



December 27, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Ann E. Misback
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

Re: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory
Paperwork Reduction Act of 1996 Docket ID OCC-2017-0018

Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork
Reduction Act of 1996 Docket No. R-1576; RIN 7100 AE-74

Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork
Reduction Act of 1996 RIN 3064-AE 59

Dear Secretary Misback, Chairman Gruenberg, and Comptroller Otting:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Office of the Comptroller of the Currency, Board of Governors of the Federal

Reserve System, and the Federal Deposit Insurance Commission’s (hereinafter “the agencies”) joint Notice of Proposed Rulemaking on *Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996*.¹ Advocacy appreciates the effort that the agencies have made to reduce the regulatory burden on small entities. Advocacy encourages the agencies to take steps to reduce the regulatory burden further.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule’s publication in the Federal Register, the agency’s response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

The Proposed Rule

On October 27, 2017, the agencies published a notice of proposed rulemaking in the Federal Register. The proposal would simplify compliance with certain aspects of the risk-based and leverage capital requirements (“capital rule”). A majority of the proposed simplifications would apply solely to banking organizations that are not subject to the advanced approaches capital rule (“non-advanced approaches banking organizations”). Specifically, the agencies are proposing that non-advanced approaches banking organizations apply a simpler regulatory capital treatment for mortgage servicing assets, certain deferred tax assets arising from temporary differences, investments in the capital of unconsolidated financial institutions, and capital issued by a consolidated subsidiary of a banking organization and held by third parties (minority interest). The proposal also includes revisions to the treatment of certain acquisition, development, or construction exposures that are designed to address comments regarding the current definition of high volatility commercial real estate exposure under the capital rule’s standardized approach. Under the standardized approach, the proposed revisions to the treatment of acquisition, development, or construction exposures would not apply to existing exposures that are outstanding or committed prior to any final rule’s effective date. In addition to the proposed simplifications, the agencies also are proposing various additional clarifications and technical

¹ 82 Fed. Reg. 49984, October 27, 2017.

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ Id.

amendments to the agencies' capital rule, which would apply to both non-advanced approaches banking organizations and advanced approaches banking organizations.⁶

There May be Less Costly Alternatives

As noted above, Advocacy appreciates the fact that the agencies are taking steps to reduce the burden on small financial institutions. For several years, small financial institutions have incurred a number of costly regulatory changes. They deserve regulatory relief. A growing body of research, including research by Advocacy, shows access to credit is a fundamental issue for small businesses, and small financial institutions are an important source of small business credit. While this proposal may reduce the regulatory burden on small entities, Advocacy understands that there may be ways to reduce the burden further. Advocacy encourages the agencies to give full consideration to the alternatives that the industry may suggest.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation & Banking

Cc: The Hon. Neomi Rao
Administrator
OMB Office of Information and Regulatory Affairs

⁶ 82 Fed. Reg. 49984.