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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

Docket No. OCC-2020-0009

RIN 1557-AF00

FEDERAL RESERVE SYSTEM

12 CFR Part 217

Regulation Q; Docket No. R-1703 and RIN 7100-AF77

12 CFR Part 252

Regulation YY; Docket No. R-1706 and RIN 7100-AF80

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064-AF40

Regulatory Capital Rule and Total Loss-Absorbing Capacity Rule: Eligible Retained Income

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

ACTION: Final rule.

SUMMARY: The OCC, Board, and FDIC (together, the agencies) are adopting as final the revisions to the definition of eligible retained income made under the interim final rule published in the **Federal Register** on March 20, 2020, for all depository institutions, bank holding companies, and savings and loan holding companies subject to the agencies' capital rule. The

final rule revises the definition of eligible retained income to make more gradual any automatic limitations on capital distributions that could apply under the agencies' capital rule. Separately, in this final rule, the Board also is adopting as final the definition of eligible retained income made under the interim final rule published in the **Federal Register** on March 26, 2020, for purposes of the Board's total loss-absorbing capacity (TLAC) rule. The final rule adopts these interim final rules with no changes.

DATES: The final rule is effective January 1, 2021.

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I. Introduction

In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 (COVID-19) and current strains in U.S. financial markets, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) published an interim final rule in the **Federal Register** on March 20, 2020 (capital interim final rule)¹ that revised the definition of eligible retained income for all depository institutions, bank holding companies, and savings and loan holding companies (together, banking organizations) subject to the agencies' capital rule (capital rule). Separately, the Board published an interim final rule in the **Federal Register** on March 26, 2020 (TLAC interim final rule)² that revised the definition of eligible retained income for the largest and most systemically important U.S. bank holding companies (collectively, U.S. GSIBs) and the U.S. operations of the largest and most systemically important foreign banking organizations (collectively, covered intermediate holding companies (IHCs) and together with U.S. GSIBs, TLAC covered companies), which are subject to the Board's total loss-absorbing capacity (TLAC) rule. These revisions help strengthen the ability of banking organizations and TLAC covered companies to continue lending and conducting other financial intermediation activities during stress periods by making distribution limitations more gradual, as intended by the agencies.

¹ See 85 FR 15909 (March 20, 2020).

² See 85 FR 17003 (March 26, 2020).

In this final rule, the agencies are adopting as final and without change the revisions to the definition of eligible retained income made under the capital interim final rule and TLAC interim final rule, as detailed further below.

II. Background

A. Capital Rule

Under the capital rule, a banking organization³ must maintain minimum risk-based capital and leverage ratios.⁴ In addition, a banking organization under the capital rule must maintain a buffer of regulatory capital above its applicable minimum risk-based capital and leverage ratio requirements, as applicable, to avoid restrictions on capital distributions—including in the form of dividends and share buybacks and certain discretionary bonus payments (collectively, capital distributions).⁵

Banking organizations under the capital rule are generally subject to a fixed capital conservation buffer requirement, composed solely of common equity tier 1 capital, of greater than 2.5 percent of risk-weighted assets. On March 4, 2020, the Board adopted a final rule that simplified the Board’s regulatory capital framework for large bank holding companies and U.S.

³ Banking organizations subject to the agencies’ capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board’s Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, Appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

⁴ 12 CFR 3.10 (OCC); 12 CFR 217.10 (Board); and 12 CFR 324.10 (FDIC). An additional minimum supplementary leverage ratio of 3 percent applies to banking organizations subject to Category I, II, and III standards.

⁵ See 12 CFR 3.11 (OCC); 12 CFR 217.11 (Board); and 12 CFR 324.11 (FDIC).

intermediate holding companies of foreign banking organizations with the introduction of a stress capital buffer requirement (SCB final rule).⁶ Under the SCB final rule, a covered holding company will receive a new stress capital buffer requirement on an annual basis, which replaces the static greater than 2.5 percent capital conservation buffer requirement.⁷ Moreover, banking organizations subject to Category I, II, and III standards also are subject to a countercyclical capital buffer requirement⁸ and a minimum supplementary leverage ratio of 3 percent. U.S. GSIBs are subject to the GSIB surcharge, an additional capital buffer requirement based on a measure of their systemic risk. Further, U.S. GSIBs are subject to enhanced supplementary leverage ratio standards, and must hold an additional leverage capital buffer of tier 1 capital to avoid limitations on capital distributions. The insured depository institution subsidiaries of U.S. GSIBs must maintain a similarly higher supplementary leverage ratio to be considered well capitalized under the agencies' respective prompt corrective action frameworks.⁹

The agencies established the capital buffer requirements to encourage better capital conservation by banking organizations and to enhance the resilience of the banking system during stress periods.¹⁰ In particular, the agencies intended for the capital buffer requirements to

⁶ Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, March 4, 2020, available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200304a2.pdf>. The SCB final rule applies to bank holding companies and U.S. intermediate holding companies of foreign banking organizations subject to the capital plan rule (covered holding company). 12 CFR 225.8.

⁷ A covered holding company's first stress capital buffer requirement, as determined under the SCB final rule, will be effective October 1, 2020. *See* 12 CFR 225.8.

⁸ Currently, the countercyclical capital buffer is set at 0 percent.

⁹ *See* 12 CFR 6.4(b)(1)(i) (OCC); 12 CFR 208.43(b)(1)(i) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

¹⁰ *See* 78 FR 62018, 62034 (October 11, 2013).

limit gradually the ability of banking organizations to distribute capital if their capital ratios fall below certain levels, thereby strengthening the ability of banking organizations to continue lending and conducting other financial intermediation activities during stress periods.

Under the capital rule, if a banking organization's capital ratios fall within its applicable minimum-plus-buffer requirements, the maximum amount of capital distributions it can make is a function of its eligible retained income.¹¹ All of the buffer requirements in the capital rule use the same definition of eligible retained income and the same definition of eligible retained income applies to depository institutions and holding companies. Prior to the issuance of the capital interim final rule, the capital rule generally defined eligible retained income as four quarters of net income, net of distributions and associated tax effects not already reflected in net income.¹²

B. TLAC Rule

In December 2016, the Board issued a final rule (TLAC rule) to require U.S. GSIBs and covered IHCs to maintain a minimum TLAC amount, consisting of minimum amounts of long-term debt (LTD) and tier 1 capital.¹³ In addition, the TLAC rule prescribed buffer requirements above the minimum TLAC amount which a TLAC covered company must maintain to avoid restrictions on capital distributions.

¹¹ A banking organization in or below the bottom quartile of its capital conservation buffer requirement may not make any capital distributions without prior approval from the OCC, Board, or FDIC, as applicable.

¹² For purposes of the stress capital buffer, the definition of eligible retained income used to determine restrictions on capital distributions by an applicable banking organization depended on the covered holding company's capital buffer amount compared to its stress capital buffer requirement.

¹³ 82 FR 8266 (January 27, 2017); 12 CFR part 252, subparts G and P.

The TLAC rule applies to U.S. GSIBs and covered IHCs because the failure or material financial distress of these companies has the greatest potential to disrupt U.S. financial stability.¹⁴ The requirements in the TLAC rule build on, and serve as a complement to, the regulatory capital requirements in the Board's capital rule (Board capital rule).¹⁵ As with the Board capital rule, the TLAC buffer requirements were established to encourage better capital conservation by TLAC covered companies and to enhance the resilience of the banking system during stress periods.¹⁶ In particular, the Board intended for the TLAC buffer requirements to limit gradually the ability of TLAC covered companies to make capital distributions under certain circumstances, thereby strengthening the ability of TLAC covered companies to continue lending and conducting other financial intermediation activities during stress periods.

A TLAC covered company with a TLAC level that falls below the applicable minimum-plus-buffer requirements faces limitations on capital distributions, in a manner designed to parallel the restrictions on capital distributions under the Board capital rule. In particular, the maximum amount of capital distributions that a TLAC covered company can make is limited as a percentage of its eligible retained income, as defined in the TLAC rule.

¹⁴ See 12 CFR 252.60; 12 CFR 252.160.

¹⁵ While the Board capital rule's requirements are intended to ensure that a banking organization has sufficient capital to remain a going concern, the objective of the TLAC rule is to reduce the financial stability impact of the failure of a TLAC covered company by requiring sufficient loss-absorbing capacity on both a going-concern and a gone-concern basis. A TLAC covered company's regulatory capital, and especially its equity capital, is likely to be significantly or completely depleted in the events leading to its bankruptcy or resolution. Thus, if a TLAC covered company is to re-emerge from resolution with sufficient capital to successfully operate as a going concern, the firm must have a source of capital. The TLAC rule therefore requires TLAC covered companies to maintain a minimum amount of LTD that can absorb losses and serve as a source of capital in resolution.

¹⁶ 78 FR 62018, 62034 (October 11, 2013).

Prior to the issuance of TLAC interim final rule, the TLAC rule used the same definition of eligible retained income for purposes of the TLAC buffer as the definition used under the Board capital rule prior to the adoption of the capital interim final rule.

III. Overview of the Interim Final Rules and Public Comments

The spread of COVID-19 has disrupted economic activity in the United States, causing significant volatility in U.S. financial markets. The magnitude and persistence of COVID-19's overall effect on the economy remain uncertain. In light of these developments, banking organizations may experience a sudden and unanticipated decline in capital ratios.

A. Capital Interim Final Rule

In March 2020, the agencies issued the capital interim final rule, which revised the definition of eligible retained income to the greater of (1) a banking organization's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a banking organization's net income over the preceding four quarters.¹⁷ This revision reduces the likelihood that a banking organization is suddenly subject to abrupt and restrictive distribution limitations in a scenario where its ratios fall within its applicable minimum-plus-buffer requirements.

The capital interim final rule's changes to the definition of eligible retained income allow banking organizations to more freely use their capital and leverage buffers and supports banking organizations' lending activity and other financial intermediation activities to avoid compounding negative impacts on the financial markets.

¹⁷ The capital interim final rule also applies to the U.S. intermediate holding companies of foreign banking organizations required to be established or designated under 12 CFR 252.153.

The revised definition of eligible retained income under the capital interim final rule applies to all of a banking organization's buffer requirements, including the fixed greater than 2.5 percent capital conservation buffer and, if applicable, the countercyclical capital buffer, as well as, for global systemically important bank holding companies, the GSIB surcharge, and enhanced supplementary leverage ratio buffer. Once the stress capital buffer requirements for covered holding companies under the SCB final rule apply, the revised definition would also apply to all parts of a covered holding company's buffer requirements. The agencies believe that having one definition of eligible retained income for all banking organizations under the capital rule simplifies the regulatory capital framework and ensures fairness across banking organizations of all sizes.

In addition, the revised definition of eligible retained income under the capital interim final rule assists in the ability of S-corporation banking organizations to provide dividends to shareholders in order to meet their pass-through tax liabilities. S-corporation banking organizations do not pay federal income taxes. Instead, income and losses of an S-corporation are attributed to shareholders, potentially increasing their personal tax liability when the S-corporation has income and potentially reducing their personal tax liability when the S-corporation has losses. In a situation where the S-corporation has income but does not pay dividends, its shareholders are responsible for meeting their increased personal tax liability using their own resources. When an otherwise adequately capitalized S-corporation banking organization is restricted from making dividends because one or more of its capital ratios breach its buffer requirements, a situation can arise in which the banking organization's dividends to its

shareholders would be insufficient to pay their share of taxes on the banking organization's income.¹⁸

The agencies encourage banking organizations to make prudent decisions regarding capital distributions.¹⁹ The capital interim final rule was intended to strengthen the incentives for a banking organization to use its buffers in a prudent manner in adverse conditions and continue to serve as a financial intermediary and source of credit to the economy. The capital interim final rule does not make changes to any other requirement that may limit capital distributions.²⁰ For instance, under the prompt corrective action requirements, an insured depository institution that becomes less than adequately capitalized would be subject to dividend restrictions.²¹

B. TLAC Interim Final Rule

The COVID-19 stress period has presented analogous concerns under the TLAC rule to those described above around buffer use and continued financial intermediation. That is, in light of developments in connection with COVID-19, TLAC covered companies rule may experience a sudden and unanticipated decline in TLAC and, prior to the issuance of the TLAC interim final rule, the Board was similarly concerned that the mechanics around buffer requirements set forth in the TLAC rule did not reflect the intended gradual manner in which capital distribution restrictions applied. A modest reduction in TLAC could result in sudden and severe limitations on capital distributions, undermining a TLAC covered company's ability to use its TLAC buffer and creating a strong incentive to limit lending and other financial intermediation activities,

¹⁸ FDIC, FIL-40-2014 (July 21, 2014).

¹⁹ See Interagency Statement on the Use of Capital and Liquidity Buffers (March 17, 2020), available at: <https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-34a.pdf>.

²⁰ See, e.g., 12 U.S.C. 56 and 60 (OCC); 12 CFR 5.46, 5.55, and 5.64 (OCC); 12 CFR 208.5 and 12 CFR 225.4(b) (Board); 12 U.S.C. 1828(i) and 12 CFR 303.241 (FDIC).

²¹ See 12 CFR 6.6 (OCC); 12 CFR 208.40 (Board); 12 CFR 324.405 (FDIC).

thereby deterring the company from continued lending to creditworthy businesses and households during a stress period.

In March 2020, the Board issued the TLAC interim final rule so that the definition of eligible retained income under the TLAC rule paralleled the definition of the term under the Board capital rule. Specifically, the TLAC interim final rule revises the definition of eligible retained income under the TLAC rule to mean the greater of (1) a TLAC covered company's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a TLAC covered company's net income over the preceding four quarters. The Board adopted this modified definition with the intent to support TLAC covered companies' lending activity and other financial intermediation activities and avoid compounding impacts on the financial markets. The revised definition applies with respect to all TLAC buffer requirements under the TLAC rule.²²

C. Public Comments

The agencies received five public comment letters on the capital interim final rule, and the Board received two public comments on the TLAC interim final rule.

Comments on the Capital Interim Final Rule

Some commenters on the capital interim final rule supported the change to the definition of eligible retained income in the capital rule, indicating that flexibility provided by the change will help banking organizations continue to lend through the COVID-19 crisis. One commenter indicated that the capital interim final rule would assist community banking organizations

²² Under the TLAC rule, a U.S. GSIB is subject to the external TLAC risk-weighted buffer, which sits above the minimum risk-based TLAC requirement, and the external TLAC leverage buffer, which sits above the minimum total-leverage exposure-based TLAC requirement. 12 CFR 252.63(c). Similarly, a covered IHC is subject to covered IHC TLAC buffer, which sits above the minimum risk-based TLAC requirement. 12 CFR 252.165(d).

organized as S-corporations to meet tax obligations and still raise capital as needed. Another commenter was supportive of the capital interim final rule's application of a consistent definition of eligible retained income across banking organizations of all sizes and suggested that the new definition will add consistency to the capital rule while balancing the need for banking organizations to lend to borrowers affected by COVID-19 and still maintain general safety and soundness.

Other commenters opposed the change to the definition of eligible retained income in the capital interim final rule and advocated that the agencies be more prescriptive in compelling banking organizations to take actions to conserve capital or continue lending, such as prohibiting capital distributions while the COVID-19 crisis continues.²³ One commenter was supportive of the capital interim final rule, but asserted that the revised definition of eligible retained income should only be used by a banking organization if the capital distributions enhance the financial institution's ability to contribute to economic recovery of both the stock market and main street businesses. The commenter suggested that capital distributions should have requirements and restrictions associated with them, such as limits on executive bonuses or payouts and limits on share repurchases, and should not be permitted in certain situations.

The agencies note that the capital buffer requirements do restrict capital distributions. As described above, if a banking organization's capital or leverage ratios fall within its applicable minimum-plus-buffer requirements, the maximum amount of capital distributions it can make is limited as a percentage of its eligible retained income, as defined in the capital rule.

²³ The Board received a number of comments that were not specifically responsive to the proposals. In particular, commenters suggested that the Board take actions outside of the scope of the Board capital rule. These comments are not within the scope of this rulemaking and therefore are not discussed in this Supplementary Information.

Accordingly, the capital buffer requirements compel banking organizations to increasingly constrain distributions as their regulatory capital ratios approach their applicable minimums. For instance, a banking organization in or below the bottom quartile of its buffer requirement may not make any capital distributions without prior approval from its primary Federal regulator.

The revised definition of eligible retained income under the final rule facilitates banking organizations' use of their buffers as intended by ensuring that the limits on capital distributions apply gradually. The revised definition reduces the incentive for banking organizations to limit their lending and other financial intermediation activities in order to avoid facing abrupt limitations on capital distributions.

Comments on the TLAC interim final rule

The comment letters addressing the TLAC interim final rule generally opposed the Board's change to the definition of eligible retained income and advocated for additional restrictions on capital distributions. These comments closely aligned with similar comments received in connection with the capital interim final rule.

A commenter to the TLAC interim final rule suggested that TLAC covered companies that utilize U.S. Treasury or Federal Reserve lending facilities should not be able to apply the revised definition of eligible retained income since it would potentially allow for greater distributions while simultaneously taking advantage of government support. Additionally, this commenter suggested that TLAC covered companies should be subject to minimum requirements for lending and limits on executive bonuses and share repurchases in order to ensure capital distributions enhance their ability to contribute to the economic recovery.

Another commenter to the TLAC interim final rule indicated that, given the uncertainties surrounding COVID-19 and potential economic effects, TLAC covered companies should be

taking actions to conserve capital. This commenter asserted that the TLAC interim final rule may pose risks to safety and soundness because capital distributed will not be available to absorb future losses of unknown severity. Further, the commenter expressed doubt that the TLAC interim final rule would achieve the Board's intent of promoting lending to the economy. The commenter concluded that the best way to promote lending would be for the Board to prohibit capital distributions by TLAC covered companies for the duration of the crisis. In addition, the commenter requested that the Board delay implementation of the revised definition of eligible retained income until after the crisis has passed.

The revised definition of eligible retained income under the TLAC interim final rule facilitates TLAC covered companies' use of their buffers as intended by ensuring that the limits on capital distributions apply gradually. The revised definition reduces the incentive for TLAC covered companies to limit their lending and other financial intermediation activities in order to avoid facing abrupt limitations on capital distributions.

IV. Summary of the Final Rule

For the reasons discussed above, the final rule adopts the definition of eligible retained income unchanged from the capital interim final rule, and the TLAC interim final rule. Accordingly, under the final rule, eligible retained income for purposes of the agencies' capital rule and the Board's TLAC rule is defined as the greater of (1) a banking organization's or TLAC covered company's net income (as applicable) for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) the average of a banking organization's or TLAC covered company's net income (as applicable) over the preceding four quarters.

V. Impact Assessment

In ordinary economic circumstances, many banking organizations will distribute a significant portion of their net income and retain the rest to support growth. As banking organizations enter stress periods, the restrictions in the capital rule and TLAC rule, as applicable, limit distributions and help to preserve capital and support lending. However, if the limits to distributions are too restrictive, banking organizations can face a sharp increase in their distribution limitations when their applicable ratios fall to certain levels. This may create an incentive for banking organizations to reduce lending or take other actions to avoid using their buffers. The revised definition of eligible net income in the final rule allows banking organizations to more gradually reduce distributions as they enter stress and provides banking organizations with stronger incentives to continue to lend in a stressed scenario. On the other hand, by enabling banking organizations to gradually decrease capital distributions in stress (rather than mandating a sharp decrease) the rule could incrementally reduce the banking organization's loss-absorption capacity in stress.

The definition of eligible retained income affects the distributions of banking organizations operating within their applicable minimum-plus-buffer requirements. It does not have an impact on minimum capital or TLAC requirements, *per se*. As such, the revised definition of eligible retained income in the final rule is not likely to have any noticeable effect on the minimum capital requirements of banking organizations or the TLAC or LTD requirements applicable to covered companies. However, the final rule could impact actual capital levels given the additional flexibility of meeting buffers during times of stress.

VI. Administrative Law Matters

A. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.²⁴ 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.²⁵

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 compete with foreign-based enterprises in domestic and export markets.²⁶

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.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. In connection with the capital interim final rule, the agencies made revisions to their current information collections for

²⁴ 5 U.S.C. 801 *et seq.*

²⁵ 5 U.S.C. 801(a)(3).

²⁶ 5 U.S.C. 804(2).

the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051). The OMB control numbers for the agencies are: OCC OMB No. 1557-0081; Board OMB No. 7100-0036; and FDIC OMB No. 3064-0052. OMB has approved these revisions and the agencies are seeking comment in a separate **Federal Register** notice.²⁷ There is no change, however, to the Call Reports or their related instructions in connection with this final rule.

Also, in connection with the capital interim final rule, the Board temporarily revised the Consolidated Financial Statements for Holding Companies (FR Y-9; OMB No. 7100-0128) to reflect the changes made in the capital interim final rule, and invited comment on a proposal to extend that collection of information for three years, with revision. No comments were received regarding this proposal under the PRA. The Board has now extended the FR Y-9 reports for three years, with revision, as proposed, to align the reporting instructions with this final rule. The Board has reviewed the revisions to the FR Y-9C pursuant to authority delegated by the OMB and will submit information collection burden estimates to OMB to finalize the revisions. All of the updates to the FR Y-9C noted in the interim final rule should be minimal and result in zero estimated net change in hourly burden.

(1) Report Title: Financial Statements for Holding Companies.

Agency form number: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS.

OMB control number: 7100-0128.

Effective Date: Currently effective

Frequency: Quarterly, semiannually, and annually.

²⁷ See 85 FR 44361 (July 22, 2020).

Respondents: Bank holding companies, savings and loan holding companies,²⁸ securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents:

FR Y-9C (non-advanced approaches (AA) HCs community bank leverage ratio (CBLR)) with less than \$5 billion in total assets – 71,

FR Y-9C (non AA HCs CBLR) with \$5 billion or more in total assets – 35,

FR Y-9C (non AA HCs non-CBLR) with less than \$5 billion in total assets – 84,

FR Y-9C (non AA HCs non-CBLR) with \$5 billion or more in total assets – 154,

FR Y-9C (AA HCs) – 19,

FR Y-9LP – 434,

FR Y-9SP – 3,960,

FR Y-9ES – 83,

FR Y-9CS – 236.

Estimated average hours per response:

Reporting

FR Y-9C (non AA HCs CBLR) with less than \$5 billion in total assets – 29.17,

FR Y-9C (non AA HCs CBLR) with \$5 billion or more in total assets – 35.14,

FR Y-9C (non AA HCs non-CBLR) with less than \$5 billion in total assets – 41.01,

FR Y-9C (non AA HCs non-CBLR) with \$5 billion or more in total assets – 46.98,

²⁸ A savings and loans holding company (SLHC) must file one or more of the FR Y-9 series of reports unless it is: (1) a unitary SLHC with primarily commercial assets that meets the requirements of section 10(c)(9)(c) of the Home Owners' Loan Act, for which thrifts make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

FR Y-9C (AA HCs) – 48.80,

FR Y-9LP – 5.27,

FR Y-9SP – 5.40,

FR Y-9ES – 0.50,

FR Y-9CS – 0.50.

Recordkeeping

FR Y-9C (non-advanced approaches HCs with less than \$5 billion in total assets), FR Y-9C (non-advanced approaches HCs with \$5 billion or more in total assets), FR Y-9C (advanced approaches HCs), and FR Y-9LP: 1.00 hour; FR Y-9SP, FR Y-9ES, and FR Y-9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y-9C (non AA HCs CBLR) with less than \$5 billion in total assets – 8,284,

FR Y-9C (non AA HCs CBLR) with \$5 billion or more in total assets – 4,920,

FR Y-9C (non AA HCs non-CBLR) with less than \$5 billion in total assets – 13,779,

FR Y-9C (non AA HCs non-CBLR) with \$5 billion or more in total assets – 28,940,

FR Y-9C (AA HCs) – 3,709,

FR Y-9LP – 9,149,

FR Y-9SP – 42,768,

FR Y-9ES – 42,

FR Y-9CS – 472.

Recordkeeping

FR Y-9C – 1,452,

FR Y-9LP – 1,736,

FR Y-9SP – 3,960,

FR Y-9ES – 42,

FR Y-9CS – 472.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. The RFA requires an agency to prepare a final regulatory flexibility analysis when it promulgates a final rule after being required to publish a general notice of proposed rulemaking. As discussed previously, the agencies have decided to adopt, without changes, revisions to the definition of eligible retain income made under the capital interim final rule and the TLAC interim final rule. There was no general notice of proposed rulemaking associated with this final rule.

Accordingly, the agencies have concluded that the RFA’s requirements relating to initial and final regulatory flexibility analysis do not apply to the promulgation of this final rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),²⁹ 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 the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on IDIs, including small IDIs, and customers of IDIs, as well as the benefits of such regulations. In addition, section 302(b) of

²⁹ 12 U.S.C. 4802(a).

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.³⁰ The agencies considered the administrative burdens and benefits of the final rule in determining its effective date and administrative compliance requirements. As such, the final rule will be effective on January 1, 2021.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act³¹ requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

F. OCC Unfunded Mandates Reform Act of 1995

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 et seq., requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has not published a general notice of proposed rulemaking in connection with this revision, the OCC has not prepared an economic analysis of the rule under the UMRA.

³⁰ 12 U.S.C. 4802.

³¹ 12 U.S.C. 4809.

Authority and Issuance

For the reasons set forth in the preamble, the interim final rules that were published at 85 FR 15909 on March 20, 2020, and 85 FR 17003 on March 26, 2020, are adopted as final rules without change.

Brian P. Brooks,
Acting Comptroller of the Currency

Board of Governors of the Federal Reserve System

By order of the Board of Governors
Ann E. Misback,
Secretary of the Board

Federal Deposit Insurance Corporation

By order of the Board of Directors
Robert E. Feldman,
Executive Secretary