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FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1621]

RIN 7100–AF15

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE90

Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures

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 to revise the definition of ''high volatility commercial real estate (HVCRE) exposure'' in the regulatory capital rule. This final rule conforms this definition to the statutory definition of ''high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,'' in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The final rule also clarifies the capital treatment for loans that finance the development of land under the revised HVCRE exposure definition.

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

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I. Background

On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) became law. Section 214 of EGRRCPA (section 214 of EGRRCPA) [1] added a new section, Section 51, to the Federal Deposit Insurance Act (FDI Act).[2] Section 51 of the FDI Act provides a statutory definition of high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan. Under section 51 of the FDI Act, the agencies may only require a depository institution to assign a heightened risk weight to a high volatility commercial real estate (HVCRE) exposure, as defined under the capital rule, if such exposure is an HVCRE ADC loan. Section 214 was effective upon enactment of EGRRCPA in May 2018.

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) issued an interagency statement on July 6, 2018 (interagency statement) that provided information on rules and associated reporting requirements that the agencies jointly administer and that EGRRCPA immediately affected, including the

[1] Public Law 115–174, 132 Stat. 1296 (2018).

[2] *See* 12 U.S.C. 1831bb.

HVCRE exposure definition in the capital rule (as affected by section 214 of EGRRCPA).[3] With respect to section 214 of EGRRCPA, the interagency statement provided that banking organizations could use available information to reasonably estimate and report only HVCRE ADC loans (as set forth in section 214 of EGRRCPA) for the purpose of reporting HVCRE exposures on Schedule RC–R, Part II of the Consolidated Reports of Condition and Income (Call Report)[4] and Schedule HC–R, Part II of FR Y–9C. The interagency statement further provided that banking organizations would be permitted to refine their estimates as they obtain additional information. The interagency statement also indicated that, alternatively, banking organizations would be permitted to continue to report and risk-weight HVCRE exposures in a manner consistent with the current capital rule and instructions to the Call Report or FR Y–9C until the agencies took further action.

On September 28, 2018, the agencies published an HVCRE notice of proposed rulemaking (HVCRE proposal) in the **Federal Register** to revise the HVCRE exposure definition in section 2 of the capital rule to conform to the statutory definition of an HVCRE ADC loan.[5] As part of the HVCRE proposal, to facilitate its consistent application, the agencies proposed to interpret certain terms in the revised definition of HVCRE exposure generally consistent with their usage in other relevant regulations or the instructions to the Call Report, where applicable, and requested comment on whether any other terms in the revised definition would also require interpretation. On July 23, 2019, the agencies proposed to clarify a portion of the HVCRE proposal by publishing in the **Federal Register** a subsequent proposal (Land Development proposal) that would have added a new paragraph to the proposed definition of HVCRE exposure.[6] The new paragraph would have provided that the exclusion for one- to four-family residential properties from the definition of HVCRE exposure does not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land, without any construction of one- to four-family residential structures.

In the HVCRE proposal, the agencies proposed to revise the definition of an HVCRE exposure for the purpose of calculating risk-weighted assets under both the standardized approach and the internal ratings-based approach (advanced approaches).[7] The proposal would have applied a 150 percent risk weight to loans that meet the revised definition of HVCRE exposure under the capital rule's standardized approach.[8] A banking organization that calculates its risk-weighted assets under the advanced approaches would have referred to the definition of an HVCRE exposure in section 2 of the capital rule for the purpose of identifying wholesale exposure categories.[9]

Consistent with section 214 of EGRRCPA, in the HVCRE proposal, the agencies proposed to exclude from the revised HVCRE exposure definition any loan made prior to January 1, 2015.[10] Unless a lower risk weight would have applied, banking organizations would have been permitted to apply a 100 percent risk weight to acquisition, development, or construction (ADC) loans originated prior to January 1, 2015, even if those loans were classified as HVCRE exposures under the superseded HVCRE exposure definition.[11]

As discussed further below, the agencies are adopting a final definition of HVCRE exposure with modifications based on comments received on the HVCRE and Land Development proposals. In adopting a final rule (final rule), the agencies made minor modifications to the proposed regulatory text by removing the separate paragraph describing the land development loans that qualify for the one- to four-family residential properties exclusion and including that same language in the part of the revised HVCRE exposure definition that allows for the exclusion of one- to four-family residential properties. By its terms, the statutory definition of an HVCRE ADC loan applies only to depository institutions. As stated in the HVCRE proposal, applying separate definitions of HVCRE ADC loan at the depository institution level and at the holding company level within an organization could result in undue burden without contributing meaningfully to any regulatory objective. Accordingly, the final rule applies the revised definition of an HVCRE exposure to all banking organizations that are subject to the agencies' capital rule, including bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations. Additionally, to facilitate the consistent application of the revised HVCRE exposure definition, the agencies are also clarifying the interpretation of certain terms in the revised HVCRE exposure definition generally to be consistent with their usage in other relevant regulations or the instructions to the Call Report and FR Y–9C, where applicable. The agencies plan to make conforming changes to the instructions of applicable regulatory reports (Schedule RC–R, Part II of the Call Report and Schedule HC–R, Part II of the FR Y–9C).[12]

The effective date of the final rule is April 1, 2020. Prior to the effective date of the final rule, banking organizations should refer to the interagency statement. On and after April 1, 2020, the final rule will supersede the HVCRE exposure section of the interagency statement, as well as the set of Frequently Asked Questions (FAQs) issued by the agencies pertaining to HVCRE exposures.[13] Accordingly, starting April 1, 2020, banking

[3] Board, FDIC, and OCC, *Interagency statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706a1.pdf*.

[4] OMB Control Nos.: OCC, 1557–0081; Board, 7100–0036; and FDIC, 3064–0052.

[5] *See* 83 FR 48990 (September 28, 2018). Section 214 of EGRRCPA generally defines an HVCRE ADC loan as a credit facility secured by land or improved real property that, primarily finances, has financed, or refinances the acquisition, development, or construction of real property; has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility. Additionally, in light of section 214 of EGRRCPA, in the HVCRE proposal the agencies stated that they will take no further action regarding the HVADC aspect of the October 27, 2017 proposal titled, Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996. 82 FR 49984 (October 27, 2017).

[6] *See* 84 FR 35344 (July 23, 2019).

[7] *See* 12 CFR part 217, subparts D and E (Board); 12 CFR part 3, subparts D and E (OCC); 12 CFR part 324, subparts D and E (FDIC).

[8] *See* 12 CFR 217.32(j) (Board); 12 CFR 3.32(j) (OCC); 12 CFR 324.32(j) (FDIC).

[9] *See* 12 CFR 217.131 (Board); 12 CFR 3.131 (OCC); 12 CFR 324.131 (FDIC).

[10] On January 1, 2015, the heightened risk weight for HVCRE exposures became effective for all banking organizations.

[11] The agencies did not propose to amend the treatment of past due exposures. Therefore, even if an exposure would no longer be considered an HVCRE exposure, it still could be subject to a heightened risk weight if it is 90 days or more past due or reported as nonaccrual.

[12] *See* 84 FR 4131 (February 14, 2019).

[13] "Frequently Asked Questions on the Regulatory Capital Rule," OCC Bulletin 2015–23 (April 6, 2016), *available at: https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html.* "SR 15–6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules" (April 5, 2015), *available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm;* FDIC FIL 16–2015, *available at https://www.fdic.gov/news/news/financial/2015/fil15016.html.*

organizations subject to the capital rule must evaluate ADC credit facilities in accordance with the revised definition of HVCRE exposure in this final rule.

II. Summary of the Proposals, Comments Received, and the Final Rule

In response to the HVCRE proposal, the agencies received 54 comment letters, and, in response to the Land Development proposal, the agencies received 9 comment letters. Numerous commenters supported revising the definition of HVCRE exposure in accordance with section 214 of EGRRCPA, though commenters were less supportive of the Land Development proposal. Many commenters offered suggestions on how the agencies should interpret several of the terms used in section 214 of EGRRCPA and in the revised definition of HVCRE exposure. Several commenters observed that the revised HVCRE exposure definition would be narrower than the previous regulatory definition of HVCRE exposure, and, that the revised definition would apply only to a relatively small number of exposures. These commenters suggested that the agencies should therefore remove the distinction between HVCRE and other ADC exposures under the capital rule's standardized approach and apply a flat 100 percent risk weight to all ADC loans. One commenter recommended eliminating the distinction between HVCRE and other ADC exposures only for banking organizations with less than $50 billion in total assets. One commenter, by contrast, opposed the proposal and indicated that it could lead to increased risk taking by banking organizations.

ADC loans, which are a subset of all commercial real estate exposures, generally exhibit heightened risks relative to other commercial real estate exposures. The revised HVCRE exposure definition is intended to capture those ADC exposures that have increased risk characteristics. These risks apply regardless of the size of the institution that has the exposure, and, therefore, the final rule applies the same HVCRE exposure definition to all banking organizations subject to risk-based capital requirements. The agencies have decided to maintain, as proposed, the 150 percent risk weight under the standardized approach for any loan that meets the revised definition of an HVCRE exposure. A banking organization that calculates its risk-weighted assets under the advanced approaches also would refer to the definition of an HVCRE exposure in section 2 of the capital rule for the purpose of identifying the appropriate wholesale exposure category for its ADC exposures.[14]

A. Evaluation of ADC Loans Originated After January 1, 2015

In the HVCRE proposal, the agencies invited comment on whether banking organizations should be required to reevaluate all ADC loans originated on or after January 1, 2015, under the revised HVCRE exposure definition. Several commenters stated that the agencies should clarify how a banking organization would apply the new definition to ADC loans originated after January 1, 2015, but before the effective date of the final rule. These commenters stated that banking organizations should be allowed, but not required, to reevaluate existing loans to determine whether they are HVCRE exposures under the revised definition.

In response to the comments, the final rule amends the HVCRE exposure definition to provide banking organizations with the option to maintain their current capital treatment for ADC loans originated between January 1, 2015, and the effective date of this final rule. Consistent with the interagency statement, a banking organization also will have the option to reevaluate any or all of its ADC loans originated on or after January 1, 2015, but before the effective date of the final rule, using the revised HVCRE exposure definition. Loans originated after the effective date of this final rule must be risk-weighted using the revised HVCRE exposure definition. If a loan is an HVCRE exposure, the loan will remain an HVCRE exposure until reclassified by the banking organization as a non-HVCRE exposure. Therefore, with respect to ADC loans originated between January 1, 2015, and prior to the effective date of the final rule that have been classified as non-HVCRE exposures, the agencies are not requiring banking organizations to reevaluate those exposures using the revised HVCRE exposure definition. In the case of a banking organization that modifies a loan or when the project is altered in a manner that materially changes the underwriting of the credit facility (such as increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project), the banking organization should treat the loan as a new ADC exposure and reevaluate the exposure to determine whether or not it is an HVCRE exposure.

B. Revised Scope of HVCRE Exposure Definition

In the HVCRE proposal, consistent with section 214 of EGRRCPA, the agencies proposed to require that a credit facility meet the following three-prong criteria in order to be classified as an HVCRE exposure. First, the credit facility must primarily finance or refinance the acquisition, development, or construction of real property. Second, the purpose of the credit facility must be to provide financing to acquire, develop, or improve such real property into income-producing real property. Finally, the repayment of the credit facility must depend upon the future income or sales proceeds from, or refinancing of, such real property.

The agencies received several comments on these three criteria. One commenter stated that the agencies should provide banking organizations more flexibility to interpret the statutory term ''primarily finances.'' This commenter stated that there may be instances where a credit facility should not be considered to ''primarily finance'' ADC activities, even where more than 50 percent of the proposed use of the funds is for ADC activities. Another commenter asked the agencies to state that a loan secured by an owner-occupied property does not ''primarily finance'' ADC activities because the financed property is not ''income producing.'' Another commenter asked the agencies to clarify the meaning of the statutory term ''income-producing real property'' and specify whether the term applies to hotel properties or real estate that are primarily occupied by a small business, but are leased in part.

In accordance with section 214 of EGRRCPA, the agencies also proposed to define HVCRE exposure as ''a credit facility secured by land or improved real property.'' The agencies stated in the HVCRE proposal that this statutory term should be applied consistently with the current Call Report definition for ''a loan secured by real estate.'' Under the Call Report and FR Y–9C instructions, ''a loan is secured by real estate'' if the estimated value of the real estate collateral at origination (after deducting all senior liens held by others) is greater than 50 percent of the principal amount of the loan at origination.[15] Therefore, for purposes of the revised HVCRE exposure definition, the HVCRE proposal would have clarified that a ''credit facility secured

[14] *See* 12 CFR 217.131 (Board); 12 CFR 3.131 (OCC); 12 CFR 324.131 (FDIC).

[15] *See* Federal Financial Institutions Examination Council, Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and FFIEC 041, GLOSSARY A–58 (2018); and FFIEC 051, GLOSSARY A–74 (2018).

by land or improved real property'' referred to a credit facility that meets this collateral criterion. Commenters generally supported using the Call Report instructions for determining whether a loan is secured by real estate and agreed that this clarification is consistent with the reference in section 214 of EGRRCPA to a ''credit facility secured by land or improved real property.''

For purposes of the final rule, consistent with the HVCRE proposal, the statutory term ''credit facility secured by land or improved real property,'' as it is used in the revised definition of HVCRE exposure, should be interpreted in a manner that is consistent with the current definition for ''a loan secured by real estate'' in the Call Report and FR Y–9C instructions. For clarity, the agencies refer to the following example, which is also contained in the glossary of the Call Report and FR Y–9C under the term, ''loan secured by real estate.'' Assume a banking organization loans $700,000 to a dental group to construct and equip a building that will be used as the dental group's office. The loan will be secured by both the real estate and the dental equipment. At origination, the estimated values of the building, upon completion, and the equipment are $400,000 and $350,000, respectively. The loan should be reported as a loan secured by real estate given that the value of the real estate collateral represents 57 percent of the loan amount. In contrast, if the estimated values of the building and equipment at origination are $340,000 and $410,000, respectively, the loan should not be reported as a loan secured by real estate as the real estate collateral only represents 48 percent of the loan amount.

In response to comments, the agencies also are clarifying that for purposes of the final rule, consistent with the reporting requirements, loans reported as ''Loans secured by nonfarm nonresidential properties'' in item 1.e of Schedules RC–C, Part I and HC–C of the Call Report and FR Y–9C, generally would not meet the criteria to be HVCRE exposures because such loans are not dependent upon future income or sales proceeds from, or refinancing of, the real property being financed for repayment. However, loans that finance nonfarm, nonresidential property construction or land development projects, as well as loans secured by vacant lots, generally would meet the three-prong scoping criteria for HVCRE exposures under the final rule.

Under both the HVCRE and Land Development proposals, ''other land loans'' (generally loans secured by vacant land, except land known to be used for agricultural purposes) were included within the scope of the revised HVCRE exposure definition. Several commenters expressed the view that loans to purchase vacant land should not automatically be considered HVCRE exposures, as these loans may not have the purpose of providing financing to develop the land or improve it into income-producing real property. These commenters requested that the HVCRE exposure definition apply only to a loan secured by vacant land if the loan is extended for the purpose of developing or improving the real property and repayment of the loan depends on the future income, sales proceeds, or refinancing of the developed or improved land. Multiple commenters stated that requiring a heightened risk weight for all loans secured by vacant land could discourage investments made for the purpose of future development.

For purposes of the final rule, the agencies are clarifying that under the final rule ''other land loans'' are not automatically included as an HVCRE exposure. Such loans would be included in the scope of the revised HVCRE exposure definition if they meet the three-prong criteria of an HVCRE exposure. For example, if a loan is made to acquire or refinance raw or developed land, and the source of repayment is dependent upon the income produced from resale or refinance of the land, then the loan meets all three prongs of the criteria. This would be consistent with the statutory definition and with the risks posed by such loans. The inclusion of such land loans in the scope of the revised HVCRE exposure definition is also consistent with the Call Report's and FR Y–9C's inclusion of ''other land loans'' with construction and development loans. Furthermore, treating such loans as HVCRE exposures is consistent with the Interagency Guidelines on Real Estate Lending Policies (referred to as ''interagency real estate guidelines''), which recognize the heightened risk profile of ''raw land'' loans, through the supervisory loan-to-value ratio assigned to such loans.[16] Aligning the treatment of loans secured by vacant land under the regulatory reporting requirements, the interagency real estate guidelines, and the regulatory capital requirements should promote a simpler framework that reflects the elevated risks generally posed by these exposures. In certain cases, land loans could still qualify for one of the exclusions under the revised HVCRE exposure definition. For example, if the repayment of a loan secured by vacant land is not dependent on income to be produced from the property, or on the future sale of the financed property, the banking organization may be able to exclude the loan from the HCVRE exposure category if the loan were made in accordance with the banking organization's loan underwriting standards for permanent financings and classified accordingly. Therefore, the agencies are clarifying for purposes of the final rule that ''other land loans'' or ''raw land'' loans that meet a banking organization's loan underwriting standards for permanent financings generally would not meet the three-prong criteria of an HVCRE exposure as a permanent financing would generally not be dependent upon future income or sales proceeds from, or refinancing of, the real property being financed for the repayment of such credit facility.

[16] *See* Board, OCC, and FDIC, *Interagency Guidelines For Real Estate Lending Policies:* 12 CFR part 208 Appendix C (Board); 12 CFR part 34 Appendix A (OCC); 12 CFR part 365 Appendix A (FDIC).

C. Exclusions From the Revised HVCRE Exposure Definition

Under the HVCRE proposal, the exposures described in the following paragraphs would have been excluded from the definition of HVCRE exposure:

1. One- to Four-Family Residential Properties

Consistent with section 214 of EGRRCPA, the HVCRE proposal would have excluded from the definition of HVCRE exposure, credit facilities that finance the acquisition, development, or construction of one- to four-family residential properties. In the HVCRE proposal, the agencies stated that the scope of the one- to four-family residential properties exclusion should be consistent with the definition of one- to four-family residential property set forth in the interagency real estate lending guidelines. The interagency real estate lending guidelines define a one- to four-family residential property as a property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law). The interagency real estate lending guidelines further state that the construction of condominiums and cooperatives should be considered multifamily construction for risk-management purposes, including for the purpose of determining the appropriate loan-to-value ratio. Accordingly, the HVCRE proposal stated that loans that finance the construction of condominiums and cooperatives generally should not qualify for exclusion from the HVCRE exposure treatment as one- to four-family residential properties. Additionally, in order to qualify for this exclusion, the HVCRE proposal stated that credit facilities extended for the purpose of the acquisition, development, or construction of properties that are one- to four-family residential properties would include both loans to construct one- to four-family residential structures and loans that finance both the acquisition of the land and the development or construction of one- to four-family residential structures, including lot development loans. However, loans used solely to acquire undeveloped land would fall outside the scope of the one- to four-family residential properties exclusion regardless of how the land is zoned.

In response to the HVCRE proposal, the agencies received several comments on the scope of the proposed exclusion for one- to four-family residential properties from the HVCRE exposure definition. Many commenters stated that the HVCRE exposure definition should exclude loans to finance any development where the units are rentals or owner-occupied. Several commenters requested that the agencies align the one- to four-family residential properties exclusion with the reporting instructions for one- to four-family residential construction loans in the Call Report and FR Y–9C. Several commenters stated that if the agencies aligned the exclusion criteria with the regulatory reporting instructions, one- to four-unit condominium residential properties would qualify for the one- to four-family residential properties exclusion, as the loans are secured and reported as one- to four-family residential properties. These commenters also stated that if the agencies follow the definition of one- to four-family residential property loans set forth in the interagency real estate lending guidelines, the Call Report and FR Y–9C instructions should be amended to align with the revised HVCRE exposure definition.

After considering the comments on the HVCRE proposal, the agencies have decided to align the exclusion of loans that finance one- to four-family residential properties with the definition and reporting of one- to four-family residential property loans set forth in the Call Report and FR Y–9C, rather than the definition set forth in the interagency real estate lending guidelines. Allowing banking organizations to apply a consistent definition of one- to four-family residential property construction loans in this manner should simplify reporting requirements. Under the final rule, one- to four-family residential property construction loans reported in the Call Report and FR Y–9C (in item 1.a. (1) of Schedules RC–C, Part I and HC–C) will qualify for the one- to four-family residential property exclusion.[17] Construction loans secured by single-family dwelling units, duplex units, and townhouses are reported in the Call Report and FR Y–9C (in item 1.a. (1) of Schedules RC–C, Part I and HC–C) and therefore these types of loans will qualify for the one- to four-family residential property exclusion. Condominium and cooperative construction loans will also qualify for the one- to four-family residential property exclusion, even if the loan is financing the construction of a building with five or more dwelling units as long as the repayment of the loan comes from the sale of individual condominium dwelling units or individual cooperative housing units. This treatment is consistent with the definition and reporting of one- to four-family residential property loans set forth in the Call Report and FR Y–9C.

The agencies are also clarifying for purposes of the final rule that loans for multifamily residential property construction and land development purposes and loans secured by vacant lots in established multifamily residential sections would not qualify for the one- to four-family residential properties exclusion. The construction of rental apartment buildings with 5 or more dwelling units are reported in the Call Report and FR Y–9C (in item 1.a.(2) of Schedules RC–C, Part I and HC–C). The agencies also note that in instances where a credit facility's underwriting materially changes, which may occur when a project changes from relying on the sale of individual condominium dwelling units for repayment to relying instead on apartment rental income for repayment, the banking organization should reevaluate the exposure to determine whether or not it is an HVCRE exposure.

a. Land Development

Commenters on the HVCRE proposal indicated that it remained unclear whether a facility that finances the purchase of land to be developed into lots but does not finance the construction of dwellings would be considered one- to four-family residential property financing and excluded from the definition of HVCRE exposure. After reviewing the comments on the HVCRE proposal related to the one- to four-family residential property exclusion, the agencies determined that the regulatory capital treatment for lot development loans warranted further consideration and clarification. Therefore, the agencies issued the Land Development proposal, which proposed to add a new paragraph to the definition of HVCRE exposure providing that the exclusion for one- to four-family residential properties would not include credit facilities that solely finance land development activities, such as the laying of sewers, water pipes, and similar improvements to land, without any construction of one- to four-family residential structures.

In order for a loan to be eligible for this exclusion, the Land Development proposal provided that the credit facility would be required to include financing for construction of one- to four-family residential structures. Therefore, a credit facility that combines the financing of land development and the construction of one- to four-family residential structures would qualify for the one- to four-family residential properties exclusion. However, a facility that solely finances land development generally would have met the three-prong criteria of an HVCRE exposure.

In response to the Land Development proposal, multiple commenters stated that treating land development loans as HVCRE exposures and thus applying heightened capital requirements to them could lead to increases in fees, costs, and interest rates for consumers who will purchase the completed one- to four-family residences. Another commenter stated that treating land development loans as HVCRE exposures could create undue barriers to the development of new housing, including affordable housing.

Several commenters acknowledged the heightened risk that land development and lot development loans pose to banking organizations and stated that such loans warrant heightened scrutiny. However, these commenters further stated that a banking organization's management of such risk should be assessed as part of the supervisory process and not addressed through a one-size-fits-all capital requirement.

Multiple commenters stated that for a variety of financial, tax, and liability reasons, standard practice is to establish one entity to develop lots and a separate entity to erect structures on the land. Commenters described that under the proposal, a loan to the first entity would

[17] *See* Federal Financial Institutions Examination Council, Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and FFIEC 041, RC–C–4 (2018); and FFIEC 051, RC–C–6 (2018).

be considered an HVCRE exposure, while a loan to the second entity would qualify for the exclusion. Another commenter stated that land development financing structures would prevent many loans from qualifying for the contributed capital exclusion because profits are normally and customarily distributed to investors throughout the project as lots are sold, rather than retained until the loan is paid off. Several commenters also stated that they believed the Land Development proposal was inconsistent with their interpretation of the statutory definition of HVCRE ADC.

One commenter on the Land Development proposal requested clarification on whether two loans originated simultaneously—a land acquisition and development loan and a loan for the construction of one- to four-family properties—would be eligible for the one- to four-family residential properties exclusion. The same commenter asked for clarification on whether a land development loan originated prior to the origination of the construction loan would cease to be an HVCRE exposure upon origination of the construction loan for one- to four-family properties.

After reviewing the comments to the Land Development proposal, the agencies believe that the proposed treatment of lot development loans for the purpose of the one- to four-family residential properties exclusion is more risk-sensitive and promotes safety and soundness, and therefore, the final rule includes the proposed treatment of these exposures. Under the final rule, this treatment would be consistent with the reporting instructions for such loans in the Call Report and FR Y–9C. Loans for the development of building lots and loans secured by vacant land are reported in item 1.a.(2), ''Other construction loans and all land development and other land loans'', of Schedules RC–C, Part I and HC–C unless the loan also finances the construction of one- to four-family residential properties. The final rule provides that loans used solely to acquire undeveloped land would not be within the scope of the one- to four-family residential properties exclusion, regardless of how the land is zoned. A credit facility should not be eligible for the one- to four-family residential properties exclusion if it does not finance the construction of one- to four-family residential structures.

The agencies do not anticipate that the final rule will have a negative impact on the financing of affordable housing. This is because credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development will continue to be excluded from the definition of HVCRE exposure. The exclusion for community development projects is described in more detail in the following section.

While several commenters stated that the risk associated with land development loans should be addressed through the supervisory process, rather than capital requirements, the agencies believe that including such loans in the revised HVCRE exposure definition is appropriate given that the agencies have long considered land development loans to be relatively riskier than construction loans. For example, consistent with this view, the interagency real estate lending guidelines require more stringent supervisory loan-to-value ratios for land development loans (75 percent) than for construction loans (80 or 85 percent depending on property type) because of elevated credit risk.[18] Furthermore, in some cases, land development loans may be made for speculative purposes, generate no cash flow prior to resale, and require other sources of cash to service the debt. For these reasons, the agencies believe that it is important to address the risk of these exposures through both the normal supervisory process and the regulatory capital standards.

In addition, the clarification of the treatment of land development loans in the revised HVCRE exposure definition is consistent with the statutory definition. As stated in the Land Development proposal, this revision would generally align with the instructions set forth in the Call Report and FR Y–9C in item 1.a.(1) of Schedules RC–C, Part I and HC–C. Exposures reported in this line item finance the construction of one- to four-family residential structures or dwelling units as other construction loans and all land development and other land loans are reported in item 1.a.(2) of Schedules RC–C, Part I and HC–C. Including specific language in the revised HVCRE exposure definition to clarify that loans that solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, will not qualify for the one- to four-family residential properties exclusion is intended to help banking organizations apply the definition consistently and promote uniform application of the capital rule.

[18] *See* Board, OCC, and FDIC, *Interagency Guidelines For Real Estate Lending Policies:* 12 CFR part 208 Appendix C (Board); 12 CFR part 34 Appendix A (OCC); 12 CFR part 365 Appendix A (FDIC).

In response to comments received on both proposals, the agencies are clarifying for purposes of the final rule that a facility that finances the purchase of land to be developed into lots, but does not include the construction of dwellings, does not qualify for the one- to four-family residential properties exclusion. Based on the risks arising from land development loans, the agencies believe it would be imprudent to exclude from heightened capital requirements loans that solely finance the preparation of land for the construction of new structures, but do not actually finance the construction of one- to four-family residential structures.

Under the final rule, combination land acquisition, lot development, and construction loans that finance the construction of one- to four-family residential structures qualify for the one- to four-family residential property exclusion, as these exposures are reported in the Call Report and FR Y–9C in item 1.a.(1) of Schedules RC–C, Part I and HC–C. Such combination loans that finance land development and one- to four-family residential structures generally pose less risk than loans that solely finance land acquisition or lot development. Applying the exclusion for the financing of one- to four-family residential properties in a manner consistent with the Call Report and FR Y–9C reporting requirements will simplify the reporting requirements for these exposures and provide greater consistency in the risk-based capital treatment of these exposures across banking organizations.

The agencies are also clarifying for purposes of the final rule that when a land acquisition and development loan and a loan to construct one- to four-family dwellings are originated simultaneously, the individual exposures must be evaluated separately to determine whether each loan on its own qualifies for an exclusion under the revised HVCRE exposure definition. Similarly, for a land loan that is originated prior to the origination of the construction loan, the land loan and the construction loan must be evaluated individually to determine whether either or both loans could be classified as a non-HVCRE exposure. Banking organizations should refer to the requirements for reclassifying an exposure as a non-HVCRE exposure, which are contained in the revised HVCRE exposure definition and described in more detail later in this **SUPPLEMENTARY INFORMATION.**

For the reasons stated above, the agencies are adopting the Land Development proposal as proposed.

Therefore, under the final rule, a facility that solely finances land development will be categorized as an HVCRE exposure, unless the exposure meets an exclusion criterion from the revised HVCRE exposure definition.

2. Community Development

Consistent with section 214 of EGRRCPA, the HVCRE proposal would have excluded from the revised HVCRE exposure definition credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' Community Reinvestment Act (CRA) regulations.[19] Generally, these types of projects include affordable housing, community services targeted to low- and moderate-income individuals, economic development through the financing of small farms and small businesses that meet a size and purpose test, and activities that revitalize and stabilize certain designated geographical areas.

As stated in the HVCRE proposal, under the agencies' CRA regulations, loans must be evaluated to determine whether they meet the criteria for community development projects. As an example, the agencies stated that an ADC loan conditionally taken out with U.S. Small Business Administration (SBA) section 504 financing would have to be evaluated under the criteria for community development projects in the agencies' CRA regulations in order to determine if the loan would qualify for this exclusion.

The agencies received numerous comments on the community development exclusion. A few commenters supported linking the exemption for community development loans to the CRA regulations and stated the proposed approach was clear and did not need further clarification. However, other commenters raised operational concerns with the exclusion. Multiple commenters objected to the proposal's requirement that loans conditionally taken out with SBA section 504 financing would have to be evaluated against the agencies' CRA regulations to determine whether such exposures could be excluded from the HVCRE exposure definition. These commenters stated that all SBA section 504 loans should be excluded from the definition of HVCRE exposure, regardless of whether they qualify as community development investments under the agencies' CRA regulations. Other commenters stated that the exclusion for community development exposures should apply, without exception, to all real estate loans, including interim lender loans and third-party lender loans, made in connection with either the SBA 7(a) or 504 loan program.

Notwithstanding the comments in favor of broadening the exclusion, the agencies are adopting the proposed community development exclusion in the final rule without modification. Referring to the CRA regulations[20] to determine whether an exposure qualifies for the community development exclusion in the revised definition of HVCRE exposure is consistent with the agencies' practice of looking to the same or substantially similar terms in other regulations or regulatory reporting instructions to clarify the interpretation of the statutory definition of an HVCRE ADC loan.

The agencies note that it is possible that some loans extended in connection with SBA guarantees or participations may not meet the criteria for community development under the agencies' CRA regulations. The final rule does not contain a broad exclusion from the HVCRE exposure definition for all loans made in connection with SBA programs. An ADC loan that is not conditionally guaranteed by a U.S. government agency or does not qualify for the community development exclusion should be categorized as an HVCRE exposure, unless the exposure meets another exclusion criterion in the final rule. While no broad exemption for loans made in connection with SBA programs exists under the final rule, the agencies generally view the SBA 7(a) guaranty to the lender as ''conditional,'' based on the lender following certain requirements established by the program. As permitted by the capital rule, the portion of a loan conditionally guaranteed by a U.S. government agency receives a 20 percent risk weighting under the standardized approach in the capital rule.

Additionally, the agencies are clarifying for purposes of the final rule that some interim-lender loans and third-party lender loans, made in connection with the SBA 504 loan program, may be considered in certain instances to be bridge loans. Bridge loans generally do not qualify as permanent financing because the cash flow being generated by the real property usually is insufficient to support the debt service and expenses of the real property. Bridge loans that finance ADC projects often pose greater credit risk than permanent loans, and, therefore, should be subject to a higher risk weight. However, if an interim-lender loan or third-party lender loan made in connection with the SBA 504 loan program meets the criteria for community development under the agencies' CRA regulations, the exposure could be excluded from the HVCRE exposure definition.

3. Agricultural Land

In the HVCRE proposal, the agencies proposed to exclude from the revised HVCRE exposure definition credit facilities financing the acquisition, development, or construction of agricultural land. The **SUPPLEMENTARY INFORMATION** to the HVCRE proposal stated that ''agricultural land,'' for the purpose of the revised HVCRE exposure definition, should have the same meaning as ''farmland,'' as used in the Call Report and FR Y–9C instructions.[21] In these instructions, the term ''farmland'' includes all land known to be used or usable for agricultural purposes but excludes loans for farm property construction and land development purposes.

Two commenters stated that the proposed exemption for agricultural land was clear and did not need further clarification. Accordingly, the agencies are adopting this proposed exclusion from the definition of HVCRE exposure without change.

4. Loans on Existing Income-Producing Properties That Qualify as Permanent Financings

The revised definition of HVCRE exposure in the HVCRE proposal would have excluded credit facilities that finance the acquisition or refinancing of existing income-producing real property secured by a mortgage on such property, so long as the cash flow generated by the real property covers the debt service and expenses of the property in accordance with the lender's underwriting criteria for permanent loans. The agencies also proposed to exclude credit facilities financing improvements to existing real property secured by a mortgage on such property.

Commenters generally supported this aspect of the HVCRE proposal. The agencies note that they may review the reasonableness of a supervised entity's underwriting criteria for permanent loans through the supervisory process to

[19] 12 CFR part 24 (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC).

[20] 12 CFR part 24 (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC). See also Interagency Questions and Answers Regarding Community Reinvestment, which provide guidance to financial institutions and the public on the agencies' CRA regulations. 78 FR 69671 (November 20, 2013).

[21] For the definition of loans secured by farmland, see the Call Report Instructions for Schedule RC–C, Part I, Item 1.b, and the FR Y–9C Instructions for Schedule HC–C, Part I, Item 1.b.

ensure the real estate lending policies are consistent with safe and sound banking practices. The agencies are adopting this exclusion from the proposed definition of HVCRE exposure without modification.

5. Certain Commercial Real Property Projects

The HVCRE proposal would have excluded from the revised HVCRE exposure definition credit facilities for certain commercial real property projects that are underwritten in a safe-and-sound manner in accordance with the interagency real estate lending guidelines and where the borrower has contributed a specified amount of capital to the project. The HVCRE proposal provided that a credit facility financing a commercial real property project would be required to meet four criteria to qualify for this exclusion from the revised HVCRE exposure definition. First, the loan-to-value ratio must be less than or equal to the applicable supervisory loan-to-value ratio in the interagency real estate lending guidelines. Second, the borrower must have contributed capital to the project of at least 15 percent of the real property's appraised ''as completed'' value. Third, the required capital must be contributed prior to the banking organization's advancement of funds, except for nominal sums meant to secure the banking organization's lien on the real property. Fourth, the 15 percent capital contribution must be contractually required to remain in the project until the loan can be reclassified as a non-HVCRE exposure.

a. Contributed Capital

As proposed, the HVCRE exposure definition provided that cash, unencumbered readily marketable assets, development expenses paid out-of-pocket, and contributed real property or improvements could count as forms of contributed capital. The agencies stated that a banking organization could consider costs incurred by the project and paid by the borrower, prior to the advancement of funds by the banking organization, as out-of-pocket, development expenses paid by the borrower.

The HVCRE proposal provided that the value of contributed real property means the appraised value of real property contributed by the borrower as determined under the appraisal standards prescribed by section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339). The agencies further stated that the value of the real property that could count toward the 15 percent contributed capital requirement would be reduced by the aggregate amount of any liens on the real property securing the HVCRE exposure.

Several commenters agreed with this aspect of the proposal, noting that it is generally consistent with industry practice. A few commenters asked the agencies to clarify whether funds borrowed from a third party (such as another banking organization, an owner or parent organization, or a related party) could be included in a borrower's capital contribution. One commenter also asked the agencies to clarify if other real estate outside of the project that has been pledged toward the loan could count toward the 15 percent contributed capital requirement.

A few commenters asked the agencies to clarify how a borrower could contribute readily marketable assets (such as securities) to a project for the purpose of this exclusion. These commenters noted that the agencies previously have not allowed for pledged assets to count as borrower-contributed capital. The commenters stated that requiring a borrower to sell such assets and contribute the cash proceeds would render this provision of the statutory language meaningless, since borrower-contributed capital in the form of cash is addressed separately.

In response to the questions about borrowed funds as a form of capital contribution, the agencies are clarifying for purposes of the final rule that any such borrowed funds should not be derived from, related to, or encumber the project that the credit facility is financing or encumber any collateral that has been contributed to the project to ensure that tangible equity is invested in the project. Additionally, the recognition of any contribution of funds to a project must be done so in conformance with safe and sound lending practices and should be in accordance with the banking organization's underwriting criteria and its internal policies.

In addition, for purposes of the final rule, contributed real property or improvements should be directly related to the project to be eligible to count toward the 15 percent contributed capital requirement. Real estate not developed as part of the project should not be counted toward the contributed capital requirement under the revised HVCRE exposure definition.

For purposes of the final rule, the agencies are clarifying that they would interpret the statutory term ''unencumbered readily marketable assets'' for the purpose of the revised HVCRE exposure definition consistent with the definition and treatment of readily marketable collateral contained within the interagency real estate lending guidelines. Consistent with the interagency real estate lending guidelines, readily marketable collateral means insured deposits, financial instruments, and bullion in which the lender has a perfected interest. For collateral to be considered ''readily marketable'' by a lender, the lender's expectation would be that the financial instrument and bullion would be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriately discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral. The agencies note that the reasonableness of a lender's underwriting criteria may be reviewed through the supervisory process to ensure the real estate lending policies are consistent with safe and sound banking practices. With the aforementioned clarifications, the agencies are finalizing this aspect of the proposal without change.

b. ''As Completed'' Value Appraisal

The HVCRE proposal would have required that the 15 percent capital contribution be calculated using the real property's appraised ''as completed'' value. In the proposal, the agencies stated that they would permit the use of an ''as is'' appraisal in instances where an ''as completed'' value appraisal was not available, such as in the case of purchasing raw land without plans for development in the near term. In addition, the agencies stated they would allow the use of an evaluation of the real property instead of an appraisal to determine the ''as completed'' appraised value, for purposes of the revised HVCRE exposure definition, where the agencies' appraisal regulations [22] permit evaluations to be used in lieu of appraisals.

A few commenters asked the agencies to allow greater flexibility in applying the appraisal requirement. The commenters stated that measuring the capital contribution relative to an appraised ''as stabilized'' value may be appropriate for certain projects. Another commenter suggested allowing the lower of cost or appraised value for the purpose of calculating the ''as completed'' value. Section 214 of

[22] *See* OCC: 12 CFR part 34, subpart C; Board: 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G; and FDIC: 12 CFR part 323.

EGRRCPA specifically requires an appraised ''as completed'' value for the contributed capital exclusion from the statutory definition of HVCRE ADC loan. Therefore, other than the clarifications contained in this **SUPPLEMENTARY INFORMATION** pertaining to ''as is'' appraisals for raw land loans and evaluations for loans in amounts under certain specified thresholds, the agencies are adopting this aspect of the proposal without change.

c. Project

In the HVCRE proposal, the agencies stated that the 15 percent capital contribution and the ''as completed'' value appraisal would be measured in relation to a ''project.'' The agencies noted that some credit facilities for the acquisition, development, or construction of real property may have multiple phases as part of a larger construction or development project. The agencies stated that in the case of a project with multiple phases, in order for a loan financing a phase to be eligible for the contributed capital exclusion, the phase must have its own appraised ''as completed'' value or an appropriate evaluation in order for it to be deemed a separate ''project'' for the purpose of the 15 percent capital contribution calculation.

A few commenters asked the agencies to clarify whether individual phase-level appraisals would always be required. Another commenter asked whether it would be possible to value all the phases of a multiphase project as one project, stating that obtaining individual phase-level appraisals may not always be necessary or appropriate.

The agencies are adopting this aspect of the rule as proposed. For purposes of the final rule, the agencies expect that each project phase being financed by a credit facility have a proper appraisal or evaluation with an associated ''as completed'' value. Where appropriate and in accordance with the banking organization's applicable underwriting standards, a banking organization may look at a multiphase project as a complete project rather than as individual phases.

6. Reclassification as a Non-HVCRE Exposure

Consistent with section 214 of EGRRCPA, for purposes of the HVCRE proposal, the agencies stated that a banking organization would have been allowed to reclassify an HVCRE exposure as a non-HVCRE exposure when the substantial completion of the development or construction on the real property has occurred and the cash flow generated by the property covered the debt service and expenses on the property in accordance with the banking organization's loan underwriting standards for permanent financings. Commenters generally supported allowing a banking organization to reclassify an HVCRE exposure as a non-HVCRE exposure once the exposure meets the statutory criteria for such reclassification as a non-HVCRE exposure. One commenter requested that the agencies provide more specificity with regard to the terms that agencies would expect to be included in a lender's underwriting standards for permanent financing.

The agencies are clarifying for purposes of the final rule that the reclassification criteria from an HVCRE exposure to a non-HVCRE exposure relies on the banking organization's loan underwriting standards for permanent financings. The agencies expect a banking organization to have prudent, clear, and measurable underwriting standards. The reasonableness of a banking organization's underwriting criteria for permanent loans may be reviewed through the supervisory process. The agencies are adopting this aspect of the proposal without change.

7. Related Interagency Guidance

On April 6, 2015, the agencies published FAQs on the capital rule, including FAQs on HVCRE exposures.[23] In the HVCRE proposal, the agencies invited comment on the potential advantages and disadvantages of incorporating the agencies' interpretations of the terms used in the revised HVCRE exposure definition into the rule text or in another published format (such as guidance or another FAQ document). A few commenters addressed this aspect of the proposal and stated that the agencies should rescind or withdraw any existing FAQs that are no longer in effect. Some commenters stated that the agencies should publish new FAQs as necessary and issue new interpretations of the revised definition of HVCRE exposure only after first publishing them for notice and public comment. One commenter stated that the Interagency Guidance on CRE Concentration Risk Management[24] should be adjusted to reflect the revised HVCRE exposure definition. Two commenters stated that the agencies should sponsor periodic industry forums to monitor the application and administration of rules pertaining to commercial real estate markets. According to the commenters, these forums would allow stakeholders to provide transparent feedback to the agencies on the implementation of the capital rule.

After reviewing the comments received, the agencies have decided to rescind all outstanding HVCRE exposure-related FAQs upon the effective date of the final rule. FAQs related to topics other than the superseded definition of HVCRE exposure will not be rescinded. Banking organizations that have questions about the final rule should contact their primary federal supervisor. In addition, upon the effective date of the final rule, the HVCRE exposure section of the interagency statement will no longer be applicable. Banking organizations must thereafter evaluate ADC credit facilities in accordance with the revised definition of HVCRE exposure in this final rule.

III. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections relate to the regulatory capital rules for each agency. However, the agencies expect that these information collections will not be affected by this final rule and therefore no submissions will be made under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part

[23] ''Frequently Asked Questions on the Regulatory Capital Rule,'' OCC Bulletin 2015–23 (April 6, 2016), *available at: https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html.* ''SR 15–6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules'' (April 5, 2015), *available at: https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm;* FDIC FIL 16–2015, *available at https://www.fdic.gov/news/news/financial/2015/fil15016.html.*

[24] ''Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices: Interagency Guidance on CRE Concentration Risk Management,'' OCC Bulletin 2006–46 (December 6, 2006), *available at: https://www.occ.gov/news-issuances/bulletins/2006/bulletin-2006-46.html.* ''SR 07–1: Interagency Guidance on Concentrations in Commercial Real Estate'' (January 4, 2007), *available at: https://www.federalreserve.gov/boarddocs/srletters/2007/SR0701.htm;* FDIC FIL 104–2006, *available at https://www.fdic.gov/news/news/financial/2006/fil06104.html.*

1320) for each of the agencies' regulatory capital rules.[25]

The final rule also requires changes to the Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)), and Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), which will be addressed in separate **Federal Register** notices.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million of less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

As of December 31, 2018, the OCC supervises 782 small entities.[26]

The final rule applies to all OCC-supervised depository institutions, except for qualifying community banking organizations electing to use the Community Banking Leverage Ratio Framework. Two hundred and eleven small OCC-supervised institutions report HVCRE exposures. Therefore, the rule will affect a substantial number of small entities. However, the OCC does not find that the impact of this final rule will be economically significant.

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

The final rule impacts three principal areas: (1) The impact associated with implementing revisions to the capital rule to make the definition of an HVCRE exposure consistent with the new statutory definition; (2) the capital impact associated with implementing revisions to the one- to four-family residential properties exclusion in the revised HVCRE exposure definition and, (3) the impact associated with the time required to update policies and procedures.

As described in the Supplementary Information section in the preamble to this final rule, the OCC believes the change to the definition of HVCRE exposure will result in fewer loans being deemed HVCRE exposures. Therefore, the amount of capital required will decrease for impacted OCC-supervised entities. Further, the OCC believes no currently reported non-HVCRE acquisition, development, or construction (ADC) exposures will be reclassified as HVCRE exposures, and thus there will be no additional compliance burden to OCC-supervised entities for the non-HVCRE component of their ADC portfolios. The final rule will not require OCC-supervised entities to amend previously filed reports as OCC-supervised entities adjust their estimates of existing HVCRE exposures. This will serve to minimize the compliance burden for OCC-supervised entities.

Compliance burdens that OCC-supervised entities may face include: (1) Updating policies and procedures to classify newly issued HVCRE loans; and (2) time spent reevaluating existing HVCRE exposures in order to determine if any are eligible to be reclassified and thus receive a lower risk-weight of 100 percent; and (3) updating policies and procedures to identify whether or not a newly issued land development loan is eligible for the one- to four-family residential properties exclusion in the revised HVCRE exposure definition.

Based on the OCC's supervisory experience, OCC staff estimates that it would take an OCC-supervised institution, on average, a one-time investment of one business week, or 40 hours, to update policies and procedures to classify newly issued HVCRE loans and to re-evaluate existing HVCRE exposures, and a one-time investment of one business day, or 8 hours, to update policies and procedures to classify newly issued land development loans.

The OCC's threshold for a significant effect is whether cost increases associated with a rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of a small bank's total non-interest expense. Institutions that do not report HVCRE exposures will incur an estimated one-time compliance cost of $2,280 per institution (20 hours × $114 per hour), while those that report HVCRE exposures will incur an estimated one-time compliance cost of $4,560 per institution (40 hours × $114 per hour). Additionally, updating policies and procedures regarding classifying land development loans will result in an estimated one-time compliance cost of $912 per institution (8 hours × $114 per hour). OCC staff finds that the cost of complying with the final rule will not exceed either of the thresholds for a significant impact on any OCC-supervised small entities.

For this reason, 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 603(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 unless the agency certifies that the rule will not, if promulgated, 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 $600 million or less (small banking organization).[27] As of June 30, 2019, there were approximately 2,976 small bank holding companies,

[25] 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 change in the definition of HVCRE exposure. In particular, the change to the definition of HVAC exposure at the proposed stage, and now at the final rule stage, does not result in a change in the current burden. 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. 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 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.

[26] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

[27] *See* 13 CFR 121.201. Effective August 19, 2019, the SBA revised the size standards for banking organizations to $600 million in assets from $550 million in assets. 84 FR 34261 (July 18, 2019).

133 small savings and loan holding companies, and 537 small SMBs.

The Board has considered the potential impact of the final rule on small entities in accordance with the RFA and has prepared a final RFA analysis detailed below. Based on the Board's analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial of number of small entities.

As discussed in this Supplementary Information, the final rule would revise the definition of HVCRE exposure to conform to the statutory definition of ''high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,'' in accordance with section 214 of EGRRCPA. The final rule would also clarify that certain land development loans as defined in the Call Report and FR Y–9C instructions are included in the revised definition of HVCRE exposure.

For purposes of the standardized approach, loans that meet the revised definition of an HVCRE exposure would receive a 150 percent risk weight under the capital rule's standardized approach. A banking organization that calculates its risk-weighted assets under the advanced approaches of the capital rule would refer to the definition of an HVCRE exposure in section 2 of the capital rule for purposes of identifying wholesale exposure categories and wholesale exposure subcategories. Based upon data reported on the FR Y–9C and on Call Report information, as of June 30, 2019, about 19 percent of state member banks, bank holding companies, and savings and loan holding companies report holdings of HVCRE exposures.

The final rule would apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's capital rule. Certain bank holding companies, and savings and loan holding companies are excluded from the application of the Board's capital rule. 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 Small 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.[28] Thus, most bank holding companies and savings and loan holding companies that would be subject to the final rule exceed the $600 million asset threshold at which a banking organization would qualify as a small banking organization.

In assessing whether the final rule would have a significant impact on a substantial number of small entities, the Board has considered the final rule's capital impact as well as its compliance, administrative, and other costs. As of June 30, 2019, there were 157 small state member banks and three small bank or savings and loan holding companies that reported combined HVCRE exposures totaling $670 million and one- to four family residential construction loans totaling $1.2 billion. To estimate the capital impact of the final rule, the Board assumed a range of 75 to 95 percent of one- to four family residential construction loans would remain exempt from the revised definition of HVCRE exposure. Based on this assumption, the difference in required capital would be in the range of $7 million to $36 million for small banking organizations supervised by the Board.

In addition to capital impact, the Board has considered the compliance, administrative, and other costs associated with the final rule. Given that the final rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report. Some small banking organizations may incur costs associated with updating internal policies to reflect the revised definition of HVCRE exposure, including the treatment of land development loans. However, because the final rule would clarify the treatment of HVCRE exposure and land development loans that may currently be in effect at many small banking organizations, the Board does not anticipate that a substantial number of small banking organizations will incur significant costs to update internal systems or policies to reflect the revised HVCRE exposure definition. The agencies separately are updating relevant reporting forms to the extent necessary to align with the capital rule.

The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there are no significant alternatives to the final rule. In light of the foregoing, the Board does not believe that the final rule will 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 rule on small entities.[29] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[30] 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 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 and under section 605(b) of the RFA, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2019, the FDIC supervised 3,424 depository institutions,[31] of which 2,665 were considered small entities for the purposes of RFA. As of that date, 2,081 small, FDIC-supervised institutions reported a positive value on Call Report schedule RC–C 1.a(2) (other construction loans and all land development loans and other land loans), 680 reported holding some volume of HVCRE loans, and 2,091 reported some volume of HVCRE or report a positive value on RC–C 1.a(2). The rule revises the capital treatment of HVCRE and certain land development loans. Therefore, the FDIC estimates that the rule is likely to affect a substantial

[28] *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[29] 5 U.S.C. 601 *et seq.*

[30] The SBA defines a small banking organization as having $600 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 by 84 FR 34261, effective August 19, 2019). 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.

[31] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

number, 2,091 (78.5 percent), of small, FDIC-supervised institutions.[32]

This rule removes certain loans from the definition of an HVCRE exposure and therefore, reduces the risk weight from 150 percent to 100 percent on some of the HVCRE loans held in portfolio by small, FDIC-supervised institutions, resulting in a reduction in their risk-based capital requirements. Institutions are permitted, but not required, to reclassify HVCRE loans that they currently hold to take advantage of the lower risk weight. The rule also clarifies that land development loans for one- to four family residential properties should be considered HVCRE, and therefore should receive a 150 percent risk weight, going forward unless such loans would qualify for a different exclusion. Institutions are not required to reclassify as HVCRE any land development loans they currently hold that would, under the rule, receive a 150 percent risk weight. Instead, they may continue to assign a 100 percent risk weight to such loans.

For purposes of this analysis, the FDIC assumes that no current land development loans receiving a 100 percent risk weight would be reclassified as HVCRE at a 150 risk-weight, and that some or all current HVCRE loans eligible for exclusion from the HVCRE category as a result of the rule would be reclassified at a 100 percent risk weight. There would thus be some reduction in risk-based capital requirements among the 680 small institutions reporting some HVCRE. The amount of the reduction would depend on the amount of each institution's current HVCRE that is newly eligible to be excluded from that category, and whether each institution views such reclassification as being worth the effort. The FDIC does not have access to sufficiently granular data to determine which HVCRE loans would qualify for a lower risk weight, nor to determine the portion of loans eligible to be reclassified that actually would be reclassified.

Going forward, new loans that would have been classified as HVCRE but for this rule would receive a 100 percent risk weight instead of a 150 percent risk weight. New land development loans for one-to-four family residential properties would receive a 150 percent risk weight instead of a 100 percent risk weight. Future effects on risk-based capital requirements would depend on the volume of land development loans that small institutions issue in the future, and the volume of loans that otherwise would have been categorized as HVCRE in their loan portfolios that would be eligible for a lower risk weight as a result of this rule.

The FDIC believes that the overall impact of this rule on the risk-based capital requirements of small institutions, now and going forward, will be small. The FDIC considered the maximum reduction in risk-based capital for the affected small institutions under the assumption that *all* of their current HVCRE loans are reclassified from a 150 percent risk weight to a 100 percent risk weight, that their current loan portfolios are representative of their future loan portfolios, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Under these assumptions, more than 98 percent of the 680 institutions currently reporting HVCRE would reduce their risk-based capital by less than five percent.[33] The actual amount and frequency of reductions in risk-based capital would be expected to be even less, since some portion of current and future loans would likely still be categorized as HVCRE.

As stated previously, covered institutions are not required to reclassify as HVCRE any land development loans they currently hold that would, under the rule, receive a 150 percent risk weight, therefore this aspect of the final rule will not have any immediate effects on small, FDIC-supervised institutions. To assess the maximum possible future effect of this aspect of the final rule the FDIC also considered the maximum increase in risk-based capital requirements for the affected small institutions under the assumption that *all* current acquisition, development and construction loans currently reported in Call Report item RC–C–1.a(2) are land development loans for one-to-four family residential properties, that all would be reclassified to 150 percent risk weights even though this is not required, that current loan portfolios are representative of future loan portfolios for these institutions, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Under these assumptions, more than 93 percent of the 2,081 small institutions currently reporting loans in this category would experience an increase in risk-based capital of less than five percent. Specifically, there were 137 small institutions that would experience an increase in risk-based capital of five percent or more under the highly unlikely assumptions that *all* their loans reported in Call Report item RC–C–1(a)(2) were land development loans for one-to-four family residential property, that current loan portfolios are representative of future loan portfolios for these institutions, and that institutions would maintain the same ratio of risk-based capital to risk-weighted assets before and after this rule becomes effective. Since this Call Report item includes all commercial construction loans and all land development loans for multifamily and commercial real estate, far fewer than 137 small institutions would likely experience increases in risk-based capital of five percent or greater.

The rule could pose some administrative costs for covered institutions. The rule gives covered institutions the option to review any loans held in portfolio that were originated after January 1, 2015 to determine if those loans meet the criteria to receive a risk weight of 100 percent rather than 150 percent. It is difficult to accurately estimate the costs that each institution will incur in order to conduct reviews since it depends on each institution's volume of loans categorized as HVCRE. The FDIC assumes that each institution will require 40 hours of labor annually, on average, in order to conduct such reviews. Assuming an hourly cost of $83.61,[34] that amounts to $3,344.40 per institution or $2,274,192 for all small, FDIC-supervised institutions that have some volume of loans classified as HVCRE as of the most recent reporting date. These administrative costs amount to less than two percent of annualized salary expense, and less than one percent of annualized noninterest expense, for all small, FDIC-supervised institutions directly affected by the rule.[35]

As noted earlier, the rule is likely to reduce capital requirements for some loans currently classified as an HVCRE exposure and to increase capital requirements for certain future lot development loans. The revised capital

[32] *Id.*

[33] 669 of the 680 small institutions would experience a less than five percent decrease in risk-based capital under the stated assumptions.

[34] Estimated total hourly compensation of Financial Analysts in the Depository Credit Intermediation sector as of June 2019. The estimate includes the May 2018 75th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2018 and June 2019 (1.86 percent) and grossed up by 51.06 percent to account for non-monetary compensation as reported by the June 2019 Employer Costs for Employee Compensation Data.

[35] FDIC Call Report, June 30th, 2019.

treatment in this rule could change the volume of lending, or the types of loans issued, by small, FDIC-supervised institutions. As described in the preceding analysis, the FDIC believes that this effect will likely be small given that the amendments only affect a subset of HVCRE loans and a subset of land development loans. Finally, changes in required capital could affect the resiliency of institutions in the event of an economically stressful scenario. Since the changes affect only a narrowly defined segment of institutions' loan portfolios, the FDIC believes any increase in risk resulting from the changes is unlikely to be material.

Based on this supporting information, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [36] 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.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this rule will not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this final rule.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[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, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[38]

In accordance with these provisions of RCDRIA, the agencies considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. This final rule revises the definition of HVCRE exposure in the capital rule to conform to the statutory definition of HVCRE ADC loan in section 214 of EGRRCPA. In conjunction with the requirements of RCDRIA, the final rule is effective on April 1, 2020.

F. The 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.[39] If a rule is deemed a "major rule" by 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, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[41] 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 3

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, National banks, Federal savings associations, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, Holding companies, State member banks, Risk.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset Risk-weighting methodologies, Reporting and recordkeeping requirements, State savings associations, State non-member banks, Risk.

Office of the Comptroller of the Currency

For the reasons set out in the **SUPPLEMENTARY INFORMATION**, the OCC is amending 12 CFR part 3 as follows.

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for Part 3 continues to read as follows:

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

■ 2. Amend § 3.2 by revising the definition of a "high volatility commercial real estate (HVCRE) exposure" to read as follows:

§ 3.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the depository institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or

[36] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

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

[38] *Id.*

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

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

[41] 5 U.S.C. 804(2).

improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility;

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the OCC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the national bank or Federal savings association advances funds (other than the advance of a nominal sum made in order to secure the national bank's or Federal savings association's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the national bank or Federal savings association as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015; and

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution shall be the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and a national bank or Federal savings association, a national bank or Federal savings association may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, a national bank or Federal savings association is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

Board of Governors of the Federal Reserve System

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

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

■ 3. 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–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909,4808, 5365, 5368, 5371; Pub. L. 115–174, 132 Stat. 1296.

Subpart A—General Provisions

■ 4. Section 217.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 217.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the Board-regulated institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the Board;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the Board-regulated institution advances funds (other than the advance of a nominal sum made in order to secure the Board-regulated institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the Board-regulated institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this definition of HVCRE exposure, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this definition of HVCRE exposure and with respect to a credit facility and a Board-regulated institution, a Board-regulated institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, a Board-regulated institution is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

12 CFR Part 324

FEDERAL DEPOSIT INSURANCE CORPORATION

For the reasons set out in the SUPPLEMENTARY INFORMATION, the FDIC proposes to amend 12 CFR part 324 as follows.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. 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, 1831bb, 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, 132 Stat. 1296.

Subpart A—General Provisions

■ 6. Section 324.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 324.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the FDIC-supervised institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the FDIC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the FDIC-supervised institution advances funds (other than the advance of a nominal sum made in order to secure the FDIC-supervised institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the FDIC-supervised institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value Of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and an FDIC-supervised institution, an FDIC-supervised institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings.

(7) For purposes of this definition, an FDIC-supervised institution is not required to reclassify a credit facility that was originated on or after January 1, 2015 and prior to April 1, 2020.

* * * * *

Dated: November 18, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 19, 2019.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–26544 Filed 12–12–19; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0604; Product Identifier 2019–NM–072–AD; Amendment 39–19812; AD 2019–23–18]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. This AD was prompted by a report that the Dassault maintenance planning document (MPD) of the related Dassault aircraft maintenance manual (AMM) states that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is longer than it should be, and could have a safety impact in case of fire. This AD requires replacing the fire extinguisher percussion cartridges with serviceable parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2020.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0084, dated April 17, 2019 (''EASA AD 2019–0084'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0604.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Dassault Aviation Model MYSTERE FALCON 50, MYSTERE FALCON 900, and FALCON 900EX airplanes; and Model FALCON 2000 and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on August 13, 2019 (84 FR 39991). The NPRM was prompted by a report that the Dassault MPD of the related Dassault AMM states that the ''combined service/storage life'' of the fire extinguisher percussion cartridges is longer than it should be, and could have a safety impact in case of fire. The NPRM proposed to require replacing the fire extinguisher percussion cartridges with serviceable parts. The FAA is issuing this AD to address the total life limit of the fire extinguisher percussion cartridges, which if not corrected, could prevent extinguishing a fire and possibly result in damage to the airplane