

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC-2017-0018]

RIN 1557-AE70

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R-1576]

RIN 7100 AE74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064-AF18

Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Revised Effective Date

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

ACTION: Final rule, effective date, early adoption.

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 permits insured depository institutions and depository

institution holding companies not subject to the advanced approaches capital rule to implement certain provisions of the final rule titled Regulatory Capital: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was issued by the agencies in July 22, 2019, (Capital Simplifications Final Rule) on January 1, 2020, rather than April 1, 2020, as initially provided. Consistent with this approach, the transitions provisions of the regulatory capital rule are being amended to provide that banking organizations not subject to the advanced approaches capital rule will be permitted to implement the Capital Simplifications Final Rule as of its revised effective date in the quarter beginning January 1, 2020, or to wait until the quarter beginning April 1, 2020.

DATES: The revisions to 12 CFR 3.21, 3.22, 3.300(b) and (d), 217.21, 217.22, 217.300(b) and (d), 324.21, 324.22, and 324.300(b) and (d) that were made on July 22, 2019 (84 FR 35234) and new 12 CFR 3.300(f), 217.300(g), 324.300(f) are effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

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

Board: Constance M. Horsley, Deputy Associate Director, (202) 452-5239; Juan Climent, Manager, (202) 872-7526; or Andrew Willis, Lead Financial Institutions Policy Analyst, (202) 912-4323, Division of Supervision and Regulation; or Jay Schwarz, Special Counsel (202) 452-2970; Gillian Burgess, Senior Counsel (202) 736-5564, or Mark Buresh, Counsel (202) 452-5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets,

NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Michael Maloney, Senior Policy Analyst, mmaloney@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

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) adopted the Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Capital Simplifications Final Rule) to simplify certain aspects of the capital rule.¹ The Capital Simplifications Final Rule is responsive to the agencies' March 2017 report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), in which the agencies committed to meaningfully reduce regulatory burden, especially on community banking organizations. The key elements of the Capital Simplifications Final Rule apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Under the Capital Simplifications Final Rule, non-advanced approaches banking organizations will be subject to simpler regulatory capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of

¹ See 84 FR 35234 (July 22, 2019).

unconsolidated financial institutions than those currently applied. The Capital Simplifications Final Rule also simplifies, for non-advanced approaches banking organizations, the calculation for the amount of capital issued by a consolidated subsidiary of a banking organization and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital.

The simpler capital requirements described above are implemented through the Capital Simplifications Final Rule via amendments to 12 CFR 3.21, 3.22, 3.300, 217.21, 217.22, 217.300(b) and (d), 324.21, 324.22, and 324.300 that were originally effective April 1, 2020. The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give institutions sufficient time to update their recordkeeping and reporting systems. Subsequent to the publication of the Capital Simplifications Final Rule, the agencies received letters from the banking industry groups seeking the ability to adopt the Capital Simplifications Final Rule earlier than April 1, 2020. After considering these requests, the agencies have determined that allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020 would be appropriate. Allowing non-advanced approaches banking organizations to implement the Capital Simplifications Final Rule in the first quarter of 2020 would permit banking organizations that have updated their reporting systems to implement the simplifications and obtain regulatory burden relief one quarter earlier than initially provided in the Capital Simplifications Final Rule.

The agencies are adopting this direct final rule to permit non-advanced approaches banking organizations to implement the sections of the Capital Simplifications Final Rule that were originally effective on April 1, 2020, beginning on January 1, 2020. Specifically, the sections in the Capital Simplifications Final Rule that were effective April 1, 2020, under that

rule are now effective January 1, 2020. Non-advanced approaches banking organizations can elect whether to implement the changes in the quarter beginning January 1, 2020, or to implement them in the quarter beginning April 1, 2020. The affected sections are those related to mortgage servicing assets, certain deferred tax assets arising from temporary differences, investments in the capital of unconsolidated financial institutions, and the calculation of minority interest and will become mandatory as of April 1, 2020. If a non-advanced approaches banking organization elects to adopt these revisions for the quarter beginning January 1, 2020, it must adopt all of these revisions for that quarter and thereafter. Consistent with the Capital Simplifications Final Rule, the transition provisions adopted by the agencies in November 2017 will cease to apply to non-advanced approaches banking organizations in the quarter in which the firm elects to adopt these portions of the Capital Simplifications Final Rule.² As a result, non-advanced approaches banking organizations may choose to begin implementing the capital treatment under the Capital Simplifications Final Rule for the reporting period ending on March 31, 2020. All non-advanced approaches banking organizations must implement the capital treatment under the Capital Simplifications Final Rule for the reporting period ending on June 30, 2020.

Administrative Law Matters.

A. Administrative Procedure Act.

The agencies are issuing this direct final rule without prior notice and the opportunity for public comment and without the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).³ Pursuant to section 553(b)(B) of the APA, general notice

² 82 FR 55309 (Nov. 21, 2017).

³ 5 U.S.C. 553.

and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁴

As discussed above, this direct final rule addresses requests from banking industry groups to be allowed to comply starting on January 1, 2020, with certain requirements of the Capital Simplifications Final Rule that otherwise were subject to an effective date of April 1, 2020. This direct final rule will allow banking organizations to begin implementing the revised requirements either on January 1, 2020 or April 1, 2020. Non-advanced approaches banking organizations that choose not to implement the revised requirements on January 1, 2020, still will be required to do so beginning April 1, 2020. The agencies initially set an effective date of April 1, 2020, for those amendments to the capital rule, in part, to give institutions sufficient time to update their systems and reporting systems. After the rule was finalized, the agencies received requests to allow banking organizations the option to adopt the rule on January 1, 2020, rather than April 1, 2020, on grounds that early adoption would simplify the reporting requirements for banking organizations whose systems will be in place by January 1, 2020, thereby reducing regulatory burden.

The agencies believe that there is good cause to issue this direct final rule without notice and public procedure because that process would be unnecessary as the agencies recently issued a final rule after providing notice and receiving comment from the public. Specifically, the original administrative record that supports the Capital Simplifications Final Rule is still pertinent and, as a result, a new round of notice and comment on the Capital Simplifications

⁴ 5 U.S.C. 553(b)(B).

Final Rule is unnecessary. The agencies could have issued the Capital Simplifications Final Rule with the provisions now being issued in the current direct final rule. The agencies believe that the implementation provisions of the current direct final rule are appropriate now given the feedback from the public since issuance of the Capital Simplifications Final Rule. In particular, the public feedback has indicated that many banking organizations would be prepared to implement the Capital Simplifications Final Rule for the quarter beginning January 1, 2020. Further, this final rule (1) relieves burden; (2) does not change any substantive requirements of the Capital Simplifications Final Rule or impose any new mandates on any banking organization; and (3) allows, but does not require, banking organizations to implement the revised requirements in the Capital Simplifications Final Rule earlier than initially provided.

In addition, the agencies believe that there is good cause consistent with the public interest to issue this direct final rule without notice and public procedure. This direct final rule benefits banking organizations subject to the Capital Simplifications Final Rule by allowing them to begin complying with the new requirements in the Capital Simplifications Final Rule one quarter before they become mandatory, thereby simplifying the reporting requirements for those banking organizations whose systems will be in place by January 1, 2020. Notably, this direct final rule does not impose any new requirements or mandatory burdens on any banking organization. Finally, the agencies believe that there is good cause to issue this direct final rule without notice and public procedure since it would be impracticable to request comment given the request for relief is to begin on January 1, 2020.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and

statements of policy; or (3) as otherwise provided by the agency for good cause.⁵ The agencies find good cause to publish the direct final rule with an immediate effective date because the rule grants relief to banking organizations and because there is good cause for the same reasons set forth above under the discussion of section 553(b)(B) of the APA. Delaying the implementation date would deprive banking organizations that are considering adopting the requirements of the Capital Simplification Final Rule earlier of the ability to make modifications to their reporting prior on their preferred effective date.

B. *Solicitation of Comments on Use of Plain Language.*

Section 722 of the Gramm-Leach-Bliley Act⁶ requires Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present this direct final rule in a simple and straightforward manner.

C. *Paperwork Reduction Act Analysis.*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3521, the agencies may not conduct or sponsor, and a 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 OCC, Board, and FDIC have reviewed this direct final rule and determined that it does not introduce a new collection of information pursuant to the PRA.

D. *Regulatory Flexibility Act Analysis.*

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required.⁷ As noted previously, the agencies are issuing this

⁵ 5 U.S.C. 553(d).

⁶ Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

direct final rule without notice and public procedure. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply. Nonetheless, the agencies believe that, with respect to the entities subject to the direct final rule and within each agency's respective jurisdiction, the direct final rule would not have a significant economic impact on a substantial number of small entities.⁸

E. *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 rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). The OCC has determined that this rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this rule.

F. *Riegle Community Development and Regulatory Improvement Act of 1994.*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),⁹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations

⁷ 5 U.S.C. 603 and 604.

⁸ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$550 million or less and trust companies with total assets of \$38.5 million or less.

⁹ 12 U.S.C. 4802(a).

would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on 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.¹⁰

Because the direct final rule would not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of the RCDRIA does not apply. In any event, the direct final rule will take effect on January 1, 2020.

G. *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.¹¹ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹²

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, investment, productivity, innovation, or on the ability of United States-based enterprises to

¹⁰ 12 U.S.C. 4802.

¹¹ 5 U.S.C. 801 *et seq.*

¹² 5 U.S.C. 801(a)(3).

compete with foreign-based enterprises in domestic and export markets.¹³ As required by the Congressional Review Act, the agencies will submit the direct final rule and other appropriate reports to Congress and the Government Accountability Office for review.

The OMB has determined that the direct final rule [is/ is not] a “major rule” within the meaning of the Congressional Review Act.¹⁴ As required by the Congressional Review Act, the agencies will submit the direct final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 3

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

12 CFR Part 217

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

12 CFR Part 324

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

Office of the Comptroller of the Currency

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

PART 3 – CAPITAL ADEQUACY STANDARDS

¹³ 5 U.S.C. § 804(2).

¹⁴ 5 U.S.C. 801 *et seq.*

--. 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).

--. The revisions to §§ 3.21, 3.22, and 3.300(b) and (d) that were made on July 22, 2019 (84 FR 35234) are effective January 1, 2020.

--. Effective January 1, 2020, § 3.300 is amended by adding paragraph (f) to read as follows:

§ 3.300 Transitions.

* * * * *

(f) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association may apply the treatment under §§ 3.21 and 3.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches national bank or Federal savings association during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, a national bank or Federal savings association that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 3.22(d)(2) and must apply a 100 percent risk weight to assets not deducted under § 3.22(d)(2). In addition, during the quarter beginning January 1, 2020, a national bank or Federal savings association that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 3.21 as it applies to an advanced approaches national bank or Federal savings association. A national bank or Federal savings association that is not an advanced approaches national bank

or Federal savings association must apply the treatment under §§ 3.21 and 3.22 applicable to a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association beginning April 1, 2020, and thereafter.

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set out in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 217 as follows:

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

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

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

--. The revisions to §§ 217.21, 217.22, and 217.300(b) and (d) that were made on July 22, 2019 (84 FR 35234) are effective January 1, 2020.

--. Effective January 1, 2020, § 217.300 is amended by adding paragraph (g) to read as follows:

§217.300 Transitions.

* * * * *

(g) A Board-regulated institution that is not an advanced approaches Board-regulated institution may apply the treatment under §§ 217.21 and 217.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches Board-regulated institution during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, a Board-regulated institution that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 217.22(d)(2) and must apply a 100 percent risk weight to assets not deducted under § 217.22(d)(2). In addition, during the quarter beginning January 1, 2020, a Board-regulated institution that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 217.21 as it applies to an advanced approaches Board-regulated institution. A Board-regulated institution that is not an advanced approaches Board-regulated institution must apply the treatment under §§ 217.21 and 217.22 applicable to a Board-regulated institution that is not an advanced approaches Board-regulated institution beginning April 1, 2020, and thereafter.

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12 CFR Part 324

Federal Deposit Insurance Corporation

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

PART 324 – CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

--. 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).

--. The revisions to §§ 324.21, 324.22, and 324.300(b) and (d) that were made on July 22, 2019 (84 FR 35234) are effective January 1, 2020.

--. Effective January 1, 2020, § 324.300 is amended by adding paragraph (f) to read as follows:

§ 324.300 Transitions.

* * * * *

(f) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution may apply the treatment under §§ 324.21 and 324.22(c)(2), (5), (6), and (d)(2) applicable to an advanced approaches FDIC-supervised institution during the calendar quarter beginning January 1, 2020. During the quarter beginning January 1, 2020, an FDIC-supervised institution that makes such an election must deduct 80 percent of the amount otherwise required to be deducted under § 324.22(d)(2) and must apply a 100 percent risk weight to assets not deducted under § 324.22(d)(2). In addition, during the quarter beginning January 1, 2020, an FDIC-supervised institution that makes such an election must include in its regulatory capital 20 percent of any minority interest that exceeds the amount of minority interest includable in regulatory capital under § 324.21 as it applies to an advanced approaches FDIC-supervised institution. An FDIC-supervised institution that is not an advanced approaches institution must

apply the treatment under §§ 324.21 and 324.22 applicable to an FDIC-supervised institution that is a non-advanced approaches institution beginning April 1, 2020, and thereafter.

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[SIGNATURE PAGES FOLLOW]

[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE TITLED
“REGULATORY CAPITAL RULE: CAPITAL SIMPLIFICATION FOR QUALIFYING
COMMUNITY BANKING ORGANIZATIONS; REVISED EFFECTIVE DATE.”]

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; REVISED EFFECTIVE DATE.”]

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; REVISED EFFECTIVE DATE.”]

Dated at Washington, DC, on

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.