DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

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

[Docket ID OCC-2018-0040]

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FEDERAL RESERVE SYSTEM

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

[Regulation Q; Docket No.]

RIN [XX]

FEDERAL DEPOSIT INSURANCE CORPORATION

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

RIN 3064-AE91

Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations

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

ACTION: 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 that provides for a simple measure of capital adequacy for certain community banking organizations, consistent with section 201 of the Economic Growth,

Regulatory Relief, and Consumer Protection Act (final rule). Under the final rule, depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets and meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent, will be eligible to opt into the community bank leverage ratio framework (qualifying community banking organizations). Qualifying community banking organizations that elect to use the community bank leverage ratio framework and that maintain a leverage ratio of greater than 9 percent will be considered to have satisfied the generally applicable risk-based and leverage capital requirements in the agencies' capital rules (generally applicable rule) and, if applicable, will be considered to have met the well-capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. The final rule includes a two-quarter grace period during which a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the greater than 9 percent leverage ratio requirement, generally would still be deemed well-capitalized so long as the banking organization maintains a leverage ratio greater than 8 percent. At the end of the grace period, the banking organization must meet all qualifying criteria to remain in the community bank leverage ratio framework or otherwise must comply with and report under the generally applicable rule. Similarly, a banking organization that fails to maintain a leverage ratio greater than 8 percent would not be permitted to use the grace period and must comply with the capital rule's generally applicable requirements and file the appropriate regulatory reports.

DATES: The final rule is effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

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I. Introduction

A. Background

On February 8, 2019, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published a notice of proposed rulemaking (the proposed rule or proposal)1 to implement section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Act), and proposed to establish a community bank leverage ratio for qualifying community banking organizations as a simple alternative methodology to measure capital adequacy. The proposal was intended to simplify regulatory capital requirements and provide material regulatory compliance burden relief to qualifying community banking organizations that opt into the community bank leverage ratio framework.

Section 201 of the Act directs the agencies to develop a community bank leverage ratio for qualifying community banking organizations of not less than 8 percent and not more than 10 percent. The Act provides that a qualifying community banking organization is a depository institution or depository institution holding company with total consolidated assets of less than

[1] 84 FR 3062 (February 8, 2019).

$10 billion that satisfies such other factors, based on its risk profile, that the agencies determine are appropriate. Pursuant to section 201, a qualifying community banking organization that exceeds the community bank leverage ratio level established by the agencies shall be considered to have met: (i) the generally applicable risk-based and leverage capital requirements in the agencies' capital rules (generally applicable rule); (ii) the capital ratio requirements in order to be considered well capitalized under the agencies' prompt corrective action (PCA) framework (in the case of insured depository institutions); and (iii) any other applicable capital or leverage requirements. In addition, the Act directs the agencies to establish procedures for the treatment of qualifying community banking organizations that fall below the community bank leverage ratio level established by the agencies.[2]

Section 201 of the Act defines the community bank leverage ratio as the ratio of a qualifying community banking organization's tangible equity capital to its average total consolidated assets, both as reported on the qualifying community banking organization's applicable regulatory filing. In addition, the Act states that the agencies may determine that a banking organization is not a qualifying community banking organization based on the banking organization's risk profile. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and such other

[2] The agencies note that, under existing PCA requirements applicable to insured depository institutions, to be considered "well capitalized" a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. *See* 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements would continue to apply under the community bank leverage ratio framework.

factors as the agencies determine appropriate. The Act also specifies that the community bank leverage ratio framework does not limit the agencies' authority in effect as of the date of enactment of the Act.

The Act directs the agencies to consult with applicable state bank supervisors in carrying out section 201 of the Act and to notify the applicable state bank supervisor of any qualifying community banking organization that exceeds, or does not exceed after previously exceeding, the community bank leverage ratio. As part of this consultation process, the agencies had a series of discussions with state bank supervisors, before and after publication of the proposal, that helped shape key elements of the community bank leverage ratio framework in the final rule.

In response to the proposal, the agencies received approximately 50 public comment letters and approximately 500 form letters from depository institutions, depository institution holding companies, trade associations, and other interested parties. Commenters generally supported the agencies' efforts to simplify the regulatory capital requirements. However, as discussed in greater detail below, many commenters indicated that certain aspects of the proposal were burdensome or unnecessarily complex, and some commenters expressed concern that banking supervisors would make the proposed community bank leverage ratio the de facto minimum capital requirement for community banking organizations, irrespective of whether they have opted into the community bank leverage ratio framework. Commenters generally favored greater simplicity in the community bank leverage ratio framework, and recommended the removal of the proposal's separate PCA proxy levels. After reviewing the comments, the agencies are making several modifications to address commenters' concerns and further simplify the community bank leverage ratio framework while retaining the quality and quantity of regulatory capital in the banking system.

B. Summary of the Final Rule

In response to comments received on the proposal, the agencies are making a number of changes in this final rule. In addition, the final rule clarifies other important aspects of the community bank leverage ratio framework. The key changes being made to the final rule include the following:

- Adoption of tier 1 capital, and therefore the existing leverage ratio, into the community bank leverage ratio framework;
- Removal of the qualifying criteria for mortgage servicing assets and deferred tax assets arising from temporary differences;
- Removal of the PCA proxy levels; and
- Allowing a banking organization that elects to use the community bank leverage ratio framework to be considered well-capitalized during the two-quarter grace period if its leverage ratio is 9 percent or less and greater than 8 percent.

Under the final rule, the numerator of the community bank leverage ratio is the existing measure of tier 1 capital used by non-advanced approaches banking organizations.[3,4] Numerous

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[3] Under the final rule, a qualifying community banking organization that elects to use the community bank leverage ratio framework will calculate its leverage ratio taking into account the modifications made in relation to the capital simplifications rule and current expected credit losses methodology (CECL) transitions final rule. *See* 84 FR 35234 (July 22, 2019) and 84 FR 4222 (February 14, 2019), respectively. The agencies anticipate that the tier 1 capital amount used in the numerator of the calculation will reflect any future modifications made to the tier 1 capital definition applicable to non-advanced approaches banking organizations. *See* 84 FR 35234 (July 22, 2019).

[4] For purposes of the community bank leverage ratio framework, an electing banking organization is not required to calculate tier 2 capital and therefore would not be required to

commenters described complexities that would be created with the proposed introduction of a new measure of capital, tangible equity, in the community bank leverage ratio framework and, therefore, the agencies have adopted the commenters' recommendation to use tier 1 capital. The use of tier 1 capital also has the benefit of including the existing threshold deduction approaches for mortgage servicing assets (MSAs) and deferred tax assets arising from temporary differences (temporary difference DTAs) which enabled the agencies to remove the qualifying criteria related to these exposures from the community bank leverage ratio framework. Due to the adoption of tier 1 capital, the community bank leverage ratio is generally calculated in the same manner as the generally applicable rule's leverage ratio: tier 1 capital divided by average total consolidated assets minus amounts deducted from tier 1 capital. As a result, the final rule incorporates and refers to the generally applicable rule's leverage ratio.

Commenters also raised concerns that the PCA proxy levels included in the proposal caused unnecessary complexity in the community bank leverage ratio framework and requested that the framework include a grace period to transition back to the generally applicable rule if a banking organization's community bank leverage ratio was less than the well-capitalized threshold. The agencies are incorporating this feedback into the final rule by modifying the definition of a "qualifying community banking organization" to include the level of the leverage ratio as a qualifying criterion.

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make any deductions that would be taken from tier 2 capital or potentially tier 1 capital due to insufficient tier 2 capital. As part of the final rule the agencies are amending 12 CFR 3.22(f) (OCC); 12 CFR 217.22(f) (Board); 12 CFR 324.22(f) (FDIC).

The final rule provides that to be a "qualifying community banking organization," a banking organization must not be an advanced approaches banking organization[5] and must meet the following qualifying criteria: (i) a leverage ratio of greater than 9 percent; (ii) total consolidated assets of less than $10 billion; (iii) total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets; and (iv) the sum of total trading assets and trading liabilities of 5 percent or less of total consolidated assets. Consistent with section 201, the final rule provides that qualifying community banking organizations that opt into the community bank leverage ratio framework (electing banking organization) will be deemed to have met the "well capitalized" ratio requirements and be in compliance with the generally applicable rule. Such banking organizations will not be required to calculate and report risk-based capital ratios.

Notably, the agencies have retained the proposal's 9 percent calibration for the leverage ratio in the community bank leverage ratio framework. The agencies believe that a 9 percent calibration, in conjunction with the final rule's qualifying criteria, will not result in a reduction in the aggregate level of regulatory capital currently held by electing banking organizations. Further, incorporating into the community bank leverage ratio framework the existing leverage ratio and the two-quarter grace period will facilitate the transition to and from the generally

[5] An advanced approaches banking organization is generally defined as a firm with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposure, and depository institution subsidiaries of those firms. Proposed rulemakings to tailor capital and liquidity requirements applicable to large banking organizations may result in changing the definition of advanced approaches banking organization. *See* 83 FR 66024 (December 21, 2018) and 84 FR 24296 (May 24, 2019).

applicable rule. Banking organizations opt into and out of the framework through their Consolidated Reports of Condition and Income (Call Report) or Form FR-Y9C.

If a qualifying community banking organization that has opted into the community bank leverage ratio framework subsequently fails to satisfy one or more of the qualifying criteria but continues to report a leverage ratio of greater than 8 percent, the banking organization could continue to use the community bank leverage ratio framework and be deemed to meet the "well capitalized" capital ratio requirements for a grace period of up to two quarters.[6] As long as the banking organization is able to return to compliance with all the qualifying criteria within two quarters, it will continue to be deemed to meet the "well capitalized" ratio requirements and be in compliance with the generally applicable rule. A banking organization will be required to comply with the generally applicable rule and file the relevant regulatory reports if the banking organization (i) is unable to restore compliance with all qualifying criteria during the two-quarter grace period (including coming into compliance with the greater than 9 percent leverage ratio requirement), (ii) reports a leverage ratio of 8 percent or less, or (iii) ceases to satisfy the qualifying criteria due to consummation of a merger transaction.

The agencies believe that the final rule provides a simple framework that simultaneously meets safety and soundness goals and responds to the concerns conveyed through comments received on the proposal. Additionally, the final rule meets the policy objectives described in the proposal. First, the community bank leverage ratio framework is available to a meaningful

[6] As a result of adopting the grace period construct, the final rule does not include the agencies' proposed PCA proxy levels, which would have allowed certain banking organizations that fell to a leverage ratio of 9 percent or lower to remain in the community bank leverage ratio framework indefinitely.

number of well-capitalized banking organizations with less than $10 billion in total consolidated assets. Second, the community bank leverage ratio requirement is calibrated to maintain the overall amount of capital currently held by qualifying community banking organizations. Third, banking organizations with higher risk profiles remain subject to the generally applicable rule to ensure that such banking organizations hold capital commensurate with the risk of their exposures and activities.[7] Fourth, the agencies maintain the authority to take supervisory action under the PCA framework and other statutes and regulations based on a banking organization's capital ratios and risk profile. The final rule also provides regulatory compliance burden relief as the community bank leverage ratio is simple to apply and allows a qualifying community banking organization to avoid the burden of calculating and reporting risk-based capital ratios under the generally applicable rule.

II. Proposed Rule

A. Proposed Community Bank Leverage Ratio Framework

The agencies proposed the community bank leverage ratio framework as a simple alternative methodology to measure capital adequacy for qualifying community banking organizations, based on the requirements of section 201 of the Act. Under the proposal, a qualifying community banking organization would have been defined as a depository institution or depository institution holding company that was not an advanced approaches banking organization and that met the following criteria (qualifying criteria), each as described further below:

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[7] 12 CFR 3.10(a)–(b) (OCC); 12 CFR 217.10(a)–(b) (Board); 12 CFR 324.10(a)–(b) (FDIC).

- Total consolidated assets of less than $10 billion;
- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets;
- Total trading assets plus trading liabilities of 5 percent or less of total consolidated assets;
- MSAs of 25 percent or less of tangible equity (as defined in the proposal); and
- Temporary difference DTAs of 25 percent or less of tangible equity.

Under the proposal, the community bank leverage ratio would have been calculated as the ratio of tangible equity to average total consolidated assets. Tangible equity would have been defined as total bank equity capital or total holding company equity capital, as applicable, prior to including minority interests, and excluding accumulated other comprehensive income (AOCI), deferred tax assets arising from net operating loss and tax credit carryforwards, goodwill, and other intangible assets (other than MSAs), each as of the most recent calendar quarter and calculated in accordance with a qualifying community banking organization's regulatory reports. Average total consolidated assets would have been calculated in a manner similar to the generally applicable rule's leverage ratio denominator in that amounts deducted from the numerator would also have been excluded from the denominator. Under the proposal, a qualifying community banking organization could have elected to use the community bank leverage ratio framework if its community bank leverage ratio was greater than 9 percent.

The proposal would have permitted an electing banking organization to remain in the community bank leverage ratio framework even in cases where such an institution's community bank leverage ratio subsequently fell to 9 percent or less. In this situation, the proposal would have continued to provide for the agencies' supervisory actions under PCA and other applicable statutes and regulations. Specifically, for insured depository institutions, the proposal would have incorporated community bank leverage ratio levels as proxies for the following PCA categories: adequately capitalized, undercapitalized and significantly undercapitalized. If an electing banking organization had met certain community bank leverage ratio levels, it would have been considered to have met the capital ratio requirements within the applicable corresponding PCA category and been subject to the same restrictions that currently apply to any other insured depository institution in the same PCA category.

After issuing the proposal, the agencies proposed a regulatory capital schedule that would have been simpler than Schedules RC-R of the Call Report and HC-R of Form FR Y-9C for use by electing banking organizations. On this proposed reporting schedule, the community bank leverage ratio calculation would have required a banking organization to report significantly less information than under the generally applicable rule.

B. Summary of Comments

Collectively, the agencies received approximately 50 public comment letters and approximately 500 form letters on the proposal from depository institutions, depository institution holding companies, trade associations, and other interested parties. As further detailed in the more comprehensive discussion of the final rule, commenters generally supported the agencies' efforts to propose a simpler regulatory capital framework but expressed concerns with some aspects of the proposal.

Several commenters expressed concern that calibrating the community bank leverage ratio at 9 percent is unnecessarily punitive and would disqualify too many banking organizations from being able to use the community bank leverage ratio framework. These commenters favored calibrating the community bank leverage ratio at 8 percent. One commenter suggested calibrating the community bank leverage ratio at 10 percent, the highest permitted by statute, because higher leverage ratios may lower the adverse effects of crises on U.S. GDP, which exceeds the costs that may arise from lower capital formation and lower GDP.

Many commenters also expressed concern that the proposed PCA proxy levels would have added unnecessary complexity to the community bank leverage ratio framework, and therefore recommended their elimination in the final rule. Some commenters expressed concern that the agencies would not permit an insured depository institution with a community bank leverage ratio at or below 9 percent to demonstrate that it is well capitalized under the generally applicable rule before assigning it a PCA category other than well capitalized. Other commenters indicated that some of the qualifying criteria were unnecessary (such as that for MSAs), overly complex to calculate (such as the off-balance sheet exposures criterion), or did not appropriately reflect the risks of underlying assets.

Multiple commenters suggested that the proposed numerator of the community bank leverage ratio should be based on tier 1 capital, as defined under the generally applicable rule, rather than on a new "tangible equity" measure. Commenters expressed concern that examiners may penalize banking organizations for opting into or out of the framework, and that the community bank leverage ratio could become the de facto minimum capital requirement for all community banking organizations.

III. Final Rule

A. Qualifying Criteria for the Community Bank Leverage Ratio Framework

The agencies received comments requesting that they eliminate or modify certain of the qualifying criteria in the proposal, particularly the MSA and the temporary difference DTA criteria. Many of these commenters also suggested using tier 1 capital, as recently modified by the agencies in a final rule (simplifications rule),[8] as the numerator of the leverage ratio. Several commenters noted that some of the qualifying criteria, such as the proposed limit for MSAs, could prevent many otherwise qualifying community banking organizations from opting into the community bank leverage ratio framework. Finally, some commenters suggested that the off-balance sheet criterion, as proposed, would be overly burdensome for community banking organizations to calculate and that certain elements included in this criterion should be eliminated as they do not represent material risk to banking organizations.

After considering the comments, the agencies have decided to modify the definition of "qualifying community banking organization" by removing the MSA criterion and the temporary difference DTA criterion. Exposures to MSAs and temporary difference DTAs will be addressed through the use of tier 1 capital as the numerator, which requires deduction of such assets to the extent they exceed certain regulatory thresholds, rather than the proposed use of "tangible equity." The use of tier 1 capital as the numerator is discussed in more detail below in this Supplementary Information. Under the final rule, a qualifying banking organization must not be an advanced approaches banking organization and must have:

- A leverage ratio of greater than 9 percent;
- Total consolidated assets of less than $10 billion;

[8] *See* 84 FR 35243 (July 22, 2019). The agencies also are adopting a final rule that permits banking organizations not subject to the advanced approaches capital rule to implement the simplifications rule in the quarter beginning January 1, 2020, or wait until the quarter beginning April 1, 2020.

- Total off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and
- Total trading assets plus trading liabilities of 5 percent or less of total consolidated assets.[9]

1. Leverage Ratio of Greater than 9 Percent

Under the proposal, a banking organization would have been required to have a community bank leverage ratio of greater than 9 percent in order to be eligible to opt into the community bank leverage ratio framework. The final rule adopts the 9 percent calibration of the community bank leverage ratio as proposed. The proposal also would have allowed an electing banking organization to remain in the community bank leverage ratio framework despite having a community bank leverage ratio which subsequently fell to 9 percent or less. As discussed above, the final rule eliminates the PCA proxy levels and, therefore, an electing banking organization will generally be required to maintain a leverage ratio of greater than 9 percent in order to be eligible to use the community bank leverage ratio framework. A two-quarter grace

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

period, as discussed in further detail below, is available for a banking organization that ceases to meet any of the qualifying criteria, including a banking organization whose leverage ratio falls to 9 percent or less, but is greater than 8 percent. During the grace period, a banking organization may continue to be treated as a qualifying community banking organization and is presumed to satisfy the "well capitalized" ratio requirements and be in compliance with the generally applicable rule without having to calculate and report risk-based capital ratios.

2. Total Consolidated Assets

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

A commenter indicated that the Act places no limit on the ability of the agencies to apply the community bank leverage ratio framework to institutions with $10 billion or more in total assets and suggested that the agencies should apply the community bank leverage ratio framework based on suitability for relief rather than on size thresholds. The same commenter urged the agencies to take into account acquisitions and to index applicability to incorporate inflation or other relevant market measures.

The agencies have considered the concerns raised with regard to the asset size threshold. The agencies continue to believe that the community bank leverage ratio framework is appropriate for most banking organizations with total consolidated assets of less than $10 billion that meet the other qualifying criteria. The agencies believe that the generally applicable rule is appropriate for larger banking organizations and banking organizations with concentrations in off-balance sheet exposures and trading assets and liabilities because such banking organizations may present risks that are not appropriately captured by the community bank leverage ratio framework. The agencies recently finalized a rule to simplify the generally applicable rule, and have proposed to modify and tailor several of the prudential requirements applicable to banking organizations with $100 billion or more in total consolidated assets.[10,11] The agencies believe these revisions reflect an appropriate tailoring of regulations based on asset size and other risk characteristics to ensure that the requirements remain appropriate for the risk profiles of different banking organizations while also maintaining the safety and soundness of the banking industry. As such, the agencies are finalizing without modification the $10 billion in total assets size threshold.

3. Total Off-Balance Sheet Exposures

Under the proposal, a qualifying community banking organization would have been required to have total off-balance sheet exposures of 25 percent or less of its total consolidated assets, as of the end of the most recent calendar quarter. The agencies included this qualifying criterion in the community bank leverage ratio framework because the proposed community bank leverage ratio included only on-balance sheet assets in its denominator and thus would not have required a qualifying community banking organization to hold capital against its off-balance sheet exposures. This qualifying criterion was intended to reduce the likelihood that a qualifying community banking organization with significant off-balance sheet exposures would

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[10] *See* 84 FR 35243 (July 22, 2019).
[11] *See* 83 FR 66024 (December 21, 2018) and 84 FR 24296 (May 24, 2019).

hold less capital under the community bank leverage ratio framework than under the generally applicable rule.

Under the proposal, total off-balance sheet exposures would have been calculated as the sum of the notional amounts of certain off-balance sheet items against which banking organizations would hold capital under the generally applicable rule[12] as of the end of the most recent calendar quarter. Total off-balance sheet exposures would have included:

a. The unused portions of commitments (except for unconditionally cancellable commitments);
b. Self-liquidating, trade-related contingent items that arise from the movement of goods;
c. Transaction-related contingent items (i.e., performance bonds, bid bonds and warranties);
d. Sold credit protection in the form of guarantees and credit derivatives;
e. Credit-enhancing representations and warranties;
f. Off-balance sheet securitization exposures;
g. Letters of credit;
h. Forward agreements that are not derivative contracts; and
i. Securities lending and borrowing transactions.

Total off-balance sheet exposures would have excluded the notional amount for all derivative contracts except credit derivatives for sold credit protection. As stated in the proposal,

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[12] *See* 12 CFR 324.33 (FDIC); 12 CFR 217.33 (Federal Reserve); 12 CFR 3.33 (OCC)

the agencies believe that the notional amount for derivatives (other than credit derivatives for sold credit protection) is not an appropriate indicator of credit risk and could inadvertently disqualify a banking organization from using the community bank leverage ratio framework if the banking organization is otherwise appropriately using derivatives to hedge its risks. The proposed components of total off-balance sheet exposures would have been generally consistent with off-balance sheet items that are included in risk-weighted assets in the generally applicable rule, except for securities lending and borrowing transactions. Securities lending and borrowing transactions would have been assigned amounts in accordance with the reporting instructions for these items in Schedules RC-L of the Call Report or HC-L of Form FR Y-9C, as applicable. The proposed calculation of total off-balance sheet exposures would have been simpler than under the generally applicable rule, which requires that off-balance sheet exposures be converted to on-balance sheet equivalents for purposes of determining capital requirements.

The agencies received several comments and requests for clarification on the proposed limit for off-balance sheet exposures. One commenter expressed concern that the process for categorizing off-balance sheet exposures, such as off-balance sheet securitizations, was overly complex, and the commenter would prefer that the off-balance sheet filter instead identify specific transactions and products routinely used by community banks that meet the off-balance sheet exposure definition. Another commenter found the wording in the proposed rule unclear and noted that it would be beneficial for the agencies to reference the specific Schedule RC-L line items that would be included in the 25 percent limitation for off-balance sheet line items.

Several commenters expressed concern about the inclusion of residential mortgage-related off-balance sheet items. One commenter wrote that the agencies should not exclude banking organizations from using the community bank leverage ratio framework due to any mortgage origination-related hedging activity. The commenter expressed concern that as proposed the criterion may capture certain exposures related to routine functioning of the mortgage market. Another commenter noted that mortgage sales to certain Federal Home Loan Banks (FHLBs) through the Mortgage Partnership Finance Program could be captured by the off-balance sheet qualifying criteria. A commenter suggested that FHLB advances should be eliminated from the calculation because such advances are typically secured at a significant discount relative to underlying loan collateral. The commenter was concerned that a banking organization may be disqualified from the community bank leverage ratio framework due to its level of unfunded commitments and FHLB lines of credit.

Finally, one commenter requested clarification on whether sales of when-issued mortgage-backed security contracts are included in the 25 percent limitation, stating that these items should be excluded because, in the commenter's view, they are of lower risk.

The agencies considered the commenters' concerns and have decided to finalize the off–balance sheet qualifying criterion as proposed with several clarifications. The agencies are clarifying that the off-balance sheet qualifying criterion incorporates off-balance sheet exposures currently required to be captured and reported by banking organizations in Schedules RC-L and RC-R of the Call Report or HC-L and HC-R of Form FR Y-9C which thereby permits these firms to leverage their existing identification, measurement and reporting infrastructure for these exposures. The agencies also are clarifying that banking organizations are only required to identify off-balance sheet securitizations to the extent that they are not already captured as part of another off-balance sheet exposure category. For example, if a banking organization issues a credit enhancing representation and warranty that also meets the definition of a traditional securitization, the final rule does not require that such an exposure be separately identified as an off-balance sheet securitization exposure because the exposure would already be captured through the requirement to include credit enhancing representations and warranties in the off-balance sheet qualifying criterion.

The agencies also are clarifying that hedging techniques related to mortgage banking activities are generally only captured in the off-balance sheet qualifying criterion to the extent such exposures are treated as off-balance sheet exposures and subject to credit conversion factors under the generally applicable rule. For this reason, typical mortgage banking activities such as forward loan delivery commitments between banking organizations and investors, which typically are derivative contracts, were excluded from the off-balance sheet exposure criterion in the proposal and are excluded under the final rule. Put and call options on mortgage-backed securities are also typically derivatives and excluded from this criterion under the final rule. A contractual obligation for the future purchase of a “to be announced” (i.e., when-issued) mortgage securities contract, that does not meet the definition of a derivative contract under the generally applicable rule, would be captured in the off-balance sheet qualifying criterion as it would be considered a forward agreement under the generally applicable rule. In contrast, a contractual obligation for the future sale (rather than purchase) of a “to be announced” mortgage securities contract, that does not meet the definition of a derivative contract under the generally applicable rule, would not be captured in the off-balance sheet qualifying criterion as it would not be considered a forward agreement under the generally applicable rule.

Banking organizations that sell mortgages to certain FHLBs through the Mortgage Partnership Finance Program may provide a credit enhancement to the FHLB. If these credit enhancements meet the definition of a credit-enhancing representation and warranty or would otherwise be considered an off-balance sheet securitization under the generally applicable rule, then the exposure amount would be included in the off-balance sheet qualifying criterion. Because these are credit risk exposures that would be assigned risk-based capital under the generally applicable rule, inclusion in the off-balance sheet qualifying criterion is appropriate.

The agencies analyzed average off-balance sheet exposures for banking organizations with less than $10 billion in total consolidated assets and observed that the vast majority of such banking organizations report off-balance sheet exposures totaling less than 25 percent of total consolidated assets, as of March 31, 2019. Accordingly, the agencies have determined that both the definition and calibration of the total off-balance sheet exposures qualifying criterion should allow a meaningful number of banking organizations to use the community bank leverage ratio framework without unduly restricting lending practices. The criterion should help to prevent banking organizations from engaging in substantial off-balance sheet activity without a commensurate capital requirement.

4. Total Trading Assets and Trading Liabilities

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

The agencies recognize the potential elevated levels of risk and complexity that can be associated with certain trading activities. For this reason, banking organizations with significant trading assets and trading liabilities are subject to a market risk capital requirement under the generally applicable rule.[13] In contrast, electing banking organizations would not be required to calculate additional market risk capital requirements and, as a result, the community bank leverage ratio framework may not appropriately capitalize for material amounts of trading assets and trading liabilities. In addition, elevated levels of trading activity can produce a heightened level of earnings volatility, which has implications for capital adequacy. Therefore, the agencies do not believe it is appropriate to make the community bank leverage ratio framework available to banking organizations with material market risk exposure. However, the agencies do not believe that low levels of trading activity should preclude a banking organization from using the community bank leverage ratio framework.

Based on the agencies' analysis, the vast majority of banking organizations with less than $10 billion in total consolidated assets have total trading assets and trading liabilities well below 5 percent of their total consolidated assets, as of March 31, 2019. The agencies believe that the proposed 5 percent threshold will help ensure that banking organizations that engage in significant trading activity are not subject to the community bank leverage ratio framework. Further, this criterion is generally consistent with section 203 of the Act, which excludes a community banking organization from proprietary trading restrictions if its total trading assets and trading liabilities are 5 percent or less of its total consolidated assets. The agencies did not receive any comment with regard to the proposed qualifying criterion for total trading assets and trading liabilities and are finalizing this requirement as proposed.

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[13] 12 CFR Part 3, Subpart F (OCC); 12 CFR Part 217, Subpart F (Board); 12 CFR Part 324, Subpart F (FDIC).

5. Advanced Approaches Banking Organizations

Under the proposal, advanced approaches banking organizations would not have been eligible to use the community bank leverage ratio framework. The agencies received no comment on this requirement and believe that, in general, section 201 of the Act is designed to provide regulatory burden relief for banking organizations with less than $10 billion in total consolidated assets and that have a limited risk profile.

A banking organization with less than $10 billion in total consolidated assets may be subject to the advanced approaches rules if it is a subsidiary of a much larger banking organization. While these types of advanced approaches banking organizations may be relatively small banking organizations, the agencies do not believe they share the same type of risk characteristics as non-complex community banking organization for which the community bank leverage ratio framework is appropriate. Consequently, under the final rule, an advanced approaches banking organization will not be eligible to use the community bank leverage ratio framework, regardless of its size.

B. Definitions of the Leverage Ratio's Numerator and Denominator

1. Numerator

Under the proposal, the numerator of the community bank leverage ratio would have been tangible equity, calculated as a banking organization's total bank equity capital or total holding company equity capital, as applicable, determined in accordance with the reporting instructions to Schedule RC of the Call Report or Schedule HC of Form FR Y–9C, prior to including minority interests, less: (i) accumulated other comprehensive income (AOCI), (ii) all intangible assets (other than MSAs), and (iii) DTAs, net of any related valuation allowances, that arise from net operating loss and tax credit carryforwards, each as of the end of the most recent calendar quarter. Tangible equity would not have included minority interests (equity of a consolidated subsidiary that is not owned by the qualifying community banking organization) because minority interests do not have the same loss absorption capacity as other components of tangible equity at the consolidated banking organization level.

The agencies received numerous comments in response to the proposed use of tangible equity as the numerator of the community bank leverage ratio. Many commenters noted that banking organizations are already familiar with the current tier 1 capital calculation, and that tier 1 capital, therefore, should be used to calculate the community bank leverage ratio instead of tangible equity. A commenter also argued that the burden associated with implementing the community bank leverage ratio framework would exceed the reporting relief provided by reduced complexity. Several commenters expressed concerns that it would be too complex for a banking organization to switch between the calculation of tangible equity and tier 1 capital as it either opts into or out of the community bank leverage ratio framework or no longer meets the definition of a qualifying community banking organization. Several commenters recommended the agencies instead use tier 1 capital for the numerator, suggesting that this would not only simplify the calculation when switching between frameworks but would also increase comparability across all banking organizations. Commenters also preferred to use tier 1 capital for the numerator in order to ensure that certain instruments, such as trust preferred securities (TruPS) and common stock issued by bank subsidiaries, would count as regulatory capital under the community bank leverage ratio framework, up to their current limits. Finally, several commenters noted that use of tier 1 capital as the numerator would avoid the need for revisions to state banking laws that reference tier 1 capital, including but not limited to state law lending limits.

Multiple commenters, although not explicitly expressing a preference for using tier 1 capital as the numerator, did request that certain adjustments be made to the proposed definition of tangible equity. A commenter recommended that cumulative preferred stock with a stated final maturity date be included as an eligible component of tangible equity. Several commenters requested that the agencies allow TruPS to count as tangible equity. A commenter recommended that the agencies include common stock minority interest of up to 10 percent of the numerator of the community bank leverage ratio where the subsidiary holds risk-weighted assets of at least the amount of common stock minority interest being included. Finally, some commenters expressed concern that the CECL methodology under U.S. generally accepted accounting principles could impact eligibility for the community bank leverage ratio framework and recommended that the agencies provide for an ongoing adjustment to the community bank leverage ratio numerator that approximates the incremental regulatory capital impact of CECL credit loss allowance levels over levels currently recorded under U.S. generally accepted accounting principles.

Taking into account the concerns of commenters and seeking to balance burden reduction with safety and soundness, the agencies have decided to replace the proposed tangible equity measure with the current calculation of tier 1 capital as the numerator of the community bank leverage ratio. This change would align the final rule's calculation of the leverage ratio with the generally applicable rule's leverage ratio, a calculation methodology with which banking organizations are already familiar, and therefore would streamline adoption of the community bank leverage ratio framework. In addition, the use of tier 1 capital in the community bank leverage ratio framework will enhance comparability among banking organizations and remove the need for separate qualifying criteria for MSAs and temporary difference DTAs, as discussed previously. Based on the agencies' analysis, for the majority of banking organizations with less than $10 billion in total consolidated assets, the proposed tangible equity and the current tier 1 capital figures result in nearly the same amount of regulatory capital. Finally, the use of tier 1 capital as the numerator of the leverage ratio allows for the incorporation of changes from the simplifications rule, which further simplifies the tier 1 capital calculation by amending the treatment of MSAs, temporary difference DTAs, investments in capital instruments, and minority interests.[14]

The agencies note that the generally applicable rule requires deductions from tier 2 capital related to investments in capital instruments of unconsolidated financial institutions when such investments exceed certain limits and that such deductions can affect the calculation of tier 1 capital.[15] This corresponding deduction approach requires a banking organization to make deductions from the same component of capital for which the underlying instrument would qualify if it was issued by the banking organization itself. In addition, if a banking organization does not have a sufficient amount of a specific regulatory capital component against which to effect the deduction, the shortfall must be deducted from the next higher (that is, more subordinated) regulatory capital component. Without any revision to the corresponding deduction approach, an electing banking organization with investments in tier 2 capital instruments of other financial institutions could have been required to apply the corresponding deduction approach potentially resulting in deductions from tier 1 capital. Under the final rule, however, since the community bank leverage ratio framework does not have a total capital requirement, an electing banking organization is neither required to calculate tier 2 capital nor

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[14] *See* 84 FR 35234 (July 22, 2019)
[15] *See* 12 CFR 3.22(c)(2) (OCC); 12 CFR 217.22(c)(2) (Board); 12 CFR 324.22(c)(2) (FDIC).

make any deductions that would have been taken from tier 2 capital under the generally applicable rule. Therefore, if an electing banking organization has investments in the capital instruments of an unconsolidated financial institution that would qualify as tier 2 capital of the electing banking organization under the generally applicable rule (tier 2 qualifying investments), and the banking organization's total investments in the capital of unconsolidated financial institutions exceed the threshold for deduction, the banking organization is not required to deduct the tier 2 qualifying investments.

An electing banking organization is only required to make a deduction from its common equity tier 1 capital or tier 1 capital if the sum of its investments in the capital of an unconsolidated financial institution is in a form that would qualify as common equity tier 1 capital or tier 1 capital instruments of the electing banking organization and exceeds the threshold for deduction. The agencies do not believe this is a common occurrence and observed that as of March 31, 2019, very few community banking organizations made a deduction from tier 2 capital. Therefore, the agencies believe it is appropriate to clarify this aspect of the tier 1 calculation for qualifying community banking organizations to ensure that it can be made as simply as possible. Further, although the community bank leverage ratio framework will not require qualifying community banking organizations to make deductions from their regulatory capital calculations for investments in tier 2 capital instruments issued by other financial institutions, the agencies will continue to monitor such investments and will address, on a case-by-case basis, any instances where such activity potentially creates an unsafe or unsound practice or condition.

With respect to a banking organization that has not elected the community bank leverage ratio framework but invests in an instrument (*e.g.*, subordinated debt instrument) issued by an electing banking organization that would qualify as tier 2 capital under the generally applicable rule, the investing banking organization would continue to treat the instrument as tier 2 capital notwithstanding the electing banking organization's capital treatment of the instrument.

The agencies believe adoption of tier 1 capital, including the adjustments described above, also addresses commenters' concerns about the inclusion of TruPS,[16] certain other preferred stock instruments, and minority interests includable in the numerator of the leverage ratio calculation by maintaining the same treatment that currently applies under the generally applicable rule's calculation for tier 1 capital for non-advanced approaches banking organizations.

2. Denominator

Under the proposal and consistent with the Act, the community bank leverage ratio denominator would have been based on a banking organization's average total consolidated assets. Specifically, average total consolidated assets for purposes of the denominator would have been calculated in accordance with the reporting instructions to Schedules RC–K on the Call Report or HC–K on Form FR Y–9C, as applicable, less the items deducted from the numerator, other than AOCI. The proposed denominator therefore would have been similar, but not identical, to the denominator of the generally applicable rule's leverage ratio.

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[16] Banking organizations that are currently grandfathered and eligible to include TruPS in tier 1 capital can continue to include TruPS in tier 1 capital under the community bank leverage ratio framework, subject to existing limits. *See* 12 CFR 3.20(c)(3) (OCC); 12 CFR 217.20(c)(3) (Board); 12 CFR 324.20(c)(3) (FDIC). *See* 12 CFR 3.22(c)(2)(iii)(A) (OCC); 12 CFR 217.22(c)(2)(iii)(A) (Board); 12 CFR 324.22(c)(2)(iii)(A) (FDIC). *See* 12 CFR 217.300(c) (Board).

The agencies received a limited number of comments on the proposed denominator for the community bank leverage ratio. A commenter suggested the agencies consider seasonality in total assets and allow for the use of four-quarter average total consolidated assets for the denominator. The agencies note that the denominator as proposed would be average total consolidated assets as described above, which would have substantially maintained consistency with the current regulatory capital calculation for average total consolidated assets. Another commenter asked that the agencies consider allowing a deduction from the denominator for pass-through reserve balances held with the Federal Reserve System. The commenter argued that allowing this deduction would refine this calculation for correspondent banking organizations to align more closely their capital requirements to their risk and would, in the commenter's view, not unduly discourage correspondent banking organizations from assisting community banking organization clients with holding proper reserve balances with the Federal Reserve System.

The agencies note that the leverage ratio in the generally applicable rule is designed to be a simple, non-risk-based on-balance sheet measure. Adjusting the leverage ratio denominator as commenters suggested would add unnecessary complexity to the measure. Therefore, the agencies are finalizing the leverage ratio denominator as proposed, except that items deducted from the denominator will align with the deductions from tier 1 capital as the numerator rather than from the proposed tangible equity measure as the numerator.

C. Calibration of the Leverage Ratio in Order to Qualify for the Community Bank Leverage Ratio

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

In general, commenters stated that the community bank leverage ratio requirement should be lowered to 8 percent, citing the lower end of the range of the requirement under section 201 of the Act. Commenters indicated that such a calibration would more closely track the current well capitalized thresholds under PCA and would allow more banking organizations to be eligible to use the community bank leverage ratio framework. Several commenters wrote that the proposed community bank leverage ratio requirement and qualifying criteria were excessively conservative, particularly combined with the assumption that the adoption of CECL would, in the commenters' view, reduce firms' regulatory capital levels. A commenter suggested a banking organization should have the option to phase in the impact of the day-one CECL adjustment recorded in retained earnings over a five year period when it elects to use the community bank leverage ratio framework to calculate regulatory capital. A few commenters indicated that the proposed community bank leverage ratio calibration would not factor in the adjusted allowance for credit loss for up to 1.25 percent of risk-weighted assets, which would be permitted under the generally applicable rule for purposes of the total capital ratio, but would not be relevant under the community bank leverage ratio. Finally, a commenter recommended a dynamic calibration that would vary depending on the business cycle to accommodate recovery and encourage lending in a stressed environment.

After considering the comments received on calibration, the agencies have decided to adopt a 9 percent leverage ratio as a qualifying criterion for the community bank leverage ratio framework. The agencies believe that a 9 percent calibration, with complementary qualifying criteria for asset size, off-balance sheet assets, and trading assets and trading liabilities, generally maintains the current level of regulatory capital held by electing banking organizations and supports the agencies' goals of reducing regulatory burden for as many community banking organizations as possible. For example, even though an 8 percent leverage ratio would have allowed more banking organizations to opt into the community bank leverage ratio framework, the reduced calibration could create an inappropriate incentive for some qualifying community banking organizations to hold less regulatory capital than they do today. Rather than lowering the minimum community bank leverage ratio from 9 percent to 8 percent, the agencies determined that it would be more appropriate to alleviate the potential burden associated with switching regulatory capital frameworks as capital levels fall by permitting an electing banking organization to have its ratio drop below 9 percent temporarily (*i.e.*, the two-quarter grace period). This grace period will provide an electing banking organization time to either comply with the qualifying criteria or to prepare to comply with the generally applicable rule and file the appropriate regulatory reports.

The agencies estimate that, as of the first quarter of 2019, the vast majority of banking organizations with under $10 billion in total consolidated assets would meet the definition of a qualifying community banking organization and have a leverage ratio above 9 percent. Based on reported data as of March 31, 2019, there are 5,221 insured depository institutions with less than $10 billion in total consolidated assets and 231 depository institution holding companies with less than $10 billion in total consolidated assets that file the form FR Y-9C.[17] The agencies estimate that approximately 85 percent of such insured depository institutions and approximately 76 percent of such depository institution holding companies would qualify to use the community bank leverage ratio framework under the 9 percent calibration and other qualifying criteria. The agencies believe the community bank leverage ratio framework in this final rule, including a 9 percent calibration, meets the objectives described above.

In February of 2019, the agencies issued a final rule to amend the generally applicable rule in response to CECL (CECL transitions final rule).[18] The CECL transitions final rule provides for an optional three-year transition arrangement that will allow a banking organization to phase in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, deferred tax assets, allowance for credit losses, and average total consolidated assets. These day-one regulatory capital effects will be phased in over the transition period on a

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[17] As of March 31, 2019, there are 4,261 depository institution holding companies with less than $10 billion in total consolidated assets. More than 95 percent of such holding companies are not subject to the capital rule because they have less than $3 billion in total consolidated assets and meet certain additional criteria to qualify for the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement. *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[18] 84 FR 4222 (February 14, 2019).

straight line basis. Under this final rule, the leverage ratio under the community bank leverage ratio framework is generally calculated in the same manner as the generally applicable rule's leverage ratio. Accordingly, an electing banking organization is also eligible to phase-in any adverse day-one regulatory capital effects of CECL adoption on retained earnings, DTAs, allowance for credit losses, and average total consolidated assets. Banking organizations will retain their three-year transition period without reset (i.e., the transition period cannot be extended) upon passage in or out of the community bank leverage ratio framework.

D. Ability to Opt Into and Out of the Community Bank Leverage Ratio Framework

Under the proposal, a qualifying community banking organization with a community bank leverage ratio greater than 9 percent could have elected to use the community bank leverage ratio framework at any time. Such a banking organization would have indicated its election by completing a community bank leverage ratio reporting schedule in its Call Report or Form FR Y–9C, as applicable. Also, under the proposal, an electing banking organization would have been able to opt out of the community bank leverage ratio framework and become subject to the generally applicable rule by completing the associated reporting requirements on Schedules RC–R of the Call Report or HC–R of Form FR Y–9C, as applicable. Additionally, the agencies noted in the proposal that an electing banking organization would have been able to opt out of the community bank leverage ratio framework between reporting periods by providing the capital ratios under the generally applicable rule to its appropriate regulators at the time of opting out. A banking organization that opted out of the community bank leverage ratio framework would have been required to meet the qualifying criteria included in the definition of a qualifying community banking organization and have a community bank leverage ratio of greater than 9 percent to be able to opt back into the community bank leverage ratio framework.

Several commenters suggested that the optionality aspect should be further emphasized to both bankers and agency examiners. These commenters expressed concern that banking organizations that do not opt in could be seen as outliers and could be pressured to raise capital and opt into the community bank leverage ratio framework, or that procedural issues would make it too difficult in practice for banking organizations to opt out.

The agencies have considered the comments and are finalizing the election to use the community bank leverage ratio framework as proposed. Due to the adoption of tier 1 capital and the leverage ratio into the community bank leverage ratio framework, the agencies will update accordingly the proposed reporting changes to the Call Report and Form FR Y-9C. The agencies are further clarifying that the community bank leverage ratio framework is an optional framework, based on section 201 of the Act, which serves the purpose of removing the burden of calculating and reporting risk-based capital ratios for banking organizations that meet certain criteria. The agencies are also clarifying that a banking organization can opt out of the community bank leverage ratio framework at any time, without restriction, by reverting to the generally applicable rule and providing the capital ratios under the generally applicable rule to its appropriate regulators at the time of opting out.

One commenter requested that the rule require that banking agencies notify state bank regulators when a state-chartered electing banking organization opts out of the framework between reporting periods. Under the final rule, a qualifying community banking organization may opt into or out of the community bank leverage ratio framework at any time and for any reason. The agencies, therefore, are not including a mandatory notification requirement in the final rule, as this could discourage banking organizations from electing to apply and report under the generally applicable rule. The agencies note that the Call Report and Form FR Y-9C are available to the public and therefore additional notice is not necessary.

As described above, a banking organization generally opts into and out of the community bank leverage ratio framework through its Call Report or Form FR Y-9C. As a result, a banking organization's compliance with the community bank leverage ratio framework or the generally applicable rule will be determined based upon the capital framework it has elected in its last filed Call Report or Form FR Y-9C.[19]

E. Ongoing Compliance with the Community Bank Leverage Ratio Framework

1. Meeting the Definition of a Qualifying Community Banking Organization

Under the proposal, an electing banking organization that no longer met the proposed qualifying criteria would have been required, within two consecutive calendar quarters, either to meet the qualifying criteria again or to demonstrate compliance with the generally applicable rule. During the proposed grace period, the banking organization could have continued to be treated as a qualifying community banking organization and could have, therefore, continued calculating and reporting a community bank leverage ratio to determine its compliance with other statutes and regulations.

The agencies did not receive specific comments relating to the mechanics of the proposed grace period. One commenter argued that a six-month transition period would be too short for banking organizations to sell MSAs, if necessary, or prepare for the different treatment in the

[19] *See* section I in this Supplementary Information for a discussion on the interaction between the effective date of the final rule and when a banking organization elects to use the community bank leverage ratio framework.

generally applicable rule. Other commenters noted that the use of tier 1 capital would ease any transition back to the risk-based capital requirements. The agencies continue to believe that this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in risk profile, and are therefore finalizing the two-quarter grace period largely as proposed. Under the final rule, the grace period begins as of the end of the calendar quarter in which the electing banking organization ceases to satisfy any of the qualifying criteria and will end after two consecutive calendar quarters. For example, if the electing banking organization no longer meets one of the qualifying criteria as of February 15, and still does not meet the criteria as of the end of that quarter, the grace period for such a banking organization will begin as of the end of the quarter ending March 31. The banking organization may continue to use the community bank leverage ratio framework as of June 30, but will need to comply fully with the generally applicable rule (including the associated reporting requirements) as of September 30, unless the banking organization once again meets all qualifying criteria of the community bank leverage ratio framework, including a leverage ratio of greater than 9 percent, by that date.

Under the proposal, an electing banking organization that ceased to meet the qualifying criteria as a result of a business combination would have received no grace period and immediately would have been required to revert to the generally applicable rule. The agencies continue to believe this approach is appropriate, as banking organizations would need to consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements. An electing banking organization that expects that it would not meet the qualifying criteria as a result of a business combination would need to provide its pro forma capital ratios under the generally applicable rule to its appropriate regulator as part of its merger application, if applicable, and fully comply with the generally applicable rule for the regulatory reporting period during which the transaction is completed.

2. Treatment of a Community Banking Organization that Falls Below Certain Leverage Ratio Levels

Under the proposal, an electing banking organization that had a community bank leverage ratio greater than 9 percent would have been considered well capitalized. In addition, an electing banking organization would have been considered to have met the minimum capital requirements under the generally applicable rule if its community bank leverage ratio was 7.5 percent or greater.[20] Under the proposal, an electing banking organization could have chosen to stop using the community bank leverage ratio framework and instead become subject to the generally applicable rule. The proposal also provided an electing banking organization with a declining community bank leverage ratio (e.g., below 9 percent) with the option to remain in the community bank leverage ratio framework indefinitely, rather than requiring the firm to revert to the generally applicable rule. Under the proposal, an electing banking organization that was an insured depository institution and no longer exceeded the 9 percent community bank leverage ratio would have been subject to community bank leverage ratio levels that would serve as

[20] Under the proposal, an electing banking organization that is a depository institution holding company would no longer be considered well capitalized if the holding company had a community bank leverage ratio of 9 percent or less.

proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA capital categories.[21]

The agencies received comments and requests for clarification regarding both the proposed PCA proxy levels and the grace period for a banking organization that has a community bank leverage ratio at or below 9 percent. One commenter requested that the agencies clarify when PCA consequences begin to apply. Another commenter indicated that the framework should require a banking organization that falls below the well-capitalized level to immediately begin reporting capital ratios under the generally applicable rule. Another commenter proposed that, instead of instituting the PCA proxy levels, the agencies should give qualifying banking organizations with a community bank leverage ratio between 8 percent and 9 percent a two-quarter grace period after which they would either need to restore their community bank leverage ratio to greater than 9 percent or revert to the generally applicable rule.

The agencies also received comments in response to the proposal's incorporation of community bank leverage ratio levels as proxies for the adequately capitalized, undercapitalized, and significantly undercapitalized PCA categories. In general, commenters noted that the establishment of a new, separate PCA framework within the community bank leverage ratio framework is not necessary or required under section 201 of the Act, expressing concern that the community bank leverage ratio framework could, in the future, function as the new, de facto

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

minimum capital requirement, particularly if it is difficult for a banking organization to switch back to the generally applicable rule. Commenters also noted community banking organizations' sensitivity to several restrictions that could arise if the community banking organization is determined to be less than well capitalized, including restrictions on funding sources such as limits on brokered deposits, and the inability to open branches or make acquisitions. Some commenters suggested alternative calibration levels for the PCA proxy levels.

In response to commenter concerns regarding the proposed PCA proxy levels for electing banking organizations that no longer exceed a 9 percent leverage ratio, the agencies decided not to incorporate the proposed PCA proxy levels in the final rule. Therefore, under the final rule, banking organizations that are insured depository institutions and that have a leverage ratio of greater than 9 percent are deemed to have met the well capitalized capital ratio requirements for PCA purposes. Further, the agencies included the requirement to have a leverage ratio greater than 9 percent as a qualifying criterion in the definition of a qualifying community banking organization. Consequently, the two-quarter grace period described above also applies depending on the level of an electing banking organization's leverage ratio. Under the final rule, an electing banking organization that has a leverage ratio that is greater than 8 percent and equal to or less than 9 percent is allowed a two-quarter grace period after which it must either (i) again meet all qualifying criteria or (ii) apply and report the generally applicable rule. During this two-quarter period, a banking organization that is an insured depository institution and that has a leverage ratio that is greater than 8 percent would be considered to have met the well-capitalized capital ratio requirements for PCA purposes. An electing banking organization with a leverage ratio of 8 percent or less is not eligible for the grace period and must comply with the generally applicable rule, i.e. for the quarter in which the banking organization reports a leverage ratio of 8 percent or less. An electing banking organization experiencing or anticipating such an event would be expected to notify its primary federal supervisory agency, which would respond as appropriate to the circumstances of the banking organization.

A commenter asked that the proposed rule be revised to provide expressly that for an otherwise qualifying community bank that is state chartered to be disqualified from using the community bank leverage ratio framework based on criteria other than the enumerated qualifying criteria, such a determination must be made jointly by (1) the bank's primary federal banking supervisory agency (either the FDIC or the Board) and (2) the appropriate state bank supervisor. The agencies expect to continue to work closely with the state bank supervisors, particularly with respect to institutions that are supervised jointly. However, the agencies are not revising the rule to require a joint determination of the federal supervisor and the state supervisor because such a requirement could prevent the federal supervisor from applying the capital standards it believes to be appropriate.

Finally, a commenter requested clarification that a bank that is a qualifying community bank may elect to use the community banking organization leverage ratio framework even if its parent holding company is not a qualifying community banking organization, or vice versa. Consistent with the proposal, a non-advanced approaches subsidiary insured depository institution may opt into the community bank leverage ratio framework even if its parent holding company is not a qualifying banking organization, and vice versa. The agencies do not have safety and soundness concerns with these scenarios and the agencies intended to allow such elections in the proposal.

F. FDIC Deposit Insurance Assessments Regulations

The FDIC’s deposit insurance assessments regulations also would be affected by the finalized community bank leverage ratio framework. The FDIC is considering, and is expected to adopt, a separate final rule to apply the community bank leverage ratio framework to the deposit insurance assessment system. The separate final rule amends the FDIC’s assessment regulations to price all qualifying community banks that elect to use the community bank leverage ratio framework as small banks, and continues to use the leverage ratio to determine assessment rates for established small banks. The separate final rule additionally clarifies that an electing bank that meets the definition of a custodial bank will have no change to its custodial bank deduction or reporting items required to calculate the deduction, and makes technical amendments to ensure that the assessment regulations continue to reference the PCA regulations for the definitions of capital categories used in the deposit insurance assessment system. Because the leverage ratio in this final rule is the same leverage ratio currently being used for assessment purposes, the separate final rule does not modify the FDIC’s assessment methodology. The FDIC does not expect that any changes to its deposit insurance assessment regulations pursuant to this separate final rule will have a material impact on aggregate assessment revenue or on rates paid by individual institutions.

G. Other Affected Regulations

Under the final rule, the community bank leverage ratio framework incorporates tier 1 capital. Therefore, Federal banking regulations outside of the regulatory capital rule (non-capital rules) can continue to reference tier 1 capital. The final rule amends standards referencing total capital so that an electing banking organization uses tier 1 capital instead of total capital. The final rule amends standards referencing risk-weighted assets so that an electing banking organization uses average total consolidated assets (i.e., the denominator of the leverage ratio) instead of risk-weighted assets.

In addition, certain of the agencies' non-capital rules refer to "capital stock and surplus" (or similar items) which is generally defined as tier 1 capital and tier 2 capital plus the amount of allowances for loan and lease losses not included in tier 2 capital. The final rule amends standards referencing "capital stock and surplus" (or similar items) so that an electing banking organization uses tier 1 capital plus allowances for loan and lease losses (or adjusted allowance for credit losses, as applicable). Thus, for example, for purposes of compliance with section 23A of the Federal Reserve Act, the Board's Regulation W should provide that for an electing banking organization "capital stock and surplus" means tier 1 capital plus allowances for loan and lease losses (or adjusted allowance for credit losses, as applicable).

H. Effective Date of the Final Rule

The final rule will be effective as of January 1, 2020, and banking organizations can utilize the community bank leverage ratio framework for purposes of filing their Call Report or Form FR Y–9C, as applicable, for the first quarter for 2020 (i.e., as of March 31, 2020). A banking organization's compliance with capital requirements for a quarter prior to the final rule's effective date shall be determined according to the agencies' generally applicable rule until the institution has filed their Call Report Form or FR Y–9C, as applicable, for the first quarter of 2020 and has indicated whether or not it has elected the community bank leverage ratio framework.

IV. Regulatory Analyses

A. Paperwork Reduction Act

The agencies' capital rule contains "collections of information" within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557-0318, Board is 7100-0313, and FDIC is 3064-0153. The information collections that are part of the agencies' capital rule will not be affected by this final rule and therefore no final submissions will be made by the FDIC or OCC to OMB 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) in connection with this rulemaking.[22] The agencies note that firms that elect to be subject to the community bank leverage ratio framework will become exempt from certain collections of

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[22] The OCC and FDIC submitted their information collections to OMB at the proposed rule stage. However, these submissions were done solely in an effort to apply a conforming methodology for calculating the burden estimates and not due to the proposed rule. OMB filed comments requesting that the agencies examine public comment in response to the proposed rule and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendation. In addition, OMB requested that the OCC and the FDIC note the convergence of the agencies on the single methodology. The agencies received no comments on the information collection requirements. Since the proposed rule stage, the agencies have conformed their respective methodologies in a separate final rulemaking titled, Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations, 84 FR 4222 (February 14, 2019), and the FDIC and OCC have had their submissions approved through OMB. As a result, the agencies' information collections related to the regulatory capital rules are currently aligned and therefore no submission will be made to OMB.

information that are part of the agencies' regulatory capital rule. Because of uncertainty regarding the number of firms that will elect to use the community bank leverage ratio framework, the agencies have not revised their estimates regarding the annual burden hours associated with such collections of information to account for elections to use the community bank leverage ratio framework. The agencies will reassess the annual burden hours associated with these information collections once there is more certainty regarding community bank leverage ratio elections.

The final rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100-0128 (Board)), which will be addressed in one or more separate Federal Register notices.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires an agency either to provide a final regulatory flexibility analysis with a final rule for which a general notice of proposed rulemaking is required or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[23] Under regulations issued by the SBA, the size standard to be considered a small business for banking entities subject to the proposed rule is $550 million or

[23] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

less in consolidated assets.[24] Under 5 U.S.C. 605(b), this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the *Federal Register* along with its rule.

Pursuant to the RFA, the OCC specifically considers (a) whether the final rule is likely to impact a substantial number of small entities; and (b) whether the economic impact on a substantial number of small entities is significant. To measure whether a rule would have a "significant economic impact," the OCC focuses on the potential costs of the rule on OCC-supervised small entities, consistent with guidance on the RFA published by the Office of Advocacy of the SBA.[25] As of December 31, 2017, the OCC supervised approximately 886 small entities.[26]

Although the minimum required capital under the community bank leverage ratio framework will, in most cases, be greater than that required for the generally applicable risk-based and leverage capital requirements, banks are not required to opt into the community bank leverage ratio framework. In addition, banks that do elect to use the community bank leverage

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[24] *See* 13 CFR 121.201.

[25] *See* "A Guide for Government Agencies; How to Comply with the Regulatory Flexibility Act," pp. 18-20 (Aug. 2017), *available at* https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.

[26] The OCC bases its estimate of the number of small entities on 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 C.F.R. §121.103(a), the OCC counts the assets of affiliated financial institutions when determining if the OCC should classify an OCC-supervised institution a small entity. The OCC uses December 31, 2017, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's Table of Size Standards.

ratio framework may, at any time, stop using the community bank leverage ratio framework. Accordingly, the final rule does not represent a regulatory increase in minimum regulatory capital requirements, and the primary cost to institutions for implementing the final rule will be administrative costs associated with required updates to their capital reporting procedures and reports.[27]

Banks that elect to use the community bank leverage ratio framework will have to make updates to their capital reporting procedures and reports. Banks will also have to make updates to existing policies and procedures to ensure compliance with regulations that will be affected by the final rule (*e.g.*, lending limits). The total impact associated with the final rule is the estimated annual tax benefit minus the compliance costs of modifying policies and procedures. The OCC estimates that each institution will spend no more than 160 hours to modify their policies and procedures. To estimate costs, the OCC uses a compensation rate of $114 per hour.[28] Therefore, the OCC estimates the cost per institution will not exceed $18,240 (160 hours x $114 per hour).

In general, the OCC classifies the economic impact of expected cost (to comply with a

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[27] The agencies intend to separately seek comment on the proposed changes to regulatory filings for qualifying community banking organizations that elect to use the community bank leverage ratio framework.

[28] To estimate wages, the OCC reviewed May 2018 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities excluding non-depository credit intermediaries (NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses $114 per hour, which is based on the average of the 90th percentile for nine occupations adjusted for inflation (2.8 percent as of Q1 2019, according to the BLS), plus an additional 33.2 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2018 for NAICS 522: credit intermediation and related activities).

rule) on an individual bank as significant if the total estimated monetized costs in one year are greater than (1) 5 percent of the bank's total annual salaries and benefits or (2) 2.5 percent of the bank's total annual non-interest expense. Based on the above criteria, the estimated cost of the rule could impose a significant economic impact at 19 of the 886 small entities if they all elected to opt into the community bank leverage ratio framework. The OCC uses 5 percent to determine a substantial number of small entities. Approximately 2 percent (19/886=2.1%) of small entities could be significantly impacted by the rule, which is not a substantial number of small entities.

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: An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the final regulation. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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).[29] 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.

As discussed, the Board is issuing this final rule to provide a simple measure of capital adequacy for certain community banking organizations. Under the final rule, depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets and meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent, will be eligible to opt into the community bank leverage ratio framework and, as a result, will not be required to calculate the risk-based capital ratios under the generally applicable capital rule.[30]

Although the final rule would provide some direct reduction in compliance burden associated with the capital rule, much of that reduction of compliance burden would be achieved through a separate notice to amend the regulatory reports associated with the capital rule. The Board does not expect that the final rule will result in a material change in the level of capital maintained by small banking organizations because (i) the framework is optional and (ii) a substantial majority of small banking organizations maintain capital in excess of both the

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[29] *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).

[30] In general, the Board's capital rule only applies to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding 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. Very few bank holding companies and savings and loan holding companies that are small entities would be impacted by the final rule because very few such entities are subject to the Board's capital rule.

generally applicable capital rule and the threshold established under the final rule. A small number of firms may face reduced capital requirements due to electing to use the community bank leverage ratio framework rather than the existing risk-based and leverage capital ratio framework. For example, the Board estimates that 448 small state member banks would be eligible for the community bank leverage ratio framework and that 4 of these small state member may face less stringent capital requirements as a result. The Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.[31] However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined “small entities” to include banking organizations with total assets of less than or equal to $550 million that are independently owned and operated or owned by a holding company with less than or equal to $550 million in total assets.[32] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5

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[31] 5 U.S.C. 601 et seq.
[32] The SBA defines a small banking organization as having $550 million or less in assets, where an organization'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). In its determination, the “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.

percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions.

For the reasons described below, the FDIC believes that the final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the FDIC has conducted and is providing a final regulatory flexibility analysis.

1. *The need for, and objectives of, the rule*

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

2. *The significant issues raised by the public comments in response to the initial regulatory flexibility analysis*

No significant issues were raised by the public comments in response to the initial regulatory flexibility analysis.

3. *Response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule,*

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

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;*

As of March 31, 2019, the FDIC supervised 3,465 institutions, of which 2,645 are considered small entities for the purposes of RFA. Of these FDIC-supervised small entities, 2,277 (86 percent) meet or exceed the qualifications for adopting the community bank leverage ratio framework, as delineated above in Section III.A.[33]

Adoption of the community bank leverage ratio framework is voluntary so it is uncertain how many small, FDIC-supervised entities that qualify will choose to adopt. Each qualifying entity must weigh the benefits of not being subject to risk-based capital requirements against the costs of adhering to the higher leverage ratio requirements under the community bank leverage ratio framework. As of March 2019, 241 (9 percent of) small, FDIC-supervised institutions would experience a net decrease in required capital holdings as a result of qualifying for and adopting the community bank leverage ratio framework. For purposes of this analysis, the FDIC assumes that these 241 small, FDIC-supervised institutions would adopt the community bank leverage ratio framework and therefore be affected by the final rule. In order to assess the maximum potential effects of the proposed rule, this analysis also calculates the expected effects

[33] Consolidated Reports of Condition and Income for the quarter ending March 31, 2019.

assuming that all 2,281 small, FDIC-supervised institutions that qualify would adopt the community bank leverage ratio framework.

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

This analysis considers benefits and costs relative to a pre-statutory baseline in which qualifying institutions must maintain a tier 1 leverage ratio of five percent, a tier 1 risk-based capital ratio of eight percent, a common equity tier 1 ratio of 6.5 percent and a total capital ratio of 10 percent in order to be deemed well capitalized for purposes of Prompt Corrective Action. Pursuant to the capital conservation buffer that is part of the Basel III rule, institutions must also maintain an additional 0.5 percentage points of risk-weighted assets above the risk-based well-capitalized thresholds to avoid potential limitations on dividends and other capital distributions.[34] Under the final rule, in contrast, qualifying institutions would have the option to operate under a 9 percent community bank leverage ratio framework and not be subject to risk-based capital requirements.

As previously discussed, 241 (9 percent of) small, FDIC-supervised institutions would experience a net decrease in required capital holdings as a result of qualifying for and adopting the community bank leverage ratio framework. For purposes of this analysis, the FDIC assumes that these 241 small, FDIC-supervised institutions would adopt the community bank leverage ratio framework and therefore be affected by the final rule. In order to assess the maximum

[34] With the additional capital conservation buffer requirements, the pre-statute baseline risk-based capital thresholds are 7 percent for common equity tier 1 capital, 8.5 percent for tier 1 capital, and 10.5 percent for total capital.

potential effects of the proposed rule, this analysis also calculates the expected effects assuming that all 2,277 small, FDIC-supervised institutions that qualify would adopt the community bank leverage ratio framework.

No bank will be compelled to raise capital under the community bank leverage ratio framework since the framework is optional. Moreover, as of March 2019, the 2,277 qualifying small, FDIC-supervised institutions held aggregate tier 1 capital in excess of 12 percent of their average assets – well in excess of both the 5 percent required by the generally applicable leverage ratio rules and the 9 percent threshold in the community bank leverage ratio framework. Some of the 241 small, FDIC-supervised banks whose capital requirements would be reduced under the community bank leverage ratio framework might choose to reduce their capital. However, these 241 banks also held aggregate tier 1 capital in excess of 12 percent of their average assets, suggesting that most of them already have the ability to operate with less capital but have chosen not to. Given these facts, the FDIC does not believe that adopting banks will change their leverage capital ratios significantly in response to this rule.

It is possible that the elimination of risk-based capital requirements by banks that choose to adopt the rule would increase their incentives to hold higher-weighted assets, such as loans. To provide a high-end estimate of the economic effect for RFA purposes, this analysis will assume that every adopting bank responds to the rule by permanently increasing its loan balances by 1 percent.

The analysis estimates the annual economic effect of a 1 percent permanent increase in loan balances at adopting banks by multiplying the increase by the net interest margin currently being earned by each bank.[35]

For each of the 241 banks that would experience a reduction in capital requirements under the community bank leverage ratio framework, this analysis calculates the expected economic effect to each bank by multiplying 1 percent of the bank's loan balances by its net interest margin. Under these assumptions, as of March 2019, only five banks would experience an annual increase in net interest income that is significant (i.e. greater than 2.5 percent of their total noninterest income over the previous four quarters or 5 percent of their total salaries and benefits paid over the previous four quarters). The estimated aggregate increase in net interest income totals less than $600,000. The five banks would comprise only 0.2 percent of the 2,645 small entities covered by this rule. These effects are not significant for a substantial number of small entities.

As an estimate of the maximum potential effects of the rule, the analysis alternately assumes that all of the 2,277 qualifying small FDIC-supervised banks that could adopt the framework choose to do so, and that all increase their loan balances by 1 percent and earn their current net interest margin on the new loans. This analysis results in eleven banks experiencing an annual increase in net interest income that is significant (i.e. greater than 2.5 percent of their total noninterest income over the previous four quarters or 5 percent of their total salaries and

[35] Defined as the annualized net interest income as a percent of average earning assets, as reported on schedule RI. For reference, the average net interest margin was 3.8 percent for small, FDIC-insured institutions, as of March 2019.

benefits paid over the previous four quarters). The eleven banks comprise only 0.4 percent of the 2,645 small entities covered by this rule. Thus, the plausible high-end effects are still not significant for a substantial number of small entities.

Although the preceding assumptions and analysis indicate that the rule is unlikely to have significant economic effects on a substantial number of small, FDIC-supervised institutions, the extent of the rule's effects on capital and assets are uncertain. Therefore, the FDIC believes, but does not certify, that the final rule will not have a significant economic impact on a substantial number of small entities.

There are other non-quantified economic effects resulting from the adoption of the community bank leverage ratio framework, such as simplicity benefits and compliance cost-savings from not having to comply with risk-based capital requirements going forward. Utilizing the community bank leverage ratio framework is expected to reduce reporting costs for small entities. Opting into the community bank leverage ratio framework would enable institutions to eliminate the reporting of many line items in schedule RC-R of their Call Reports, resulting in a reduction in reporting costs for institutions. Depository institutions also may benefit from reduced reporting costs because by being able to employ those resources in ways the institution believes is more beneficial. The FDIC does not have a reasonable basis for quantifying the compliance cost savings associated with the rule, but does not believe they will be significant for a substantial number of small entities.

The quantified economic effects are expected to be significant for less than a percent of small, FDIC-supervised institutions covered by this rule. Even assuming broad adoption rates and an increase in lending by all adopting institutions, the quantified economic effects are only significant for 0.4 percent of small, FDIC-supervised institutions.

6. *A description of the steps the agency has taken to minimize the significant economic impact on small entities.*

As described above, the FDIC does not believe this rule will have a significant economic impact on a substantial number of small entities. Further, since the election of the community bank leverage ratio is voluntary, the impacts are expected to be beneficial for institutions that adopt it.

The agencies considered alternative calibrations, such as 8 percent. As discussed in Section III.C however, the agencies believe that a 9 percent calibration, with complementary qualifying criteria for asset size, off-balance sheet assets, and trading assets and liabilities, should generally maintain the current level of regulatory capital held by electing banking organizations while maintaining the quality and quantity of regulatory capital in the banking system consistent with the agencies' safety-and-soundness goals, while also supporting the agencies' goals of reducing regulatory burden for as many community banking organizations as possible. For example, even though an 8 percent leverage ratio would allow more banking organizations to opt into the community bank leverage ratio framework it could incentivize a large number of qualifying community banking organizations to hold less regulatory capital than they do today.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[36] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies

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

have sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

D. OCC Unfunded Mandates Reform Act of 1995

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 proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). Because the rule does not specifically require banks to modify their policies and procedures, the OCC has determined that there are no expenditures for the purposes of UMRA. Therefore, the OCC concludes that the final rule will not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

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), [37] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), 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

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[37] 12 U.S.C. 4802(a).

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 IDIs 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.[38]

The Federal banking agencies considered the administrative burdens and benefits of the rule and its elective framework in determining its effective date and administrative compliance requirements. As such, the final rule will be effective on January 1, 2020.

F. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.[39] If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[40]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment,

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[38] 12 U.S.C. 4802.

[39] 5 U.S.C. 801 *et seq*.

[40] 5 U.S.C. 801(a)(3).

investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[41] The OMB has determined that the final rule is not a "major rule" within the meaning of the Congressional Review Act. As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 1

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

12 CFR Part 3

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

12 CFR Part 5

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

12 CFR Part 6

Federal Reserve System, National banks

12 CFR Part 23

National banks

12 CFR Part 24

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[41] 5 U.S.C. § 804(2).

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

12 CFR Part 32

National banks, Reporting and recordkeeping requirements

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements

12 CFR Part 160

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

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities

12 CFR Part 206

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

12 CFR Part 208

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

12 CFR Part 211

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

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements

12 CFR Part 217

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

12 CFR Part 223

Banks, Banking, Federal Reserve System

12 CFR Part 225

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

12 CFR Part 238

Savings and loan holding companies (Regulation LL).

12 CFR Part 251

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

12 CFR Part 303

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

12 CFR Part 324

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

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities

12 CFR Part 347

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

12 CFR Part 362

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

12 CFR Part 365

Banks, banking, Mortgages

12 CFR Part 390

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

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the joint preamble, Chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 1 – INVESTMENT SECURITIES

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

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

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

§ 1.2 Definitions.

(a) *Capital and surplus* means:

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

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

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

(2) For all other banks:

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

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

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PART 3 – CAPITAL ADEQUACY STANDARDS

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

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

4. Section 3.10 is amended by revising paragraph (a) to read as follows:

§ 3.10 Minimum capital requirements.

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

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

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

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

(v) For advanced approaches national banks or Federal savings associations, a supplementary leverage ratio of 3 percent.

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

(2) A qualifying community banking organization (as defined in § 3.12), that is subject to the community bank leverage ratio framework (as defined in § 3.12), is considered to have met the minimum capital requirements in paragraph (a) of this section.

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5. Add section 3.12 to read as follows:

§ 3.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework.* (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 3.10, the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

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

(i) Has a leverage ratio of greater than 9 percent;

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

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

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

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

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

(D) Sold credit protection through

(1) Guarantees; and

(2) Credit derivatives;

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report;

(G) Financial standby letters of credit;

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

(I) Off-balance sheet securitization exposures; and

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

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

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

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 3.10(a)(1) in its Call Report or by otherwise providing this information to the OCC.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 3.10(a)(1) immediately.

(b) *Calculation of the leverage ratio*. A qualifying community banking organization's leverage ratio is calculated in accordance with § 3.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 3.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 3.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (c)(6) of this section, if a national bank or Federal savings association ceases to meet the definition of a qualifying community banking organization, the national bank or Federal savings association has two reporting periods under its Call Report (grace period) to either satisfy the requirements to be a qualifying community banking organization or to comply with § 3.10(a)(1) and report the required capital measures under § 3.10(a)(1) on its Call Report.

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

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

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 3.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 6.4(b)(1)(i)(A) through (D) of this chapter, and any other capital or leverage requirements to which the qualifying community

banking organization is subject, and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, a national bank or Federal savings association that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a national bank or Federal savings association must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, a national bank or Federal savings association that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 3.10(a)(1) and must report the required capital measures under § 3.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

* * * * *

6. Section 3.22 is amended by revising paragraph (f) to read as follows:

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a national bank or Federal savings association does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the national bank or Federal savings association must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 3.12) that has elected to use the community bank leverage ratio framework pursuant to § 3.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

* * * * *

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

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

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

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

§ 5.3 Definitions.

* * * * *

(e) *Capital and surplus* means:

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

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

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

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

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

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

* * * * *

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

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

* * * * *

(c) * * *

(3) *Capital and surplus* means:

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

(A) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

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

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

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

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

* * * * *

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

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

* * * * *

(h) * * *

(2) The Federal savings association is not investing more than 10 percent of its total capital (or, in the case of a Federal savings association that is a qualifying community banking organization that has elected to use the community bank leverage ratio framework, 10 percent of its tier 1 capital, as used under § 3.12 of this chapter) in one company;

* * * * *

PART 6 – PROMPT CORRECTIVE ACTION

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

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

12. Section 6.4 is amended by:

a. Revising the heading;

b. Revising paragraphs (a) and (b);

c. Removing paragraph (c); and

c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

The revisions read as set forth below.

§ 6.4 Capital measures and capital categories.

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

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

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

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

(iv) The Leverage Measure:

(A) The leverage ratio; and

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

(2) For a qualifying community banking organization (as defined in § 3.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in § 3.12 of this chapter), the leverage ratio calculated in accordance with § 3.12(b) of this chapter is

used to determine the well capitalized capital category under paragraph (b)(1)(i) (A) through (D) of this section.

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

(1)(i) *Well capitalized* if:

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

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

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

(D) Leverage Measure:

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

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

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

(ii) A qualifying community banking organization, as defined under § 3.12 of this chapter, that has elected to use the community bank leverage ratio framework under § 3.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i) (A) through (D) of this section.

*** * * * ***

PART 23 – LEASING

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

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

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

§ 23.2 Definitions.

* * * * *

(b) *Capital and surplus* means:

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

(i) A qualifying community banking organization’s tier 1 capital, as used under § 3.12 of this chapter; plus

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

(2) For all other national banks:

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

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

* * * * *

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

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

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

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

§ 24.2 Definitions.

* * * * *

(b) Capital and surplus means:

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

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

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

(2) For all other national banks:

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

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

* * * * *

PART 32 – LENDING LIMITS

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

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

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

§32.2 Definitions.

* * * * *

(c) *Capital and surplus* means—

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

(i) A qualifying community banking organization’s tier 1 capital, as used under § 3.12 of this chapter; plus

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

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

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

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

* * * * *

PART 34 – REAL ESTATE LENDING AND APPRAISALS

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

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

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

§ 34.81 Definitions.

(a) *Capital and surplus* means:

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

(i) A qualifying community banking organization's tier 1 capital, as used under § 3.12 of this chapter; plus

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

(2) For all other national banks:

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

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

* * * * *

PART 160 – LENDING AND INVESTMENT

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

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

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

* * * * *

Total capital means:

(1) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter, total capital refers to the qualifying community banking organization's tier 1 capital, as used under § 3.12(b)(2) of this chapter;

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

* * * * *

PART 192 – CONVERSIONS FROM MUTUAL TO STOCK FORM

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

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

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

§ 192.500 What management stock benefit plans may I implement?

(a) * * *

(3) * * *

(iii) For a qualifying community banking organization that has elected to use the community bank leverage ratio framework, as set forth under the OCC's Capital Adequacy Standards at part 3 of this chapter, the term tangible capital, as it is used in this paragraph (a)(3), refers to the qualifying community banking organization’s tier 1 capital, as used under § 3.12 of this chapter.

* * * * *

__Federal Reserve System__

12 CFR Chapter II

Authority and Issuance

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

PART 206 – LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

24. The authority citation for part 206 continues to read as follows:

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

25. Section 206.2 is amended by revising paragraph (g) to read as follows:

§ 206.2 Definitions.

* * * * *

(g) *Total capital* means the total of a bank’s Tier 1 and Tier 2 capital under the risk-based capital guidelines provided by the bank’s primary federal supervisor. For a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), total capital means the bank’s Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter). For an insured branch of a foreign bank organized under the laws of a country that subscribes to the principles of the Basel Capital Accord, “total capital” means total Tier 1 and Tier 2 capital as calculated under the standards of that country. For an insured branch of a foreign bank organized under the laws of a country that does not subscribe to the principles of the Basel Capital Accord, “total capital” means total Tier 1 and Tier 2 capital as calculated under the provisions of the Accord.

* * * * *

26. Section 206.5 is amended by adding paragraph (a)(4) to read as follows:

§ 206.5 Capital levels of correspondents.

(a) * * *

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio (as defined in § 217.12 of this chapter) is considered to have met the minimum capital requirements in this paragraph (a).

* * * * *

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

27. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3905-3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78*l*(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

28. Section 208.2 is amended by adding a new paragraph (d)(3) to read as follows:

§ 208.2 Definitions.

* * * * *

(d) * * *

(3) For a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), capital stock and surplus means the bank's Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowance for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

29. Section 208.43 is amended by revising paragraphs (a) and (b) to read as follows:

§ 208.43 Capital measures and capital category definitions.

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

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

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

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

(iv) Leverage Measure:

(A) The leverage ratio; and

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

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

(2) For a qualifying community banking organization (as defined in § 217.12 of this chapter), that has elected to use the community bank leverage ratio framework (as defined in § 217.12 of this chapter), the leverage ratio calculated in accordance with § 217.12(b) of this chapter is used to determine the well capitalized capital category under paragraph (b)(1)(i)(A) through (D) of this section.

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

(1)(i) “Well capitalized” if:

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

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

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

(D) Leverage Measure:

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

(*2*) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a global systemically important BHC under the definition of “subsidiary” in § 217.2 of this chapter, the bank has a supplementary leverage ratio of 6.0 percent or greater; and

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

(ii) A qualifying community banking organization, as defined in § 217.12 of this chapter, that has elected to use the community bank leverage ratio framework under § 217.12 of this chapter, shall be considered to have met the capital ratio requirements for the well capitalized capital category in paragraph (b)(1)(i)(A) through (D) of this section.

* * * * *

PART 211 – INTERNATIONAL BANKING OPERATIONS (REGULATION K)

31. The authority citation for part 211 continues to read as follows:

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

32. In part 211, remove the words “Capital Adequacy Guidelines” wherever they appear and add in their place the words “capital rule”.

33. Section 211.2 is amended by revising paragraphs (b), (c), and (x) to read as follows:

§ 211.2 Definitions.

* * * * *

(b) *Capital and surplus* means, unless otherwise provided in this part:

(1) For organizations subject to the capital rule:

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

(ii) The balance of allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in an organization’s tier 2 capital for calculation of risk-based capital, based on the organization’s most recent consolidated Report of Condition and Income.

(iii) For qualifying community banking organizations (as defined in § 217.12 of this chapter) that are subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

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

(c) *Capital rule* means part 217 of this chapter.

* * * * *

(x) *Tier 1 capital* has the same meaning as provided in § 217.2 of this chapter. A qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), calculates its tier 1 capital in accordance with § 217.12(b) of this chapter.

* * * * *

34. Section 211.9 is amended by redesignating footnote 5 to paragraph (a) as footnote 1 to paragraph (a).

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

35. The authority citation for part 215 continues to read as follows:

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

36. Section 215.2 is amended by adding paragraph (i)(3) to read as follows:

§ 215.2 Definitions.

* * * * *

(i) * * *

(3) Notwithstanding paragraphs (i)(1) through (2) of this section, for a member bank that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), unimpaired capital and unimpaired surplus equals Tier 1 capital (as defined in § 217.12 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

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

37. The authority citation for part 217 is revised to read as follows:

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

38. Section 217.10 is amended by revising paragraph (a) to read as follows:

§ 217.10 Minimum capital requirements.

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

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

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

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

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

(2) A qualifying community banking organization (as defined in § 217.12), that is subject to the community bank leverage ratio framework (as defined § 217.12), is considered to have met the minimum capital requirements in this paragraph (a) of this section.

* * * * *

39. Section 217.12 is added as to read as follows:

§ 217.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 217.10, the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

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

(i) Has a leverage ratio of greater than 9 percent;

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

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

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

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

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

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

(E) Credit-enhancing representations and warranties;

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

(G) Financial standby letters of credit;

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

(I) Off-balance sheet securitization exposures; and

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

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

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

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 217.10(a)(1) in its Call Report or its Form FR Y-9C, as applicable, or by otherwise providing the information to the Board.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 217.10(a)(1) immediately.

(b) *Calculation of the leverage ratio*. A qualifying community banking organization's leverage ratio is calculated in accordance with § 217.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 217.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 217.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (c)(6) of this section, if an Board-regulated institution ceases to meet the definition of a qualifying community banking organization, the Board-regulated institution has two reporting periods under its Call Report or Form FR Y-9C, as applicable (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with§ 217.10(a)(1) and report the required capital measures under § 217.10(a)(1) on its Call Report or its Form FR Y-9C, as applicable.

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

(3) During the grace period, the Board-regulated institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the Board-regulated

institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 217.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 208.43(b)(1)(i)(A) through (D) of this chapter, and any other capital or leverage requirements to which the qualifying community banking organization is subject, and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such a Board-regulated institution must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, a Board-regulated institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 217.10(a)(1) and must report the required capital measures under § 217.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

* * * * *

40. Section 217.22 is amended by revising paragraph (f) to read as follows:

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the Board-regulated institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 217.12) that has elected to use the community bank leverage ratio framework pursuant to § 217.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

*	*	*	*	*

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

40. The authority citation for part 223 continues to read as follows:

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

41. Section 223.3 is amended by adding paragraph (d)(4) to read as follows:

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

* * * * *

(d) * * *

(4) Notwithstanding paragraphs (d)(1) through (3) of this section, for a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), capital stock and surplus equals tier 1 capital (as defined in § 217.12 of this chapter and calculated in accordance with § 217.12(b) of this chapter) plus allowances for loan and lease losses or adjusted allowance for credit losses, as applicable.

* * * * *

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

42. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

43. Section 225.2 is amended by revising paragraph (h), redesignating footnote 2 to paragraph (r)(1) as footnote 1 to paragraph (r)(1), and adding paragraph (r)(4) to read as follows:

§ 225.2 Definitions.

*   *   *   *   *

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

*   *   *   *   *

(r) *   *   *

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

(i) A bank holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) is well capitalized if it satisfies the requirements of paragraph (r)(1)(iii) of this section.

(ii) A depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) is well capitalized.

*   *   *   *   *

44. Section 225.14 is amended by:

a. Redesignating footnote 3 to paragraph (a)(1)(ii) as footnote 1 to paragraph (a)(1)(ii);

b. Revising paragraphs (a)(1)(v)(A), (a)(1)(vii), and (c)(6)(i); and

c. Adding paragraphs (c)(6)(iii) and (f).

The revisions and additions read as follows:

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

(a) * * *

(1) * * *

(v) (A) If the bank holding company is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), and:

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

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

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

* * * * *

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

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis; and

* * * * *

(c) * * *

(6) * * *

(i) * * *

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

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

* * * * *

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

(A) The acquiring bank holding company is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter);

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as used in § 217.12 of this chapter) of the acquiring bank holding company as last reported to the Board; and

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

* * * * *

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

45. Section 225.22 is amended by adding paragraph (d)(8)(vi) to read as follows:

§ 225.22 Exempt nonbanking activities and acquisitions.

* * * * *

(d) * * *

(8) * * *

(vi) *Qualifying community banking organizations*. For purposes of paragraph (d)(8)(ii) of this section, a lending company or industrial bank that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), or is a subsidiary of such a qualifying community banking organization, has risk-weighted assets equal to:

(A) Its average total consolidated assets (as used in § 217.12 of this chapter) as most recently reported to its primary banking supervisor (as defined in § 225.14(d)(5)); or

(B) Its total assets, if the company or industrial bank does not report such average total consolidated assets.

* * * * *

46. Section 225.23 is amended by:

a. Redesignating footnote 2 to paragraph (a)(1) as footnote 1 to paragraph (a)(1);

b. Revising paragraphs (a)(1)(iii) and (c)(5)(i); and

c. Adding paragraphs (c)(5)(iii) and (e).

The revisions and additions read as follows:

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

(a) * * *

(1) * * *

(iii) * * *

(A) If the acquiring bank holding company is not a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter):

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

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

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

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

(D) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis;

* * * * *

(c) * * *

(5) * * *

(i) * * *

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

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

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

* * * * *

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

(A) The acquiring bank holding company is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter); and

(B) The sum of the total assets to be acquired in the proposal and the total assets acquired by the acquiring bank holding company in all other qualifying transactions does not exceed 35 percent of the average total consolidated assets (as used in § 217.12 of this chapter) of the acquiring bank holding company as last reported to the Board;

(C) The gross consideration to be paid by the acquiring bank holding company in the proposal does not exceed 15 percent of the Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) of the acquiring bank holding company; and

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

* * * * *

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

47. Section 225.24 is amended by revising paragraphs (a)(2)(iv)(B) and (a)(2)(vi) to read as follows:

§ 225.24 Procedures for other nonbanking proposals.

(a) * * *

(2) * * *

(iv) * * *

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

* * * * *

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

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a *pro forma* basis;

* * * * *

48. Section 225.87 is amended by adding paragraph (b)(4)(iv) to read as follows:

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

* * * * *

(b) * * *

(4) * * *

(iv) For purposes of this paragraph (b)(4), a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

49. Section 225.174 is amended by adding paragraph (d) to read as follows:

§ 225.174 What aggregate thresholds apply to merchant banking investments?

* * * * *

(d) *Qualifying community banking organizations*. For purposes of this section, a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in §

217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

50. Section 225.175 is amended by adding paragraph (c)(3) to read as follows:

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

* * * * *

(c) * * *

(3) *Qualifying community banking organizations*. For purposes of this paragraph (c), a financial holding company that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter) calculates its Tier 1 capital (as defined in § 217.2 of this chapter) in accordance with § 217.12(b) of this chapter.

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

51. The authority citation for part 238 continues to read as follows:

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

52. Section 238.53 is amended by revising paragraphs (c)(2)(iii)(B) and (v) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(iii) * * *

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

* * * * *

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

(B) For each insured depository institution that is a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter), whose Tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter) or total assets change as a result of the transaction, the total assets and Tier 1 capital of the institution on a pro forma basis;

* * * * *

PART 251 – CONCENTRATION LIMIT (REGULATION XX)

53. The authority citation for part 251 continues to read as follows:

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

54. Section 251.3 is amended by revising paragraph (c)(2) and adding paragraph (c)(3) to read as follows:

§ 251.3 Concentration limit.

* * * * *

(c) * * *

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules (other than a qualifying community banking organization (as defined in § 217.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 217.12 of this chapter)), consolidated liabilities

are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

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

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

(ii) The company's tier 1 capital (as defined in § 217.2 of this chapter and calculated in accordance with § 217.12(b) of this chapter).

* * * * *

<u>Federal Deposit Insurance Corporation</u>

12 CFR Chapter III

Authority and Issuance

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

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

57. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub.L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub.L. 102–242, 105 Stat. 2236, 2355, as amended by Pub.L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub.L. 102–242, 105 Stat. 2236, 2386, as amended by Pub.L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub.L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note); Pub. L. 115-174 §201.

58. Section 324.10 is amended by revising paragraph (a) to read as follows:

§ 324.10 Minimum capital requirements.

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

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

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

(iii) A total capital ratio of 8 percent.

(iv) A leverage ratio of 4 percent.

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

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

(2) A qualifying community banking organization (as defined in § 324.12), that is subject to the community bank leverage ratio framework (as defined in § 324.12), is considered to have met the minimum capital requirements in this paragraph (a).

* * * * *

59. Section 324.12 is added to read as follows:

§ 324.12 Community bank leverage ratio framework.

(a) *Community bank leverage ratio framework*. (1) Notwithstanding any other provision in this part, a qualifying community banking organization that has made an election to use the community bank leverage ratio framework under paragraph (a)(3) of this section shall be considered to have met the minimum capital requirements under § 324.10, the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject, if it has a leverage ratio greater than 9 percent.

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

(i) Has a leverage ratio of greater than 9 percent;

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

(iii) Has off-balance sheet exposures of 25 percent or less of its total consolidated assets as of the end of the most recent calendar quarter, calculated as the sum of the notional amounts of the exposures listed in paragraphs (a)(2)(iii)(A) through (I) of this section, divided by total consolidated assets, each as of the end of the most recent calendar quarter:

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

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

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

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

(E) Credit-enhancing representations and warranties;

(F) Securities lent and borrowed, calculated in accordance with the reporting instructions to the Call Report;

(G) Financial standby letters of credit;

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

(I) Off-balance sheet securitization exposures; and

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

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

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

(iii)(A) A qualifying community banking organization that has elected to use the community bank leverage ratio framework may opt out of the community bank leverage ratio framework by completing the applicable risk-based and leverage ratio reporting requirements necessary to demonstrate compliance with § 324.10(a)(1) in its Call Report or by otherwise providing the information to the FDIC.

(B) A qualifying community banking organization that opts out of the community bank leverage ratio framework pursuant to paragraph (a)(3)(iii)(A) of this section must comply with § 324.10(a)(1) immediately.

(b) *Calculation of the leverage ratio*. A qualifying community banking organization's leverage ratio is calculated in accordance to § 324.10(b)(4), except that a qualifying community banking organization is not required to:

(1) Make adjustments and deductions from tier 2 capital for purposes of § 324.22(c); or

(2) Calculate and deduct from tier 1 capital an amount resulting from insufficient tier 2 capital under § 324.22(f).

(c) *Treatment when ceasing to meet the qualifying community banking organization requirements.* (1) Except as provided in paragraphs (c)(5) and (c)(6) of this section, if an FDIC-supervised institution ceases to meet the definition of a qualifying community banking organization, the FDIC-supervised institution has two reporting periods under its Call Report (grace period) either to satisfy the requirements to be a qualifying community banking organization or to comply with § 324.10(a)(1) and report the required capital measures under § 324.10(a)(1) on its Call Report.

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

(3) During the grace period, the FDIC-supervised institution continues to be treated as a qualifying community banking organization for the purpose of this part and must continue calculating and reporting its leverage ratio under this section unless the FDIC-supervised

institution has opted out of using the community bank leverage ratio framework under paragraph (a)(3) of this section.

(4) During the grace period, the qualifying community banking organization continues to be considered to have met the minimum capital requirements under § 324.10(a)(1), the capital ratio requirements for the well capitalized capital category under § 324.403(b)(1)(i)(A) through (D) of this part, and any other capital or leverage requirements to which the qualifying community banking organization is subject and must continue calculating and reporting its leverage ratio under this section.

(5) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that no longer meets the definition of a qualifying community banking organization as a result of a merger or acquisition has no grace period and immediately ceases to be a qualifying community banking organization. Such an FDIC-supervised institution must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it ceases to be a qualifying community banking organization.

(6) Notwithstanding paragraphs (c)(1) through (4) of this section, an FDIC-supervised institution that has a leverage ratio of 8 percent or less does not have a grace period and must comply with the minimum capital requirements under § 324.10(a)(1) and must report the required capital measures under § 324.10(a)(1) for the quarter in which it reports a leverage ratio of 8 percent or less.

* * * * *

40. Section 324.22 is amended by revising paragraph (f) to read as follows:

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if an FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the FDIC-supervised institution must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital. Notwithstanding any other provision of this section, a qualifying community banking organization (as defined in § 324.12) that has elected to use the community bank leverage ratio framework pursuant to § 324.12 is not required to deduct any shortfall of tier 2 capital from its additional tier 1 capital or common equity tier 1 capital.

* * * * *

60. Section 324.403 is amended by revising paragraphs (a) and (b) to read as follows:

§ 324.403 Capital measures and capital categories.

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

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

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

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

(iv) Leverage Measure:

(A) The leverage ratio; and

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

(2) For a qualifying community banking organization (as defined under § 324.12), that has elected to use the community bank leverage ratio framework (as defined under § 324.12), the leverage ratio calculated in accordance with § 324.12(b) is used to determine the well capitalized capital category under paragraph (b)(1)(i) (A) through (D) of this section.

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

(1) (i) “Well capitalized” if:

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

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

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

(D) The FDIC-supervised institution has a leverage ratio of 5.0 percent or greater; and

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

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

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

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

61. The authority citation for part 337 continues to read as follows:

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

62. Section 337.3 is amended by redesignating footnote 3 to paragraph (b) as footnote 1 and revising newly to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of insured nonmember banks.

* * * * *

(b) * * *

1 For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (§ 215.2(f) of this chapter). For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), capital and unimpaired surplus shall mean the FDIC-supervised institution's tier 1 capital (as defined in § 324.2 of this chapter) plus adjusted allowances for credit losses or allowances for loan and lease losses, as applicable (as defined in § 324.2 of this chapter).

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PART 365—REAL ESTATE LENDING STANDARDS

67. The authority citation for part 365 continues to read as follows:

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

68. Appendix A to subpart A of part 365 is amended by:

a. Following the heading " Supervisory Loan-to-Value-Limits" in the table, redesignating footnotes 1 and 2 as footnotes 2 and 3;

b. In the first paragraph of the appendix, redesignating footnote 5 as footnote 1; and

c. Following the heading "Loans in Excess of the Supervisory Loan-to-Value-Limits," redesignating the second footnote 2 as footnote 4 and revising newly redesignated footnote 4.

The revision reads as follows:

Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

* * * * *

4 For state non-member banks and state savings associations, “total capital” refers to that term described in § 324.2 of this chapter. For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), “total capital” refers to the FDIC-supervised institution’s tier 1 capital, as defined in § 324.2 of this chapter.

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PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

69. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

70. Section 390.265 is amended by revising footnote 4 to read as follows:

* * * * *

4 For the state member banks, the term “total capital” is defined at 12 CFR 217.2. For insured state non-member banks, the term “total capital” is defined at § 324.2 of this chapter. For national banks, the term “total capital” is defined at 12 CFR 3.2. For state savings associations, the term “total capital” is defined at § 324.2 of this chapter. For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), “total capital” means the FDIC-supervised institution’s tier 1 capital (as defined in § 324.2 of this chapter).

* * * * *

71. Section 390.344 is amended by revising the definition of “Capital” to read as follows:

* * * * *

§ 390.344 Definitions applicable to capital distributions.

*   *   *   *   *

Capital means total capital, as computed under part 324 of this chapter. For a qualifying community banking organization (as defined in § 324.12 of this chapter) that is subject to the community bank leverage ratio framework (as defined in § 324.12 of this chapter), total capital means the FDIC-supervised institution's tier 1 capital, as defined under § 324.2 of this chapter and calculated in accordance with § 324.12(b) of this chapter.

*   *   *   *   *

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

Dated:

Joseph M. Otting
Comptroller of the Currency

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

By order of the Board of Governors of the Federal Reserve System,

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

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

Dated at Washington, DC, on

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.