The proposal stated that the more complex capital deduction treatments in the capital rule are appropriate for advanced approaches banking organizations, because their size, complexity, and international exposure warrant a risk-sensitive treatment that more aggressively reduces potential interconnectedness among such firms. Some commenters objected to the scope of the simplifications proposal and requested that all banking organizations, including advanced approaches banking organizations, be allowed to apply the proposed

revisions when calculating capital ratios under the capital rule's generally applicable capital requirements.

Subsequent to issuing the simplifications proposal, the agencies published a tailoring proposal applicable to domestic banking organizations with total consolidated assets of \$100 billion.<sup>38</sup> The agencies subsequently issued a separate tailoring proposal to determine the application of regulatory capital requirements to certain U.S. intermediate holding companies of foreign banking organizations and their depository institution subsidiaries and the application of standardized liquidity requirements with respect to certain U.S. intermediate holding companies of foreign banking organizations, and certain subsidiary depository institutions of such U.S. intermediate holding companies.<sup>39</sup> Both tailoring proposals were designed to more closely match the capital and liquidity rules for large banking organizations with their risk profiles.

Currently, banking organizations with total consolidated assets of \$250 billion or more, or at least \$10 billion in foreign exposure, generally are considered “advanced approaches banking organizations.”<sup>40</sup> If the agencies were to adopt the tailoring proposals as proposed, the consequent change in the scope of application of certain requirements could result in some banking organizations being able to apply this final rule's changes for threshold deductions and minority interest when calculating their regulatory capital ratios.

The Basel Committee on Banking Supervision (BCBS) recently completed revisions to its capital standards, revising the methodologies for credit risk, operational risk, and market

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<sup>38</sup> 83 FR 66024 (December 21, 2018).

<sup>39</sup> See <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190408a.htm>.

<sup>40</sup> See 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

risk.<sup>41</sup> The agencies are considering how to most appropriately implement these standards in the United States, including potentially replacing the advanced approaches with the risk-based capital requirements based on the Basel standardized approaches for credit and operational risk. Any such changes to applicable risk-based capital requirements would be subject to notice and comment through a future rulemaking.

The agencies are not amending the capital rule to allow advanced approaches banking organizations to use this final rule when calculating their risk-based capital ratios for the generally applicable capital requirements. As the agencies consider implementing aspects of the Basel reforms, they will further consider the calculation of regulatory capital for advanced approaches banking organizations.

#### **D. Technical Amendments to the Capital Rule**

The simplifications proposal would have made certain technical corrections and clarifications to the capital rule. The agencies identified typographical and technical errors in several provisions of the capital rule that warrant clarification or updating. Most of the proposed corrections or technical changes were self-explanatory. In addition, there were several incorrect or imprecise cross-references that the agencies proposed to change in an effort to better clarify the capital rule's requirements, as well as other changes to references necessary to implement the simplifications described elsewhere in this Supplementary Information.

The agencies received only a handful of comments related to the simplifications proposal's technical amendments. There were more comments about additional potential revisions to the capital rule spanning a range of topics for the agencies' consideration. For instance, some commenters requested that the agencies implement the BCBS's standards related

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<sup>41</sup> Available at: <https://www.bis.org/bcbs/publ/d424.pdf>

to counterparty credit risk, securities financing transactions, and securities firms. There were additional suggested revisions related to the capital rule's operational requirements for credit risk mitigation, client clearing transactions, commitments to securitization vehicles, the asset threshold for advanced approaches and market risk capital rules, as well as accounting considerations.

Some of the commenters' suggestions have been addressed in rulemakings that were issued subsequent to this proposal, including comments related to the HVCRE, CBLR, and tailoring proposals. The agencies are considering other comments that requested additional changes outside the scope of this rulemaking and will determine whether and how to address them in subsequent rulemakings.

The final rule adopts the technical changes as proposed, but differs from the proposal in minor ways to conform with changes to the capital rule related to the implementation and transition of the current expected credit losses methodology for allowances, which were implemented subsequent to the simplifications proposal.<sup>42</sup>

In section 1 of the OCC's capital rule, the final rule clarifies that the minimum capital requirements and overall capital adequacy standards set forth in 12 CFR Part 3 do not apply to Federal branches and agencies of foreign banks that are regulated by the OCC. The OCC regulates Federal branches and agencies of foreign banks.<sup>43</sup>

In section 2, the final rule corrects an error in the definition of *investment in the capital of an unconsolidated financial institution* by changing the word "and" to "or." This revision clarifies that an instrument meeting the definition can be either recognized as capital for

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<sup>42</sup> 83 FR 22312 (July 13, 2018). Consistent with the proposal, the final rule includes various minor corrections and updates in addition to the items specified in this discussion.

<sup>43</sup> 12 U.S.C. §§ 3101–3111.

regulatory purposes by a primary supervisor of an unconsolidated financial institution or can be part of the equity of an unconsolidated unregulated financial institution, in accordance with GAAP.

The final rule adds “the European Stability Mechanism” and “the European Financial Stability Facility” to the capital rule with respect to (i) the definition of *eligible guarantor* in section 2, (ii) the list of entities eligible for a zero percent risk weight in section 32(b), (iii) the list of equity exposures eligible for a zero percent risk weight in section 52(b)(1), (iv) the list of entities eligible for assignment of a rating grade associated with a probability of default of less than 0.03 percent in section 131(d)(2), and (v) certain supranational entities and multilateral development bank debt positions eligible for assignment of a zero percent specific risk weighting factor in section 210(b)(2)(ii). The final rule also excludes such entities from the definition of (i) *corporate exposure* in section 2, (ii) *private sector credit exposure* in section 11, and (iii) *corporate debt position* in section 202. The agencies are making this change to reflect the roles and functions of the European Stability Mechanism and the European Financial Stability Facility, which were in early stages of operation when the current capital rule was issued in 2013 and therefore were not addressed. The final rule updates the list of entities included or excluded, as applicable, for these purposes in the standardized approach and advanced approaches of the capital rule and the market risk capital rule..

The agencies are making technical amendments to section 11(a) of the capital rule, on the capital conservation buffer, to clarify the calculation of a banking organization’s maximum payout amount for a specific calendar quarter. First, the final rule clarifies that the eligible retained income during a specific current calendar quarter is the banking organization’s net income, calculated in accordance with the instructions for the Call Report or the FR Y-9C, as

appropriate, for the four calendar quarters preceding the current calendar quarter.<sup>44</sup> Second, the final rule clarifies that the key inputs for the calculation of a banking organization's capital conservation buffer during the current calendar quarter are the banking organization's regulatory capital ratios as of the last day of the previous calendar quarter.<sup>45</sup>

In section 20(d)(5) of the Board's and OCC's capital rule, the final rule provides that the reference to AOCI opt-out election is section 22(b)(2) instead of section 20(b)(2).

In section 20(c) of the capital rule, the OCC's and FDIC's regulations mistakenly provide that cash dividend payments on additional tier 1 capital instruments may not be subject to a "limit" imposed by the contractual terms governing the instrument. This requirement was intended to apply only to common equity tier 1 capital instruments, and not to additional tier 1 capital instruments. The final rule harmonizes the language of the agencies' capital rule in section 20(c) by removing this requirement for additional tier 1 instruments.

Through proposed section 20(f) of the Board's capital rule, the simplifications proposal would have introduced a standalone requirement, outside the existing qualification criteria for capital, that a Board-regulated institution obtain the prior approval of the Board before redeeming a common equity tier 1 capital instrument, additional tier 1 capital instrument, or tier 2 capital instrument. The Board has received feedback regarding requiring prior approval for redemptions and repurchases of capital instruments. In particular, this feedback noted that there was a high burden associated with obtaining prior approval for all redemptions and repurchases of common stock instruments, especially with respect to standard common stock buyback

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<sup>44</sup> 12 CFR 3.11(a)(2)(i) (OCC); 12 CFR 217.11(a)(2)(i) (Board); 12 CFR 324.11(a)(2)(i) (FDIC).

<sup>45</sup> 12 CFR 3.11(a)(3)(i) (OCC); 12 CFR 217.11(a)(3)(i) (Board); 12 CFR 324.11(a)(3)(i) (FDIC).



programs, and that the supervisory function of requiring prior approval seemed limited where a firm was not subject to other limitations on capital actions, such as the capital conservation buffer.

In response to the feedback, the Board is modifying proposed section 20(f). For common equity tier 1 capital instruments, a Board-regulated institution will be required to obtain the prior approval of the Board before redeeming or repurchasing common equity tier 1 capital instruments only to the extent otherwise required by law or regulation. Thus, prior approval for common equity tier 1 capital redemptions or repurchases will be required under section 217.20 of the capital rule only to the extent that a Board-regulated institution is subject to a separate legal requirement to obtain prior approval for the redemption or repurchase, such as section 217.11 of the capital rule, sections 225.4 or 225.8 of the Board's Regulation Y, or section 11 of the Federal Reserve Act.<sup>46</sup> Depository institution holding companies are not subject to the same legal requirements as state member banks and, therefore, generally would be able to redeem or repurchase common equity tier 1 capital instruments without the prior approval of the Board, unless there is an independent approval requirement, such as under the capital plan rule (12 CFR 225.8) as noted above. With respect to redemptions or repurchases of additional tier 1 capital instruments and tier 2 capital instruments, the prior approval requirements in the final rule are the same as in the proposal.

In section 22(g) of the capital rule, the final rule removes specific references to certain assets to exclude them from risk weighting if they are required to be deducted from regulatory capital. The effect of this change is to exclude from standardized total risk-weighted assets and,

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<sup>46</sup> 12 CFR 217.11; 12 CFR 225.4; 12 CFR 225.8; 12 U.S.C. § 329.

as applicable, advanced approaches total risk-weighted assets, any items deducted from capital, not only the items specifically enumerated.

In section 22(h) of the capital rule, the final rule replaces inaccurate terminology with the properly defined terms “investment in the capital of an unconsolidated financial institution” and “investment in the [AGENCY]-regulated institution’s own capital instrument,” as provided in section 2.

The final rule revises, for purposes of clarity, the capital rule’s sections 32(d)(2)(iii) and (iv), and creates a new section 32(d)(2)(v). The revised section 32(d)(2)(iii) requires banking organizations to “assign a 20 percent risk weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.” This requirement is currently embedded in section 32(d)(2)(iii) of the capital rule, together with rule text related to the risk weighting of exposures to a foreign bank whose home country is not a member of the OECD and does not have a CRC. This latter provision is a stand-alone requirement in the revised section 32(d)(2)(iv) under the final rule.

In sections 34(c)(1) and 34(c)(2)(i) of the capital rule, the final rule provides that the counterparty credit risk capital requirement references subpart D of the capital rule in its entirety rather than just section 32 of subpart D.

In sections 35(b)(3)(ii), 35(b)(4)(ii), 35(c)(3)(ii), 35(c)(4)(ii), 36(c), 37(b)(2)(i), 38(e)(2), 42(j)(2)(ii)(A), 133(b)(3)(ii), and 133(c)(3)(ii) of the capital rule, the final rule provides that the risk weight substitution references subpart D of the capital rule in its entirety rather than just section 32 of subpart D.

In section 61 of the capital rule, the final rule clarifies the requirement that a non-advanced approaches banking organization with \$50 billion or more in total consolidated assets must complete the disclosure requirements described in sections 62 and 63, unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of section 62, or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

Table 8 of section 63 of the capital rule describes information related to securitization exposures that banking organizations are required to disclose. The capital rule revised the risk-based capital treatment of these items, including the regulatory capital treatment of after-tax gain-on-sale resulting from a securitization and credit-enhancing interest-only strips that do not constitute after-tax gain-on-sale. Because Table 8 does not properly reflect these revisions, the final rule updates line (i)(2) under quantitative disclosures to appropriately reflect these revisions.

In section 210(b)(2)(vii) of the Board's capital rule, the final rule adds references to U.S. intermediate holding companies to clarify for these firms how to calculate capital requirements related to securitization positions under the Board's market risk capital rule depending on whether they are using the advanced approaches to calculate risk-weighted assets.

In section 300 of the capital rule, the final rule removes several transition provisions in order to rescind the transition rule simultaneously with the simplifications of the threshold deductions and the treatment of minority interest. In connection with these revisions, the final rule also would remove several paragraphs that are no longer operative because the transition period provided ended at the beginning of 2018. These revisions would take effect on April 1,

2020, concurrently with the effective date of the simplifications of the threshold deductions and the treatment of minority interest.

In section 300(c)(2) of the Board's capital rule, the final rule clarifies that the mergers and acquisitions that can potentially affect the inclusion of certain non-qualifying capital instruments in a Board-regulated banking organization's regulatory capital must have occurred after December 31, 2013.

#### **E. Effective Dates of Amendments**

The amendments in this final rule will take effect on either April 1, 2020, or October 1, 2019. Specifically, the simplifications of the threshold deductions and the treatment of minority interest discussed in sections III.A and III.B of this Supplementary Information will take effect on April 1, 2020, in order to allow banking organizations sufficient time to update systems and the agencies sufficient time to update reporting forms to reflect the changes to the capital rule made by this final rule. In addition, the amendments to rescind the transitions rule discussed in section III.C of this Supplementary Information also would take effect on April 1, 2020, simultaneously with the simplifications of the threshold deductions and the treatment of minority interest. All of the other technical amendments discussed in section III.C of this Supplementary Information will take effect on October 1, 2019. The agencies believe that the technical amendments will require minimal, if any, updates to systems and no updates to reporting forms and thus should take effect as soon as possible. Any banking organization subject to the capital rule may elect to adopt the amendments that are effective October 1, 2019, before that date.

#### **IV. Abbreviations**

ADC	Acquisition, Development, or Construction
BHC	Bank Holding Company

CFR	Code of Federal Regulations
CRC	Country Risk Classification
DTA	Deferred Tax Asset
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act of 1996
FAQ	Frequently Asked Question
FR	Federal Register
FDIC	Federal Deposit Insurance Corporation
FDICIA	Federal Deposit Insurance Corporation Improvement Act of 1991
GAAP	U.S. generally accepted accounting principles
GSIB	Global Systemically Important Bank Holding Company
HVADC	High Volatility Acquisition, Construction, or Development
HVCRE	High Volatility Commercial Real Estate
IHC	U.S. Intermediate Holding Company
LTV	Loan-to-Value
MDB	Multilateral Development Bank
MSA	Mortgage Servicing Asset
NPR	Notice of Proposed Rulemaking
OCC	Office of the Comptroller of the Currency
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
PD	Probability of Default
PMSA	Purchased Mortgage Servicing Asset
PRA	Paperwork Reduction Act
RCDRIA	Riegle Community Development and Regulatory Improvement Act of 1994
RFA	Regulatory Flexibility Act
RIN	Regulation Identifier Number
SBA	Small Business Administration
SLHC	Savings and Loan Holding Company
SMB	State Member Banks
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

## **V. Regulatory Analyses**

### **A. Paperwork Reduction Act**

Certain provisions of the final 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 revised disclosure

requirements are found in section .63 of the proposed rule. 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 final 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 OCC submitted the information collection requirements at the proposed rule stage. OMB filed a comment requiring that the OCC examine public comment in response to the proposed rule and will include in the supporting statement of the next Information Collection Request (ICR), to be submitted to OMB at the final rule stage, a description of how the agency has responded to any public comments on the ICR, including comments on maximizing the practical utility of the collection and minimizing the burden. No comments were received regarding the information collection. The FDIC will be making a nonmaterial submission to OMB to reflect its updated number of respondents.

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 Board's 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.

### 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: Section \_.63 of the final rule would break out the disclosures in Table 8 to include (i) after-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital and (ii) credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. There are no changes in burden associated with the final rulemaking.

### PRA Burden Estimates

OCC

OMB control number: 1557-0318.

Estimated number of respondents: 1,365.

Estimated annual burden hours: 66,081.

Board

Agency form number: FR Q.

OMB control number: 7100-0313.

Estimated number of respondents: 1,431.

Estimated annual burden hours: 79,727 hours.

FDIC

OMB control number: 3064-0153.

Estimated number of respondents: 3,483.

Estimated annual burden hours: 127,840 hours.

The final 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, 7100-0036, and 3064-0052), Consolidated Financial Statements for Holding Companies (FR Y-9C; OMB No. 7100-0128), and Capital Assessments and Stress Testing (FR Y-14A and Q; OMB No. 7100-0341), which will be addressed in a separate **Federal Register** notice.

**B. Regulatory Flexibility Act Analysis**

*OCC:* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (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 or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2017, the OCC supervised 907 small entities.<sup>47</sup>

The rule will apply to all OCC-supervised entities that are not subject to the advanced approaches risk-based capital rules, and thus potentially affects a substantial number of small entities. Further, the OCC has determined that 131 such entities report either threshold deduction amounts or minority interest and thus engage in affected activities to an extent that they would be impacted directly by the final rule. For the purposes of this analysis, the OCC believes a substantial number of small entities is five percent of OCC-supervised small entities, or 45 as of June 30, 2017. Thus, a substantial number of small entities will be directly impacted by the final rule.

Although a substantial number of small entities will be impacted by the final rule, the OCC does not find that this impact is economically significant. To determine whether a final rule will have a significant effect, the OCC considers whether projected cost increases associated with the rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of an OCC-supervised small entity's total non-interest expense. Based on supervisory experience, the OCC estimates that small banks, on average, will make a one-time investment of one business week, or 40 hours, to update policies and procedures, and

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<sup>47</sup> 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.

another one-time investment of 40 hours to make the accounting ledger changes for currently held threshold deduction amounts and minority interests. Therefore, the OCC estimates that small banks that do not report any items subject to threshold deductions or minority interest will incur an estimated one-time compliance cost of \$4,560 per institution (40 hours × \$114 per hour), while those that report items subject to threshold deductions or minority interest will incur an estimated one-time compliance cost of \$9,120 per institution (80 hours × \$114 per hour). The OCC finds that the value of the change in capital exceeded both of these thresholds for 1 of the 907 OCC-supervised small entities. For this single small institution, the decrease in required regulatory capital is \$93.3 thousand.

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

*Board:* The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., (RFA), requires an agency to consider whether the rules it finalizes will have a significant economic impact on a substantial number of small entities. The RFA generally requires that an agency prepare and make available an initial regulatory flexibility analysis (IRFA) in connection with a notice of proposed rulemaking and that an agency prepare a final regulatory flexibility analysis (FRFA) in connection with promulgating a final rule. A FRFA issued by the Board must contain (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the simplifications proposal as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposal, and a detailed statement of any change made to the proposal in the final rule as a result of the

comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.<sup>48</sup>

As discussed in the Supplementary Information section, the final rule revises the treatment of certain assets under the capital rule and would also make various corrections and clarifications to the capital rule to address issues that have been identified since the rule was issued. Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of \$550 million or less and trust companies with total assets of \$38.5 million or less (small banking organization).<sup>49</sup> On average during 2018, there were approximately 3,191 small bank holding companies, 204 small savings and loan holding companies, and 549 small state member banks.

The Board solicited public comment on this rule in a notice of proposed rulemaking and has considered the potential impact of this rule on small entities in accordance with section 604

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<sup>48</sup> 5 U.S.C. § 601(a).

<sup>49</sup> See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to \$550 million in assets from \$500 million in assets. 79 FR 33647 (June 12, 2014).

of the RFA.<sup>50</sup> Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

*1. Statement of the need for, and objectives of, the final rule.*

As discussed, the Board is issuing this final rule to simplify aspects of the capital rule for non-advanced approaches banking organizations and to clarify and correct certain technical items in the capital rule.

*2. Significant issues raised by the public comments in response to the IRFA and comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the simplifications proposal and summary of any changes made in the final rule as a result of such comments.*

Commenters did not raise any issues in response to the IRFA. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposal.

*3. Description and estimate of the number of small entities to which the final rule will apply.*

Aspects of the final rule apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's regulatory capital rule. Certain portions of the proposal would not apply to state member banks, bank holding companies, and savings and loan holding companies that are subject to the advanced approaches. In general, the Board's capital rule only apply to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding

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<sup>50</sup> 83 FR 18160 (April 25, 2018).

Company and Savings and Loan Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than \$3 billion in total assets that also meet certain additional criteria.<sup>51</sup> Thus, most bank holding companies and savings and loan holding companies that would be subject to the final rule exceed the \$550 million asset threshold at which a banking organization would qualify as a small banking organization.

*4. Significant alternatives to the final rule.*

The Board does not believe that this final rule will have a significant negative economic impact on any small entities and therefore believes that there are no significant alternatives to the final rule that would reduce the impact on small entities.

*5. Description of the projected reporting, recordkeeping and other compliance requirements of the rule.*

Given that the final rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report.

For non-advanced approaches banking organizations, the final rule revises the capital deductions for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions by raising the threshold at which such items must be deducted and simplifying the number and interaction of required deductions. The Board expects that the final rule would result in slightly lower capital requirements compared to the capital rule for a few small banking organizations that currently deduct MSAs, temporary difference DTAs, and/or investments in the capital of unconsolidated financial institutions. Because so few

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<sup>51</sup> See 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

banking organizations are currently subject to these deductions, the number of affected banking organizations appears to be minimal.

Also for non-advanced approaches banking organizations, the final rule simplifies the requirements related to the inclusion of minority interest of subsidiaries in capital. The Board expects that the final rule generally will result in more minority interest being includable in capital than is permitted under the current rule. However, only a few small banking organizations currently include minority interest in capital and minority interest represents a significant portion of capital for very few banking organizations. As a result, the impact of this portion of the final rule is not expected to be significant.

The remaining revisions to the capital rule consist of technical corrections and clarifications that have been identified since the rule was issued. None of these revisions constitutes a significant change to the capital rule and the impact of these revisions on banking organizations is expected to be immaterial.

*6. Steps taken to minimize the significant economic impact on small entities.*

The Board does not believe that this final rule will have a significant economic impact on small entities.

*FDIC:* The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final rule on small entities.<sup>52</sup> However, a regulatory flexibility analysis is not required 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 of less

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<sup>52</sup> 5 U.S.C. 601 *et seq.*

than or equal to \$550 million who are independently owned and operated or owned by a holding company with less than \$550 million in total assets.<sup>53</sup> For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,483 depository institutions,<sup>54</sup> of which, 2,674 are defined as small banking entities by the terms of the RFA.<sup>55</sup> The final rule removes the individual and aggregate deduction thresholds and replaces them with individual, higher deduction thresholds for: (i) MSAs; (ii) temporary differences DTAs; and (iii) investments in the capital of unconsolidated financial institutions. Finally, the final rule amends the methodology that determines the amount of minority interest that is includable in regulatory capital. According to Call Report data as of December 31, 2018, 1,586 FDIC-supervised small banking entities reported some amount of MSAs, net DTAs, deductions related to investments in unconsolidated financial institutions, or minority interests that could be affected by this rule making.

#### Estimation Methodology

To estimate the effects of the final rule, the FDIC estimated the changes to capital that would result by treating MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions, and minority interests as prescribed by the final rule,

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<sup>53</sup> 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 quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, effective December 2, 2014). “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.” See 13 CFR 121.103. 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.

<sup>54</sup> FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

<sup>55</sup> FDIC Call Report, December 31, 2018.

compared with how they are treated in the agencies' fully phased-in capital rule, using Call Report data from December 31, 2018.

In cases where an institution reported some minority interest included in a particular capital tier, the FDIC estimated that additional minority interest includable in the respective capital tier under the final rule equaled the smaller of 10 percent of the institution's respective capital tier base amount (before including any minority interest) or its total balance sheet minority interest, minus the amount of minority interest currently included in the respective capital tier. It is difficult to estimate how the final rule might change an institution's likelihood to include minority interest in regulatory capital in the future because it depends upon the future financial characteristics of individual institutions and the future decisions of senior management at those institutions, therefore the FDIC did not estimate it.

In cases where an institution reported taking one or more of the individual threshold deductions for MSAs, temporary difference DTAs, or investments in the capital of unconsolidated financial institutions, the FDIC estimated the effect of the increase in the deduction thresholds from 10 percent to 25 percent in the final rule by grossing up the amount deducted, and comparing it to the institution's estimated capital under the final rule. Additional regulatory capital under the final rule equaled the amount deducted, grossed up, that was between the 10 percent and 25 percent thresholds. Any amounts of MSAs and temporary difference DTAs not deducted were risk-weighted at 250 percent, while non-deducted amounts of investments in the capital of unconsolidated financial institutions were risk-weighted at 100 percent. It is difficult to estimate how the final rule might change an institution's likelihood to acquire or retain MSAs, temporary difference DTAs, or to make investments in the capital of unconsolidated financial institutions because it depends upon the future financial characteristics



of individual institutions and the future decisions of senior management at those institutions, therefore the FDIC did not estimate it.

In cases where an institution did not report taking a threshold deduction for either temporary difference DTAs or MSAs, the FDIC estimated the amount of these assets on the balance sheet using information from the Call Report, as any amounts not deducted under the final rule are risk-weighted at 250 percent. For temporary difference DTAs, the FDIC used the difference between net DTAs reported on schedule RC-F line 2 and net operating loss DTAs reported on RC-R Part I line 8 as a proxy. For MSAs, the FDIC used gross MSAs reported on RC-M line 2a. It is difficult to estimate the amounts of investments in the capital of unconsolidated financial institutions when an institution did not report taking a threshold deduction for such investments, therefore the FDIC did not estimate it.

#### Threshold Deductions

The final rule changes the regulatory capital treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for FDIC-supervised small banking entities. It does so by removing the individual and aggregate deduction thresholds for these assets and by adopting a single 25 percent common equity tier 1 capital deduction threshold for each type of asset. According to the December 31, 2018 Call Report data, 1,582 FDIC-supervised small banking entities reported holding some MSAs, net DTAs, or reported taking a threshold deduction due to investments in the capital of unconsolidated financial institutions. Only 31 small institutions reported taking one or more of the individual threshold deductions, or taking the aggregate threshold deduction, due to their holdings of these assets.<sup>56</sup> The FDIC estimates that this aspect of the final rule will provide a net benefit of \$45.6

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<sup>56</sup> Ibid.

million in the form of an increase in tier 1 capital to those institutions that currently have to calculate a deduction, representing approximately 0.08 percent of tier 1 capital reported by FDIC-supervised small banking entities. The FDIC expects that the final rule will yield future benefits to affected FDIC-supervised small banking entities by reducing the likelihood of regulatory capital deductions due to holding these asset types. In particular, the final rule relaxes a capital constraint on FDIC-supervised small banking entities that specialize in mortgage servicing. The increase in the threshold deduction for MSAs makes it less likely that a small banking entity would exit or reduce its activity in the mortgage servicing market.

#### Minority Interest

The final rule simplifies the capital rule's limitation on the inclusion of minority interest in regulatory capital. It does so by allowing FDIC-supervised small banking entities to include minority interest up to 10 percent of the parent banking organization's common equity tier 1, tier 1, or total capital, not including the minority interest. The FDIC estimates that 6 FDIC-supervised small banking entities will be affected by the inclusion of minority interest in regulatory capital calculations.<sup>57</sup> The FDIC estimates that these small banking entities will experience a decline in tier 1 capital of \$184,000 due to the inclusion of minority interest, representing less than 0.01 percent of tier 1 capital reported by FDIC-supervised small banking entities.

#### Compliance Costs

Finally, FDIC-supervised small banking entities are likely to incur some implementation costs in order to comply with the final rule. These costs would encompass changes to their systems designed to calculate, manage, and report risk-weighted assets and regulatory capital.

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<sup>57</sup> Ibid.

Given the limited nature of the changes necessary to comply with the final rule, the implementation costs are expected to be minimal. Additionally, the FDIC believes that the simplifying changes in this final rule will help reduce some of the compliance costs associated with capital regulations in the long-term by making the regulations easier to apply.

The final rule does not impact the recordkeeping and reporting requirements that affect FDIC-supervised small banking entities and there is no change to the information that FDIC-supervised small banking entities must track and report. The FDIC anticipates updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule.

### Conclusion

The threshold-deduction provisions of the final rule will increase the amount of eligible regulatory capital for a limited number of FDIC-supervised small banking entities currently subject to deductions or limitations on these items, as described above. The minority-interest provisions of the final rule will slightly decrease the amount of eligible regulatory capital for a small number of FDIC-supervised small banking entities.

The agencies received nearly 100 comment letters on the proposed capital simplifications. Comments on the proposed revisions to the definition of HVCRE exposure are addressed in a different rulemaking. Commenters suggested a variety of alternatives to the proposed capital simplifications. The agencies have provided a discussion of the comments received and the agencies' consideration of those comments in Section III of this rulemaking.

The FDIC received two comments on the analysis it presented in the proposal's RFA Analysis Section. Although both commenters were concerned with the proposed revisions to the definition of HVCRE exposure, the FDIC is addressing them to clarify the scope of analysis done pursuant to the RFA. Both commenters pointed out that the analysis presented did not

consider the effects of the proposal on the entire banking industry, with one commenter also stating that the sample size used in the analysis was relatively small. The scope of analysis done by the FDIC pursuant to the RFA is limited to those institutions which meet the definition of “small entities” as set forth by the Small Business Administration.

The FDIC does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing discussion, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

### **C. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act<sup>58</sup> requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner, did not receive any comments on the use of plain language.

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<sup>58</sup> Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

#### **D. OCC Unfunded Mandates Reform Act of 1995 Determination**

The OCC analyzed the final 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 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 rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year.<sup>59</sup> Accordingly, the OCC has not prepared a written statement to accompany this rule.

#### **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),<sup>60</sup> in determining the effective date and administrative compliance

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<sup>59</sup> The final rule applies to all OCC-supervised non-advanced approaches institutions, and as of June 30, 2017, 225 OCC-supervised banks reported threshold deduction amounts or minority interest. To estimate administrative costs associated with the final rule, the OCC estimates the number of employees each activity is likely to require and the number of hours necessary to assess, implement, and perfect the required activity. Based on supervisory experience, the OCC estimates it will take an OCC-supervised institution, on average, a one-time investment of one business week, or 40 hours, to update policies and procedures, and another one-time investment of 40 hours to make the accounting ledger changes for currently held threshold deduction amounts and minority interests. Assuming a compensation cost of \$114 per hour, the OCC estimates that the rule would impose administrative costs associated with compliance activities of approximately \$6.8 million for OCC supervised non-advanced approaches institutions in the first year.  $[(40 \text{ hours} \times \$114 \text{ per hour} \times 1,237 \text{ banks}) + (40 \text{ hours} \times \$114 \text{ per hour} \times 225 \text{ banks with threshold deduction items or minority interest}) = \$6,666,720]$ . The OCC expects these additional administrative costs to occur in the first year and to be near zero after the first year.

The OCC further estimates that final rule will lead to an aggregate increase in reported regulatory capital of \$1.8 billion for national banks and Federal savings associations compared to the amount they would report if they were required to continue to apply the current capital requirements.

<sup>60</sup> 12 U.S.C. 4802(a).

requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, 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.<sup>61</sup>

In accordance with these provisions of RCDRIA, the agencies considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. In conjunction with the requirements of RCDRIA, the final rule is effective on October 1, 2019, except that amendatory instructions 7, 8, 24, 30, 31, 47.b, 53, 54, and 70 are effective April 1, 2020. Any banking organization subject to the capital rule may elect to adopt the amendments that are effective October 1, 2019, prior to that date.

## **List of Subjects**

### **12 CFR Part 3**

Administrative practice and procedure, Capital, National banks, Risk.

### **12 CFR Part 217**

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

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<sup>61</sup> *Id.*

## 12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

### Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, 12 CFR part 3 is amended as follows.

## PART 3 – CAPITAL ADEQUACY STANDARDS

### Subpart A—General Provisions

1. 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).

2. Effective October 1, 2019, Section 3.1 is amended by revising paragraph (a) to read as follows:

#### §3.1 Purpose, applicability, reservation of authority, and timing.

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for national banks and Federal savings associations. This part does not apply to Federal branches and agencies of foreign banks. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

\* \* \* \* \*

3. Effective October 1, 2019, Section 3.2 is amended by revising the definitions of “corporate exposure,” “eligible guarantor,” “International Lending Supervision Act,” “Investment in the capital of an unconsolidated financial institution,” and “Significant

investment in the capital of an unconsolidated financial institution”; and adding in alphabetical order the definition of “Nonsignificant investment in the capital of an unconsolidated financial institution,” to read as follows:

**§3.2 Definitions.**

\* \* \* \* \*

*Corporate exposure* means an exposure to a company that is not:

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility commercial real estate (HVCRE) exposure;
- (7) A cleared transaction;
- (8) A default fund contribution;
- (9) A securitization exposure;
- (10) An equity exposure; or
- (11) An unsettled transaction.
- (12) A policy loan; or
- (13) A separate account.

\* \* \* \* \*



*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*International Lending Supervision Act* means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.).

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §3.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments,

excluding underwriting positions held by the national bank or Federal savings association for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

4. Effective October 1, 2019, Section 3.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§3.10 Minimum capital requirements.**

\* \* \* \* \*

- (c) \* \* \*
- (4) \* \* \*
- (ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the national bank or Federal savings association, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §3.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

5. Effective October 1, 2019, Section 3.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

**§3.11 Capital conservation buffer and countercyclical capital buffer amount.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) *Eligible retained income.* The eligible retained income of a national bank or Federal savings association is the national bank's or Federal savings association's net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability

Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A national bank’s or Federal savings association’s capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The national bank or Federal savings association's common equity tier 1 capital ratio minus the national bank or Federal savings association 's minimum common equity tier 1 capital ratio requirement under § 3.10;

(B) The national bank or Federal savings association's tier 1 capital ratio minus the national bank or Federal savings association's minimum tier 1 capital ratio requirement under § 3.10; and

(C) The national bank or Federal savings association's total capital ratio minus the national bank or Federal savings association's minimum total capital ratio requirement under § 3.10; or

\* \* \* \* \*

**TABLE 1 TO §3.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the national bank’s or Federal savings association’s applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the national bank’s or Federal savings association’s applicable countercyclical capital buffer amount, <i>and</i> greater than 1.875 percent plus 75 percent of the national bank’s or Federal savings association’s applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the national bank’s or Federal savings association’s applicable countercyclical capital buffer amount, <i>and</i> greater than 1.25 percent plus 50 percent of the national bank’s or Federal savings association’s applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the national bank’s or	20 percent.

Federal savings association's applicable countercyclical capital buffer amount, <i>and</i> greater than 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	
Less than or equal to 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	0 percent.

\* \* \* \* \*

6. Effective October 1, 2019, Section 3.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), (d)(2), and (5) to read as follows:

**§3.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §3.21.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) Any cash dividend payments on the instrument are paid out of the national bank's or Federal savings association's net income or retained earnings.

\* \* \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §3.21, that is not included in the national bank's or Federal savings association's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §3.21, that is not included in the national bank's or Federal savings association's tier 1 capital.

\* \* \* \* \*

(5) For a national bank or Federal savings association that makes an AOCI opt-out election (as defined in paragraph (b)(2) of §3.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

\* \* \* \* \*

7. Effective April 1, 2020, Section 3.21 is revised to read as follows:

**§3.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §3.20, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* The amount of common equity tier 1 minority interest that a national bank or Federal savings association may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the national bank or Federal savings association (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the national bank or Federal savings association.* The amount of tier 1 minority interest that a national bank or Federal savings association may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the national bank or Federal savings association (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* The amount of total capital minority interest that a national bank or Federal savings association may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the national bank or Federal savings association (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §3.20, an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches national

bank or Federal savings association, the advanced approaches national bank or Federal savings association must assume that the capital adequacy standards of the advanced approaches national bank or Federal savings association apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* For each consolidated subsidiary of an advanced approaches national bank or Federal savings association, the amount of common equity tier 1 minority interest the advanced approaches national bank or Federal savings association may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches national bank or Federal savings association.* For each consolidated subsidiary of the advanced



approaches national bank or Federal savings association, the amount of tier 1 minority interest the advanced approaches national bank or Federal savings association may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* For each consolidated subsidiary of the advanced approaches national bank or Federal savings association, the amount of total capital minority interest the advanced approaches national bank or Federal savings association may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

8. Effective April 1, 2020, Section 3.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

**§3.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches national bank or Federal savings association, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated

financial statements of the advanced approaches national bank or Federal savings association), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

(1) *Investment in the national bank's or Federal savings association's own capital instruments.* A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own capital instruments as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a national bank or Federal

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<sup>23</sup> The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under §3.20(d)(3).

savings association that is not an advanced approaches national bank or Federal savings association (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a national bank or Federal savings association must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the national bank or Federal savings association itself, as described in paragraphs (c)(2)(i)-(iii) of this section. If the national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier

1 or tier 2 capital instruments under §3.20, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §3.300(c)), the national bank or Federal savings association must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A national bank or Federal savings association must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must deduct its investments in the capital of unconsolidated financial institutions (as

defined in §3.2) that exceed 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches national bank or Federal savings association must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §3.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by

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<sup>24</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches national bank's or Federal savings association's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches national bank's or Federal savings association's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches national bank's or Federal savings association's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches national bank or Federal savings association must deduct its significant investments in the capital of unconsolidated financial

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<sup>26</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

*(d) MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

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<sup>28</sup> With prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the national bank or Federal savings association and assigned a 250 percent risk weight.



(ii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of 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 and net of DTLs, in accordance with paragraph (e) of this section. A national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §3.22(e)) arising from timing differences that the national bank or Federal savings association could realize through net operating loss carrybacks. The national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(iii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

(2) An advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §3.22(e)) arising from timing differences that the advanced approaches national bank or Federal savings association could realize through net operating loss carrybacks. The advanced approaches national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup> Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches national bank or Federal savings association pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has

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<sup>30</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* A national bank or Federal savings association must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the national bank's or Federal savings association's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches national bank or Federal savings association and assigned a 250 percent risk weight.

section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §3.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §3.2;

(iii) For an indirect exposure, the national bank's or Federal savings association's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A national bank or Federal savings association may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the national bank's or Federal savings association's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A national bank or Federal savings association may calculate the gross long position for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the national bank's or Federal savings association's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(2) The investment fund's actual holdings of investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the national bank's or Federal savings association's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the national bank's or Federal savings association's Call Report, if the national bank or Federal savings association has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the national bank or Federal savings association exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital

instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the national bank's or Federal savings association's Call Report, and the hedge is deemed effective by the national bank's or Federal savings association's internal control processes, which have not been found to be inadequate by the OCC.

9. Effective October 1, 2019, Section 3.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), (l) to read as follows:

**§3.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs)*. A national bank or Federal savings association must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks*. (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a national bank or Federal savings association must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §3.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.



**TABLE 2 TO §3.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
CRC:	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A national bank or Federal savings association must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A national bank or Federal savings association must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §3.22(d)(2)(i)(c);

(iii) and (iv) \* \* \*

\* \* \* \* \*

*High-volatility commercial real estate (HVCRE) exposures.* A national bank or Federal savings association must assign a 150 percent risk weight to an HVCRE exposure.

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A national bank or Federal savings association must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A national bank or Federal savings association may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §3.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A national bank or Federal savings association may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §3.37 if the collateral meets the requirements of that section.

(l) *Other assets.* (1) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of the national bank or Federal savings

association or in transit; to gold bullion held in the national bank's or Federal savings association's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A national bank or Federal savings association must assign a 20 percent risk weight to cash items in the process of collection.

(3) A national bank or Federal savings association must assign a 100 percent risk weight to DTAs arising from temporary differences that the national bank or Federal savings association could realize through net operating loss carrybacks.

(4) A national bank or Federal savings association must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §3.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks.

(5) A national bank or Federal savings association must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §3.22.

(6) Notwithstanding the requirements of this section, a national bank or Federal savings association may assign an asset that is not included in one of the categories provided in this

section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies at 12 CFR part 217, provided that all of the following conditions apply:

(i) The national bank or Federal savings association is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

10. Effective October 1, 2019, Section 3.34 is amended by revising paragraph (c) to read as follows:

**§3.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A national bank or Federal savings association that purchases an OTC credit derivative that is recognized under §3.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the national bank or Federal savings association does so consistently for all such credit derivatives. The national bank or Federal savings association must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A national bank or Federal savings association that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an

exposure to the underlying reference asset. The national bank or Federal savings association is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The national bank or Federal savings association must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the national bank or Federal savings association is treating the OTC credit derivative as a covered position under subpart F, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

11. Effective October 1, 2019, Section 3.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§3.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member client national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

(4) \* \* \*

(ii) A clearing member national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*

12. Effective October 1, 2019, Section 3.36 is amended by revising paragraph (c) to read as follows:

**§3.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a national bank or Federal savings association may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged

exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage.* If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the national bank or Federal savings association must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The national bank or Federal savings association may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The national bank or Federal savings association must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

13. Effective October 1, 2019, Section 3.37 is amended by revising paragraph (b)(2)(i) to read as follows:

**§3.37 Collateralized transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) A national bank or Federal savings association may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

14. Effective October 1, 2019, Section 3.38 is amended by revising paragraph (e)(2) to read as follows:

**§3.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the national bank or Federal savings association has made its delivery until five business days after the counterparty delivery is due, the national bank or Federal savings association must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the national bank or Federal savings association as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*



15. Effective October 1, 2019, Section 3.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§3.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) If the national bank or Federal savings association purchases credit protection from a counterparty that is not a securitization SPE, the national bank or Federal savings association must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

16. Effective October 1, 2019, Section 3.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§3.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §3.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §3.22(d)(2) are assigned a 250 percent risk weight.

(5) through (7) (ii) \* \* \*

\* \* \* \* \*

17. Effective October 1, 2019, Section 3.61 is revised to read as follows:

**§3.61 Purpose and scope.**

Sections 3.61 through 3.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a national bank or Federal savings association with total consolidated assets of \$50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures pursuant to §3.172. An advanced approaches national bank or Federal savings association that has not received approval from the OCC to exit parallel run pursuant to §3.121(d) is subject to the disclosure requirements described in §§3.62 and 3.63. A national bank or Federal savings association with total consolidated assets of \$50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures subject to §3.172 must comply with §3.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §3.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the national bank's or Federal

savings association's total consolidated assets in the four most recent quarters as reported on the Call Report or the average of the national bank or Federal savings association's total consolidated assets in the most recent consecutive quarters as reported quarterly on the national bank's or Federal savings association's Call Report if the national bank or Federal savings association has not filed such a report for each of the most recent four quarters.

\* \* \* \* \*

18. Effective October 1, 2019, Section 3.63 is amended by revising Table 3 and Table 8 to read as follows:

**§3.63 Disclosures by national bank or Federal savings associations described in §3.61.**

\* \* \* \* \*

**TABLE 3 TO §3.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a)	A summary discussion of the national bank's or Federal savings association's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for:
		(1) Exposures to sovereign entities;
		(2) Exposures to certain supranational entities and MDBs;
		(3) Exposures to depository institutions, foreign banks, and credit unions;
		(4) Exposures to PSEs;
		(5) Corporate exposures;
		(6) Residential mortgage exposures;
		(7) Statutory multifamily mortgages and pre-sold construction loans;
		(8) HVCRE exposures;

	(9) Past due loans;
	(10) Other assets;
	(11) Cleared transactions;
	(12) Default fund contributions;
	(13) Unsettled transactions;
	(14) Securitization exposures; and
	(15) Equity exposures.
	(c) Standardized market risk-weighted assets as calculated under subpart F of this part.
	(d) Common equity tier 1, tier 1 and total risk-based capital ratios:
	(1) For the top consolidated group; and
	(2) For each depository institution subsidiary.
	(e) Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §3.63—SECURITIZATION**

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
	(1) The national bank's or Federal savings association's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the national bank or Federal savings association to other entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
	(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
	(3) The roles played by the national bank or Federal savings association in the securitization process <sup>2</sup> and an indication of the extent of the national bank's or Federal savings association's involvement in each of them;
	(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for

	res securitization exposures;
	(5) The national bank's or Federal savings association's policy for mitigating the credit risk retained through securitization and res securitization exposures; and
	(6) The risk-based capital approaches that the national bank or Federal savings association follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b) A list of:
	(1) The type of securitization SPEs that the national bank or Federal savings association, as sponsor, uses to securitize third-party exposures. The national bank or Federal savings association must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the national bank or Federal savings association manages or advises; and
	(ii) That invest either in the securitization exposures that the national bank or Federal savings association has securitized or in securitization SPEs that the national bank or Federal savings association sponsors. <sup>3</sup>
	(c) Summary of the national bank's or Federal savings association's accounting policies for securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased interests;
	(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
	(5) Treatment of synthetic securitizations;
	(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and
	(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the national bank or Federal savings association to provide financial support for securitized assets.
	(d) An explanation of significant changes to any quantitative information since the last reporting period.

Quantitative Disclosures	(e)	The total outstanding exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria provided in §3.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f)	For exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria in §3.41:
		(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
		(2) Losses recognized by the national bank or Federal savings association during the current period categorized by exposure type. <sup>6</sup>
	(g)	The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h)	Aggregate amount of:
		(1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and
		(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and
		(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:
		(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
		(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
	(j)	Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k)	Aggregate amount of resecuritization exposures retained or purchased categorized according to:
		(1) Exposures to which credit risk mitigation is applied and those not applied; and
		(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The national bank or Federal savings association should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the national bank or Federal savings association is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the national bank or Federal savings association, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the national bank’s or Federal savings association's balance sheet and underlying exposures acquired by the national bank or Federal savings association from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. National banks and Federal savings associations are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the national bank’s or Federal savings association's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the national bank or Federal savings association with respect to securitized assets.

\* \* \* \* \*

19. Effective October 1, 2019, Section 3.131 is amended by revising paragraph (d)(2) to read as follows:

**§3.131 Mechanics for calculating total wholesale and retail risk-weighted assets.**

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a

sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the national bank or Federal savings association assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

20. Effective October 1, 2019, Section 3.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§3.133 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight applicable to the CCP according to subpart D of this part.

\* \* \* \* \*

21. Effective October 1, 2019, Section 3.152 is amended by revising paragraph (b)(5) and (6) to read as follows:



**§3.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

22. Effective October 1, 2019, Section 3.202 is amended by revising the definition of “Corporate debt position” in paragraph (b) to read as follows:

**§3.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

23. Effective October 1, 2019, Section 3.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§3.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* A

national bank or Federal savings association may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

24. Effective April 1, 2020, Section 3.300 is amended by removing paragraphs (b) and (d).

**Board of Governors of the Federal Reserve System**

For the reasons set out in the joint preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

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

**Subpart A—General Provisions**

25. The authority citation for part 217 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371.

26. Effective October 1, 2019, Section 217.2 is amended by (1) Removing the definitions of “corporate exposure,” “eligible guarantor,” “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution,” and (2) Adding the definitions of “corporate exposure,” “eligible guarantor,” “International Lending Supervision Act,” “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution” as follows:

**§217.2 Definitions.**

\* \* \* \* \*

*Corporate exposure* means an exposure to a company that is not:

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility commercial real estate (HVCRE) exposure;
- (7) A cleared transaction;
- (8) A default fund contribution;

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

(12) A policy loan; or

(13) A separate account.

\* \* \* \* \*

*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*International Lending Supervision Act* means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.).

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §217.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the Board-regulated institution for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches Board-regulated institution in the capital of an unconsolidated financial institution where the advanced approaches Board-regulated institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches Board-regulated institution in the capital of an unconsolidated financial institution where the advanced approaches Board-regulated institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

27. Effective October 1, 2019, Section 217.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§217.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the Board-regulated institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

28. Effective October 1, 2019, Section 217.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and revise Table 1 to read as follows:

**§217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the Board-regulated institution's net income, calculated in accordance with the instructions to the Call Report or the FR Y-9C, as applicable, for the four calendar quarters preceding the current

calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) \* \* \*

(i) A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10; or

\* \* \* \* \*

**TABLE 1 TO §217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge	0 percent.

\* \* \* \* \*

29. Effective October 1, 2019, Section 217.20 is amended by revising paragraphs

(b)(1)(iii), (b)(4), (c)(2), (d)(2), (5) and adding a new paragraph (f) to read as follows:



**§217.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of the Board to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem;

\* \* \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §217.21.

\* \* \* \* \*

(c) \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §217.21, that is not included in the Board-regulated institution's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §217.21, that is not included in the Board-regulated institution's tier 1 capital.

\* \* \* \* \*

(5) For a Board-regulated institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of §217.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

\* \* \* \* \*

(f) A Board-regulated institution may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of the Board to the extent such prior approval is required by paragraphs (b), (c), or (d) of this section, as applicable.

\* \* \* \* \*

30. Effective April 1, 2020, Section 217.21 is revised to read as follows:

**§217.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §217.20, a Board-regulated institution that is not an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* The amount of common equity tier 1 minority interest that a Board-regulated institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the Board-regulated institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the Board-regulated institution.* The amount of tier 1 minority interest that a Board-regulated institution may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the

Board-regulated institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the Board-regulated institution.* The amount of total capital minority interest that a Board-regulated institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the Board-regulated institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §217.20, an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches Board-regulated institution, the advanced approaches Board-regulated institution must assume that the capital adequacy standards of the advanced approaches Board-regulated institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* For each consolidated subsidiary of an advanced approaches

Board-regulated institution, the amount of common equity tier 1 minority interest the advanced approaches Board-regulated institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches Board-regulated institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(I) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of tier 1 minority interest the advanced approaches Board-regulated institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches Board-regulated institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of total capital minority interest the advanced approaches Board-regulated institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches Board-regulated institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

\* \* \* \* \*

31. Effective April 1, 2020, Section 217.22 is amended by revising paragraphs (a)(1)(i), paragraphs (c), (d), (g), and (h) to read as follows:

**§217.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1) \* \* \*

(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches Board-regulated institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches Board-regulated institution), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

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<sup>23</sup> The Board-regulated institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under §217.20(d)(3).

(1) *Investment in the Board-regulated institution's own capital instruments.* A Board-regulated institution must deduct an investment in the Board-regulated institution's own capital instruments as follows:

(i) A Board-regulated institution must deduct an investment in the Board-regulated institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §217.20(b)(1);

(ii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a Board-regulated institution that is not an advanced approaches Board-regulated institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution itself, as

described in paragraphs (c)(2)(i)-(iii) of this section. If the Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under §217.20, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §217.300(c)), the Board-regulated institution must treat the instrument as:



(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A Board-regulated institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A Board-regulated institution that is not an advanced approaches Board-regulated institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that exceed 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct an investment in the capital of an

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<sup>24</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution that is not an advanced approaches Board-regulated institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §217.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

(ii) The amount to be deducted under this section from a specific capital component is equal to:

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<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

<sup>26</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(A) The advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches Board-regulated institution's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches Board-regulated institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) A Board-regulated institution that is not an advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(1).

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<sup>28</sup> With prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

(i) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

(ii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. A Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §217.22(e)) arising from timing differences that the Board-regulated institution could realize through net operating loss carrybacks. The Board-regulated institution must risk weight these assets at 100 percent. For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(iii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

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<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the Board-regulated institution and assigned a 250 percent risk weight.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A Board-regulated institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

(2) An advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §217.22(e)) arising from timing differences that the advanced approaches Board-regulated institution could realize through net operating loss carrybacks. The advanced approaches Board-regulated institution must risk weight these assets at 100 percent.

For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup>

Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches Board-regulated institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches Board-

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<sup>30</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

regulated institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches Board-regulated institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* A Board-regulated institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the Board-regulated institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches Board-regulated institution and assigned a 250 percent risk weight.

underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §217.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §217.2;

(iii) For an indirect exposure, the Board-regulated institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A Board-regulated institution may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the Board-regulated institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A Board-regulated institution may calculate the gross long position for investments in the Board-regulated institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the Board-regulated institution's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or



(2) The investment fund's actual holdings of investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the Board-regulated institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, if the Board-regulated institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the Board-regulated institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the Board-regulated institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A Board-regulated institution may only net a short position against a long position in an investment in the Board-regulated institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, and the hedge is deemed effective by the Board-regulated institution's internal control processes, which have not been found to be inadequate by the Board.

\* \* \* \* \*

32. Effective October 1, 2019, Section 217.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (k), (l) to read as follows:

**§217.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs)*. A Board-regulated institution must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks*. (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a Board-regulated institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §217.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

**TABLE 2 TO §217.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
CRC:	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A Board-regulated institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A Board-regulated institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A Board-regulated institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A Board-regulated institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §217.22(d)(2)(i)(c);

(iii) and (iv) \* \* \*

\* \* \* \* \*

(k) Past due exposures. Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A Board-regulated institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A Board-regulated institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §217.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A Board-regulated institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §217.37 if the collateral meets the requirements of that section.

(1) Other assets. (1)(i) A bank holding company or savings and loan holding company must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A state member bank must assign a zero percent risk weight to cash owned and held in all offices of the state member bank or in transit; to gold bullion held in the state member bank's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A Board-regulated institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) A Board-regulated institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the Board-regulated institution could realize through net operating loss carrybacks.

(4) A Board-regulated institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §217.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks.

(5) A Board-regulated institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §217.22.

(6) Notwithstanding the requirements of this section, a state member bank may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under this part, provided that all of the following conditions apply:

(i) The Board-regulated institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

33. Effective October 1, 2019, Section 217.34 is amended by revising paragraph (c) to read as follows:

**§217.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A Board-regulated institution that purchases an OTC credit derivative that is recognized under §217.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the Board-regulated institution does so consistently for all such credit derivatives. The Board-regulated institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A Board-regulated institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The Board-regulated institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The Board-regulated institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the Board-regulated institution is treating the OTC credit derivative as a covered position under subpart F, in which case the Board-regulated institution must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

34. Effective October 1, 2019, Section 217.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§217.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) \* \* \*

(ii) A clearing member client Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) \* \* \*

(ii) A clearing member Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*



35. Effective October 1, 2019, Section 217.36 is amended by revising paragraph (c) to read as follows:

**§217.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a Board-regulated institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the Board-regulated institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The Board-regulated institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The Board-regulated institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

36. Effective October 1, 2019, Section 217.37 is amended by revising paragraph (b)(2)(i) to read as follows:

**§217.37 Collateralized transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) A Board-regulated institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the Board-regulated institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

37. Effective October 1, 2019, Section 217.38 is amended by revising paragraph (e)(2) to read as follows:

**§217.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the Board-regulated institution has made its delivery until five business days after the counterparty delivery is due, the Board-regulated institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the Board-regulated institution as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*

38. Effective October 1, 2019, Section 217.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§217.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) If the Board-regulated institution purchases credit protection from a counterparty that is not a securitization SPE, the Board-regulated institution must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

39. Effective October 1, 2019, Section 217.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§217.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §217.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §217.22(d)(2) are assigned a 250 percent risk weight.

(5) through (7) (ii) \* \* \*

\* \* \* \* \*

40. Effective October 1, 2019, Section 217.61 is revised to read as follows:

**§217.61 Purpose and scope.**

Sections 217.61 through 217.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a Board-regulated institution with total consolidated assets of \$50 billion or more as reported on the Board-regulated institution's most recent year-end Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable that is not an advanced approaches Board-regulated institution making public disclosures pursuant to §217.172. An advanced approaches Board-regulated institution that has not received approval

from the Board to exit parallel run pursuant to §217.121(d) is subject to the disclosure requirements described in §§217.62 and 217.63. A Board-regulated institution with total consolidated assets of \$50 billion or more as reported on the Board-regulated institution's most recent year-end Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, that is not an advanced approaches Board-regulated institution making public disclosures subject to §217.172 must comply with §217.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §217.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the Board-regulated institution's total consolidated assets in the four most recent quarters as reported on the Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable; or the average of the Board-regulated institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable if the Board-regulated institution has not filed such a report for each of the most recent four quarters.

\* \* \* \* \*

41. Effective October 1, 2019, Section 217.63 is amended by revising Tables 3 and 8 to read as follows:

**§217.63 Disclosures by Board-regulated institutions described in §217.61.**

\* \* \* \* \*

**TABLE 3 TO §217.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a) A summary discussion of the Board-regulated institution's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b) Risk-weighted assets for:
	(1) Exposures to sovereign entities;
	(2) Exposures to certain supranational entities and MDBs;
	(3) Exposures to depository institutions, foreign banks, and credit unions;
	(4) Exposures to PSEs;
	(5) Corporate exposures;
	(6) Residential mortgage exposures;
	(7) Statutory multifamily mortgages and pre-sold construction loans;
	(8) HVCRE exposures;
	(9) Past due loans;
	(10) Other assets;
	(11) Cleared transactions;
	(12) Default fund contributions;
	(13) Unsettled transactions;
	(14) Securitization exposures; and
	(15) Equity exposures.
	(c) Standardized market risk-weighted assets as calculated under subpart F of this part.
	(d) Common equity tier 1, tier 1 and total risk-based capital ratios:
	(1) For the top consolidated group; and
	(2) For each depository institution subsidiary.
	(e) Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §217.63—SECURITIZATION**

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
	(1) The Board-regulated institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Board-regulated institution to other entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
	(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
	(3) The roles played by the Board-regulated institution in the securitization process <sup>2</sup> and an indication of the extent of the Board-regulated institution's involvement in each of them;
	(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;
	(5) The Board-regulated institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and
	(6) The risk-based capital approaches that the Board-regulated institution follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b) A list of:
	(1) The type of securitization SPEs that the Board-regulated institution, as sponsor, uses to securitize third-party exposures. The Board-regulated institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the Board-regulated institution manages or advises; and
	(ii) That invest either in the securitization exposures that the Board-regulated institution has securitized or in securitization SPEs that the Board-regulated institution sponsors. <sup>3</sup>
	(c) Summary of the Board-regulated institution's accounting policies for

	securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased interests;
	(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
	(5) Treatment of synthetic securitizations;
	(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and
	(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the Board-regulated institution to provide financial support for securitized assets.
	(d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria provided in §217.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f) For exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria in §217.41:
	(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
	(2) Losses recognized by the Board-regulated institution during the current period categorized by exposure type. <sup>6</sup>
	(g) The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h) Aggregate amount of:
	(1) On-balance sheet securitization exposures retained or purchased



		categorized by exposure type; and
		(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and
		(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:
		(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
		(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
	(j)	Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k)	Aggregate amount of resecuritization exposures retained or purchased categorized according to:
		(1) Exposures to which credit risk mitigation is applied and those not applied; and
		(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The Board-regulated institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the Board-regulated institution is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Banks are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

\* \* \* \* \*

42. Effective October 1, 2019, Section 217.131 is amended by revising paragraph (d)(2) to read as follows:

**§217.131 Mechanics for calculating total wholesale and retail risk-weighted assets.**

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the Board-regulated institution assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

43. Effective October 1, 2019, Section 217.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§217.133 Cleared transactions.**

\* \* \* \* \*

(b)\* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight applicable to the CCP according to subpart D of this part .

\* \* \* \* \*

44. Effective October 1, 2019, Section 217.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

**§217.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

45. Effective October 1, 2019, Section 217.202, paragraph (b) is amended by revising the definition of “Corporate debt position” to read as follows:

**§217.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

46. Effective October 1, 2019, Section 217.210 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(vii)(A) to read as follows:

**§217.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* A Board-regulated institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(vii) \* \* \*

(A) General requirements. (1) A Board-regulated institution that is not an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is not calculating risk-weighted assets according to Subpart E must assign a specific risk-weighting factor to a securitization position using either the simplified supervisory formula approach (SSFA) in paragraph (b)(2)(vii)(C) of this section (and §217.211) or assign a specific risk-weighting factor of 100 percent to the position.

(2) A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated

pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E must calculate a specific risk add-on for a securitization position in accordance with paragraph (b)(2)(vii)(B) of this section if the Board-regulated institution and the securitization position each qualifies to use the SFA in §217.143. A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E with a securitization position that does not qualify for the SFA under paragraph (b)(2)(vii)(B) of this section may assign a specific risk-weighting factor to the securitization position using the SSFA in accordance with paragraph (b)(2)(vii)(C) of this section or assign a specific risk-weighting factor of 100 percent to the position.

(3) A Board-regulated institution must treat a short securitization position as if it is a long securitization position solely for calculation purposes when using the SFA in paragraph (b)(2)(vii)(B) of this section or the SSFA in paragraph (b)(2)(vii)(C) of this section.

\* \* \* \* \*

47. Section 217.300 is amended by:

a. Effective October 1, 2019, revising paragraphs (c)(2) and (c)(3) to read as follows; and

b. Effective April 1, 2020, deleting paragraphs (b) and (d).

**§217.300 Transitions.**

(c) \* \* \*

(2) *Mergers and acquisitions.* (i) A depository institution holding company of \$15 billion or more that acquires after December 31, 2013 either a depository institution holding company with total consolidated assets of less than \$15 billion as of December 31, 2009 (depository institution holding company under \$15 billion) or a depository institution holding company that is a 2010 MHC, may include in regulatory capital the non-qualifying capital instruments issued by the acquired organization up to the applicable percentages set forth in Table 8 to §217.300.

(ii) If a depository institution holding company under \$15 billion acquires after December 31, 2013 a depository institution holding company under \$15 billion or a 2010 MHC, and the resulting organization has total consolidated assets of \$15 billion or more as reported on the resulting organization's FR Y-9C for the period in which the transaction occurred, the resulting organization may include in regulatory capital non-qualifying instruments of the resulting organization up to the applicable percentages set forth in Table 8 to §217.300.

**Table 8 to §217.300**

<b>Transition period (calendar year)</b>	<b>Percentage of non-qualifying capital instruments includable in additional tier 1 or tier 2 capital for a depository institution holding company of \$15 billion or more</b>
Calendar year 2014	50
Calendar year 2015	25
Calendar year 2016 and thereafter	0

(3) *Depository institution holding companies under \$15 billion and 2010 MHCs.* (i) Non-qualifying capital instruments issued by depository institution holding companies under \$15 billion and 2010 MHCs prior to May 19, 2010, may be included in additional tier 1 or

tier 2 capital if the instrument was included in tier 1 or tier 2 capital, respectively, as of January 1, 2014.

(ii) Non-qualifying capital instruments includable in tier 1 capital are subject to a limit of 25 percent of tier 1 capital elements, excluding any non-qualifying capital instruments and after applying all regulatory capital deductions and adjustments to tier 1 capital.

(iii) Non-qualifying capital instruments that are not included in tier 1 as a result of the limitation in paragraph (c)(3)(ii) of this section are includable in tier 2 capital.

\* \* \* \* \*

## **12 CFR Part 324**

### **Federal Deposit Insurance Corporation**

For the reasons set out in the joint preamble, 12 CFR part 324 is amended as follows.

## **PART 324 – CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS**

### **Subpart A—General Provisions**

48. 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).



49. Effective October 1, 2019, Section 324.2 is amended by revising the definitions of “corporate exposure,” “eligible guarantor,” “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution” as follows:

**§324.2 Definitions.**

\* \* \* \* \*

*Corporate exposure* means an exposure to a company that is not:

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility commercial real estate (HVCRE) exposure;
- (7) A cleared transaction;
- (8) A default fund contribution;
- (9) A securitization exposure;
- (10) An equity exposure;
- (11) An unsettled transaction;

(12) A policy loan; or

(13) A separate account.

\* \* \* \* \*

*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments,

excluding underwriting positions held by the FDIC-supervised institution for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

50. Effective October 1, 2019, Section 324.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§324.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the FDIC-supervised institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §324.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

51. Effective October 1, 2019, Section 324.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

**§324.11 Capital conservation buffer and countercyclical capital buffer amount.**

(a) \* \* \*

(2) \* \* \*

(i) *Eligible retained income.* The eligible retained income of an FDIC-supervised institution is the FDIC-supervised institution's net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income.

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) An FDIC-supervised institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The FDIC-supervised institution's common equity tier 1 capital ratio minus the FDIC-supervised institution's minimum common equity tier 1 capital ratio requirement under § 324.10;

(B) The FDIC-supervised institution's tier 1 capital ratio minus the FDIC-supervised institution's minimum tier 1 capital ratio requirement under § 324.10; and

(C) The FDIC-supervised institution's total capital ratio minus the FDIC-supervised institution's minimum total capital ratio requirement under § 324.10; or

\* \* \* \* \*

**TABLE 1 TO §324.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the FDIC-supervised	20 percent.

institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	
Less than or equal to 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	0 percent.

\* \* \* \* \*

52. Effective October 1, 2019, Section 324.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), and (d)(2) to read as follows:

**§324.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §324.21.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) Any cash dividend payments on the instrument are paid out of the FDIC-supervised institution's net income or retained earnings. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241.

\* \* \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §324.21, that is not included in the FDIC-supervised institution's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §324.21, that is not included in the FDIC-supervised institution's tier 1 capital.

\* \* \* \* \*

53. Effective April 1, 2020, Section 324.21 is revised to read as follows:

**§324.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §324.20, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* The amount of common equity tier 1 minority interest that an FDIC-supervised institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the FDIC-supervised institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the FDIC-supervised institution.* The amount of tier 1 minority interest that an FDIC-supervised institution may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the FDIC-supervised institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* The amount of total capital minority interest that an FDIC-supervised institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the FDIC-supervised institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §324.20, an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches FDIC-supervised institution, the advanced approaches FDIC-supervised institution must assume that the capital adequacy standards of the advanced approaches FDIC-supervised institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* For each consolidated subsidiary of an advanced approaches FDIC-supervised institution, the amount of common equity tier 1 minority interest the advanced approaches FDIC-supervised institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus



(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(1) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised institution, the amount of tier 1 minority interest the advanced approaches FDIC-supervised institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary

bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(I) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised institution, the amount of total capital minority interest the advanced approaches FDIC-supervised institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(I) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

\* \* \* \* \*

54. Effective April 1, 2020, Section 324.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

**§324.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches FDIC-supervised institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches FDIC-supervised institution), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

(1) *Investment in the FDIC-supervised institution's own capital instruments.* An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own capital instruments as follows:

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<sup>23</sup> The FDIC-supervised institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under §324.20(d)(3).

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, an FDIC-supervised institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the FDIC-supervised institution itself, as described in paragraphs (c)(2)(i)-(iii) of this section. If the FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under §324.20, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §324.300(c)), the FDIC-supervised institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* An FDIC-supervised institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that exceed 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

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<sup>24</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §324.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

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<sup>26</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(B) The ratio of the advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches FDIC-supervised institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital

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<sup>28</sup> With prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.



elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

(ii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §324.22(e)) arising from timing differences that the FDIC-supervised institution could realize through net operating loss carrybacks. The FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(iii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, an FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section.

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<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the FDIC-supervised institution and assigned a 250 percent risk weight.

An FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

(2) An advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §324.22(e)) arising from timing differences that the advanced approaches FDIC-supervised institution could realize through net operating loss carrybacks. The advanced approaches FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the

amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup>

Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches FDIC-supervised institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this

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<sup>30</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* An FDIC-supervised institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the FDIC-supervised institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches FDIC-supervised institution and assigned a 250 percent risk weight.

adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §324.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §324.2;

(iii) For an indirect exposure, the FDIC-supervised institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) An FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in the FDIC-supervised institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) An FDIC-supervised institution may calculate the gross long position for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the FDIC-supervised institution's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(2) The investment fund's actual holdings of investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the FDIC-supervised institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) An FDIC-supervised institution may only net a short position against a long position in an investment in the FDIC-supervised institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the FDIC-supervised institution's Call Report and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which have not been found to be inadequate by the FDIC.

\* \* \* \* \*

55. Effective October 1, 2019, Section 324.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (k), and (l) to read as follows:

**§324.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs).* An FDIC-supervised institution must assign a zero percent risk weight to an exposure to the Bank for

International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, an FDIC-supervised institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §324.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

**TABLE 2 TO §324.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
<b>CRC:</b>	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) An FDIC-supervised institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.



(iii) An FDIC-supervised institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) An FDIC-supervised institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §324.22(d)(2)(i)(c);

(iii) and (iv) \* \* \*

\* \* \* \* \*

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) An FDIC-supervised institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An FDIC-supervised institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §324.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) An FDIC-supervised institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §324.37 if the collateral meets the requirements of that section.

(1) *Other assets.* (1) An FDIC-supervised institution must assign a zero percent risk weight to cash owned and held in all offices of the FDIC-supervised institution or in transit; to gold bullion held in the FDIC-supervised institution's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) An FDIC-supervised institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) An FDIC-supervised institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks.

(4) An FDIC-supervised institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §324.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks.

(5) An FDIC-supervised institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §324.22.

(6) Notwithstanding the requirements of this section, an FDIC-supervised institution may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under 12 CFR part 217, provided that all of the following conditions apply:

(i) The FDIC-supervised institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

56. Effective October 1, 2019, Section 324.34 is amended by revising paragraph (c) to read as follows:

**§324.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* An FDIC-supervised institution that purchases an OTC credit derivative that is recognized under

§324.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) An FDIC-supervised institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The FDIC-supervised institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the FDIC-supervised institution is treating the OTC credit derivative as a covered position under subpart F, in which case the FDIC-supervised institution must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

57. Effective October 1, 2019, Section 324.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§324.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member client FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*

58. Effective October 1, 2019, Section 324.36 is amended by revising paragraph (c) to read as follows:

**§324.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, an FDIC-supervised institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the FDIC-supervised institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The FDIC-supervised institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The FDIC-supervised institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

59. Effective October 1, 2019, Section 324.37 is amended by revising paragraph (b)(2)(i) to read as follows:

**§324.37 Collateralized transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) *Risk weight substitution.* (i) An FDIC-supervised institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the

FDIC-supervised institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

60. Effective October 1, 2019, Section 324.38 is amended by revising paragraph (e)(2) to read as follows:

**§324.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the FDIC-supervised institution as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*

61. Effective October 1, 2019, Section 324.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§324.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*



(2) \* \* \*

(ii) \* \* \*

(A) If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

62. Effective October 1, 2019, Section 324.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§324.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §324.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §324.22(d)(2) are assigned a 250 percent risk weight.

\* \* \* \* \*

63. Effective October 1, 2019, Section 324.61 is revised to read as follows:

**§324.61 Purpose and scope.**

Sections 324.61 through 324.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for an FDIC-supervised institution with total consolidated assets of \$50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures pursuant to §324.172. An advanced approaches FDIC-supervised institution that has not received approval from the FDIC to exit parallel run pursuant to §324.121(d) is subject to the disclosure requirements described in §§324.62 and 324.63. An FDIC-supervised institution with total consolidated assets of \$50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures subject to §324.172 must comply with §324.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §324.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the FDIC-supervised institution's total consolidated assets in the four most recent quarters as reported on the Call Report; or the average of the FDIC-supervised institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the FDIC-

supervised institution's Call Report if the FDIC-supervised institution has not filed such a report for each of the most recent four quarters.

\* \* \* \* \*

64. Effective October 1, 2019, Section 324.63 is amended by revising Table 3 and Table 8 to read as follows:

**§324.63 Disclosures by FDIC-supervised institutions described in §324.61.**

\* \* \* \* \*

**TABLE 3 TO §324.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a)	A summary discussion of the FDIC-supervised institution's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for:
		(1) Exposures to sovereign entities;
		(2) Exposures to certain supranational entities and MDBs;
		(3) Exposures to depository institutions, foreign banks, and credit unions;
		(4) Exposures to PSEs;
		(5) Corporate exposures;
		(6) Residential mortgage exposures;
		(7) Statutory multifamily mortgages and pre-sold construction loans;
		(8) HVCRE exposures;
		(9) Past due loans;
		(10) Other assets;
		(11) Cleared transactions;
		(12) Default fund contributions;

	(13) Unsettled transactions;
	(14) Securitization exposures; and
	(15) Equity exposures.
(c)	Standardized market risk-weighted assets as calculated under subpart F of this part.
(d)	Common equity tier 1, tier 1 and total risk-based capital ratios:
	(1) For the top consolidated group; and
	(2) For each depository institution subsidiary.
(e)	Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §324.63—SECURITIZATION**

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
	(1) The FDIC-supervised institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the FDIC-supervised institution to other entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
	(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
	(3) The roles played by the FDIC-supervised institution in the securitization process <sup>2</sup> and an indication of the extent of the FDIC-supervised institution's involvement in each of them;
	(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;

	(5) The FDIC-supervised institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and
	(6) The risk-based capital approaches that the FDIC-supervised institution follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b) A list of:
	(1) The type of securitization SPEs that the FDIC-supervised institution, as sponsor, uses to securitize third-party exposures. The FDIC-supervised institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the FDIC-supervised institution manages or advises; and
	(ii) That invest either in the securitization exposures that the FDIC-supervised institution has securitized or in securitization SPEs that the FDIC-supervised institution sponsors. <sup>3</sup>
	(c) Summary of the FDIC-supervised institution's accounting policies for securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased interests;
	(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
	(5) Treatment of synthetic securitizations;
	(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and

		(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the FDIC-supervised institution to provide financial support for securitized assets.
	(d)	An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e)	The total outstanding exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria provided in §324.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f)	For exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria in §324.41:
		(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
		(2) Losses recognized by the FDIC-supervised institution during the current period categorized by exposure type. <sup>6</sup>
	(g)	The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h)	Aggregate amount of:
		(1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and
		(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and

	(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:
	(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
	(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
(j)	Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
(k)	Aggregate amount of resecuritization exposures retained or purchased categorized according to:
	(1) Exposures to which credit risk mitigation is applied and those not applied; and
	(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The FDIC-supervised institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the FDIC-supervised institution is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the FDIC-supervised institution, whether generated by them or purchased, and recognized in the balance

sheet, from third parties, and third-party exposures included in sponsored transactions.

Securitization transactions (including underlying exposures originally on the FDIC-supervised institution's balance sheet and underlying exposures acquired by the FDIC-supervised institution from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. FDIC-supervised institutions are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the FDIC-supervised institution's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the FDIC-supervised institution with respect to securitized assets.

\* \* \* \* \*

65. Effective October 1, 2019, Section 324.131 is amended by revising paragraph (d)(2) to read as follows:

**§324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.**

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the



European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the FDIC-supervised institution assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

66. Effective October 1, 2019, Section 324.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§324.133 Cleared transactions.**

\* \* \* \* \*

(b)\* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight applicable to the CCP according to subpart D of this part.

\* \* \* \* \*

67. Effective October 1, 2019, Section 324.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

**§324.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

68. Effective October 1, 2019, Section 324.202 is amended by revising the definition of “Corporate debt position” in paragraph (b) to read as follows:

**§324.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the

European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

69. Effective October 1, 2019, Section 324.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§324.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* An FDIC-supervised institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

70. Effective April 1, 2020, Section 324.300 is amended by deleting paragraphs (b) and (d).

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “REGULATORY CAPITAL RULE: SIMPLIFICATIONS TO THE CAPITAL RULE PURSUANT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.”]

Dated: [--]

---

**Joseph M. Otting**

*Comptroller of the Currency*

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “REGULATORY CAPITAL RULE: SIMPLIFICATIONS TO THE CAPITAL RULE PURSUANT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.”]

By order of the Board of Governors of the Federal Reserve System, [--].

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**Ann E. Misback,**  
*Secretary of the Board.*

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “REGULATORY CAPITAL RULE: SIMPLIFICATIONS TO THE CAPITAL RULE PURSUANT TO THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT OF 1996.”]

Dated at Washington, D.C. this [--].

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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**Robert E. Feldman,**

*Executive Secretary.*