

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 3**

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FEDERAL RESERVE SYSTEM**12 CFR Part 217**

[Regulation Q; Docket No. R–1708]

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FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 324**

RIN 3064–AF42

Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments* (CECL). The final rule provides banking organizations that implement CECL during the 2020 calendar year the option to delay for two years an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, followed by a three-year transition period. The agencies are providing this relief to allow these banking organizations to better focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the coronavirus disease 2019, while also maintaining the quality of regulatory capital. This final rule is consistent with the interim final rule published in the **Federal Register** on March 31, 2020, with certain clarifications and minor adjustments in response to public comments related to

the mechanics of the transition and the eligibility criteria for applying the transition.

DATES: The final rule is effective September 30, 2020.

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SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Summary of Comments to the Interim Final Rule
- III. The Final Rule
 - A. Approximating the Impact of CECL
 - B. Mechanics of the 2020 CECL Transition Provision
 - C. 2020 CECL Adopters
 - D. Transitions Applicable to Advanced Approaches Banking Organizations
 - E. Other Considerations

- F. Technical Amendments to the Interim Final Rule
- IV. Impact Assessment
- V. Administrative Law Matters
 - A. Administrative Procedure Act
 - B. Congressional Review Act
 - C. Paperwork Reduction Act
 - D. Regulatory Flexibility Act
 - E. Riegle Community Development and Regulatory Improvement Act of 1994
 - F. Plain Language
 - G. Unfunded Mandates Reform Act

I. Background

In 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments*.¹ The update resulted in significant changes to credit loss accounting under U.S. generally accepted accounting principles (GAAP). The revisions to credit loss accounting under GAAP included the introduction of the current expected credit losses methodology (CECL), which replaces the incurred loss methodology for financial assets measured at amortized cost. For these assets, CECL requires banking organizations² to recognize lifetime expected credit losses and to incorporate reasonable and supportable forecasts in developing the estimate of lifetime expected credit losses, while also maintaining the current requirement that banking organizations consider past events and current conditions.

On February 14, 2019, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a final rule that revised certain regulations to account for the aforementioned changes to credit loss accounting under GAAP, including CECL (2019 CECL rule).³ The

¹ ASU 2016–13 covers measurement of credit losses on financial instruments and includes three subtopics within Topic 326: (i) Subtopic 326–10 Financial Instruments—Credit Losses—Overall; (ii) Subtopic 326–20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 326–30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

² Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

³ 84 FR 4222 (February 14, 2019).

2019 CECL rule revised the agencies' regulatory capital rule (capital rule),⁴ stress testing rules, and regulatory disclosure requirements to reflect CECL, and made conforming amendments to other regulations that reference credit loss allowances. The 2019 CECL rule applies to banking organizations that file regulatory reports for which the accounting principles are uniform and consistent with GAAP,⁵ including banking organizations that are subject to the capital rule or stress testing requirements.

The 2019 CECL rule also includes a transition provision that allows banking organizations to phase in over a three-year period the day-one adverse effects of CECL on their regulatory capital ratios. The agencies intend for the transition provision to address concerns that despite adequate capital planning, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances. This increase in allowances is expected largely because CECL requires banking organizations to consider current and reasonable and supportable forecasts of future economic conditions to estimate credit loss allowances.

On March 31, 2020, as part of efforts to address the disruption of economic activity in the United States caused by the spread of coronavirus disease 2019 (COVID-19), the agencies adopted a second CECL transition provision through an interim final rule.⁶ This transition provision provides banking organizations that were required to adopt CECL for purposes of GAAP (as in effect January 1, 2020), for a fiscal year that begins during the 2020 calendar year, the option to delay for up to two years an estimate of CECL's effect on regulatory capital, followed by a three-year transition period (*i.e.*, a five-year transition period in total). The agencies provided this relief in response to the additional operational challenges and resource burden of implementing CECL amid the uncertainty caused by recent strains on the U.S. economy so that adopting banking organizations may better focus on supporting lending to creditworthy households and

businesses, while maintaining the quality of regulatory capital and reducing the potential for competitive inequities across banking organizations.

Under the interim final rule, an eligible banking organization would make an election to use the 2020 CECL transition provision in its first Consolidated Reports of Condition and Income (Call Report) or Consolidated Financial Statements for Holding Companies (FR Y-9C) filed during the 2020 calendar year after it meets the eligibility requirements. The interim final rule provides electing banking organizations with a methodology for delaying the effect on regulatory capital of an estimated increase in the allowances for credit losses (ACL) that can be attributed to the adoption of CECL, relative to an estimated increase in the allowance for loan and lease losses (ALLL) that would occur for banking organizations operating under the incurred loss methodology. The interim final rule does not replace the three-year transition provision in the 2019 CECL rule, which remains available to any banking organization at the time that it adopts CECL. Banking organizations that were required to adopt CECL during the 2020 calendar year have the option to elect the three-year transition provision contained in the 2019 CECL rule or the 2020 CECL transition provision contained in the interim final rule, beginning with the March 31, 2020, Call Report or FR Y-9C.

II. Summary of Comments to the Interim Final Rule

The agencies received six public comments on the interim final rule from banking organizations and interest groups. Commenters supported the objectives of the interim final rule because it provides banking organizations additional flexibility to lend to creditworthy borrowers in the current economic environment, without imposing undue regulatory burden. However, several commenters suggested that the regulatory capital relief provided in the interim final rule is insufficient, especially given the current economic downturn. Some of these commenters asserted either that banking organizations should be permitted to add back a larger proportion of the ACL (temporarily or permanently) to common equity tier 1 capital or that the methodology for calculating the add-back should address certain commenters' concerns regarding pro-cyclicality and differences in credit portfolios. One commenter asked the FASB and the agencies to allow banking organizations of all sizes the option to

defer the implementation of CECL until 2025, given current economic uncertainties. This commenter asserted that without a longer delay, community banking organizations may need to maintain loan portfolios with a credit profile that minimizes the regulatory capital volatility caused by CECL, rather than loan portfolios that meet the credit needs of the community. One commenter suggested that the agencies reevaluate whether to increase the amount of ACL includable in tier 2 capital on a permanent basis to address the commenter's concerns regarding pro-cyclicality and CECL.

III. The Final Rule

The final rule is consistent with the interim final rule with some clarifications and adjustments related to the calculation of the transitions and the eligibility criteria for using the 2020 CECL transition provision, as discussed below.

A. Approximating the Impact of CECL

As discussed in the Supplementary Information to the interim final rule, the agencies considered different ways for determining the portion of credit loss allowances attributable to CECL that is eligible for transitional regulatory capital relief. To best capture the effects of CECL on regulatory capital, it would be necessary for a banking organization to calculate the effect on retained earnings of measuring credit loss allowances using both the incurred loss methodology and CECL. This approach, however, would require a banking organization to maintain the equivalent of two separate loss-provisioning processes. For many banking organizations that have adopted CECL, it would be burdensome to track credit loss allowances under both CECL and the incurred loss methodology, due to significant CECL-related changes already incorporated in internal systems or third-party vendor systems in place of elements of the incurred loss methodology. Further, if banking organizations were to maintain separate loss provisioning processes, there would also be burden associated with having to subject the incurred loss methodology to internal controls and supervisory oversight, which may in some respects differ from the controls and oversight over CECL. One commenter agreed that maintaining separate ongoing calculations of loan losses under two processes would entail significant burden.

To address concerns regarding burden and to promote a consistent approach across electing banking organizations, the interim final rule provided a

⁴ 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

⁵ See 12 U.S.C. 1831n; See also current versions of the following: Instructions for Preparation of Consolidated Financial Statements for Holding Companies, Reporting Form FR Y-9C; Instructions for Preparation of Consolidated Reports of Condition and Income, Reporting Forms FFIEC 031 and FFIEC 041; Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than \$1 Billion, Reporting Form FFIEC 051.

⁶ 85 FR 17723 (March 31, 2020).

uniform approach for estimating the effect of CECL during the first two years of the five-year transition period. Specifically, the interim final rule introduced a 25 percent scaling factor that approximates the average after-tax provision for credit losses attributable to CECL, relative to the incurred loss methodology, in a given reporting quarter.

Some commenters asserted that the 25 percent scaling factor was too low and that it was based on forecasts of benign economic conditions that existed at the beginning of 2020. Further, some commenters stated that the scaling factor could lead to disparate impacts on the availability of credit to different types of borrowers. These commenters suggested that a 100 percent add-back of incremental CECL allowances to regulatory capital would be appropriate for the duration of the transition period or until a longer-term solution is developed by the agencies for addressing potential unintended consequences of CECL on regulatory capital requirements. Other commenters stated that the regulatory capital relief provided through the interim final rule should be permanent to acknowledge the fundamental changes that CECL has introduced to credit loss allowance practices, to avoid the need for the agencies to intervene each time the economy contracts, and to promote credit availability in all economic conditions.

The agencies also received several comments on the precision of the 25 percent scaling factor. One commenter supported the interim final rule's uniform scaling approach because it does not require banking organizations to calculate provisions under both the CECL and incurred loss methodologies, noting that such a requirement would have been labor-intensive and costly. Another commenter supported the objective of the agencies to make the regulatory capital impact of near-term accounting for credit losses under CECL through the crisis roughly comparable to the regulatory capital impact under the incurred loss methodology. However, this commenter asserted that a dynamic scaling factor that increases over time to 50 percent and then reduces to zero percent over a nine quarter period would achieve this objective more effectively and accurately.

After considering these comments, the agencies have decided to retain the 25 percent scaling factor provided in the interim final rule. In developing an approach for adding back an amount of ACL measured under CECL to regulatory capital, the agencies have provided a measure of capital relief for

banking organizations while not creating undue burden. In the agencies' view, this approach should also consider the fundamental differences between CECL and the incurred loss methodology. Both CECL and the incurred loss methodology take into account historical credit loss experience and current conditions when estimating credit loss allowances; however, CECL also requires consideration of the effect of reasonable and supportable forecasts on collectability. This naturally causes a difference in the timing of the build-up of allowances. This difference in timing makes it more difficult to calibrate a more precise scaling factor that changes during a transition period because establishing the increases and decreases in the scaling factor that should apply for particular quarters during this period would require the agencies to anticipate the peaks and troughs of the economic crisis. Further, the amount of allowances required under CECL as compared to the incurred loss methodology is affected by the composition of a banking organization's credit exposures subject to CECL. As a result, developing a scaling factor that changes over the course of a transition period could exacerbate inequities among banking organizations whose credit exposures might be weighted toward particular loan types. As noted in the Supplemental Information to the interim final rule, the agencies believe that the 25 percent scaling factor provides a reasonable estimate of the portion of the increase in allowances related to CECL relative to the incurred loss methodology.⁷ In addition, the uniform calibration promotes competitive equity in the current economic environment between electing banking organizations and those banking organizations that have not yet adopted CECL.

B. Mechanics of the 2020 CECL Transition Provision

The Supplementary Information to the interim final rule states that an

⁷ See Loudis, Bert and Ben Ramish. (2019) "CECL and the Credit Cycle." Finance and Economics Discussion Series Working Paper 061. Available at: <https://www.federalreserve.gov/econres/feds/files/2019061pap.pdf> and Covas, Francisco and William Nelson. "Current Expected Credit Loss: Lessons from 2007–2009." (2018) Banking Policy Institute Working Paper. Available at: https://bpi.com/wpcontent/uploads/2018/07/CECL_WP-2.pdf; the agencies reviewed data from public securities filings of various large banking organizations. These organizations reported allowances and provisions under CECL, on a weighted-average basis, approximately 30 percent higher on a pre-tax basis and 25 percent higher on an after-tax basis. The agencies chose a scalar closer to the after-tax median to avoid additional burden involved with making quarterly tax adjustments throughout the transition period.

electing banking organization must calculate transitional amounts for the following items: Retained earnings, temporary difference deferred tax assets (DTAs), and credit loss allowances eligible for inclusion in regulatory capital. For each of these items, the transitional amount is equal to the difference between the electing banking organization's closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount) and its balance sheet amount as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount) (*i.e.*, day-one transitional amounts). To calculate the transitional amounts for these items, an electing banking organization must first calculate, as provided in the 2019 CECL rule, the CECL transitional amount, the adjusted allowances for credit losses (AACL) transitional amount, and the DTA transitional amount. The CECL transitional amount is equal to the difference between an electing banking organization's pre-CECL and post-CECL amounts of retained earnings at adoption. The AACL transitional amount is equal to the difference between an electing banking organization's pre-CECL amount of ALLL and its post-CECL amount of AACL at adoption. The DTA transitional amount is the difference between an electing banking organization's pre-CECL amount and post-CECL amount of DTAs at adoption due to temporary differences.

The agencies received several comments from banking organizations requesting clarification about how the day-one changes to the CECL transitional amount, DTA transitional amount, and AACL transitional amount should be calculated when an electing banking organization experiences a day-one increase in retained earnings. To the extent there is a day-one change for these items, an electing banking organization would calculate each transitional amount as a positive or negative number. For example, an electing banking organization with an increase in retained earnings upon adopting CECL would treat this amount as a negative value when calculating its modified CECL transitional amount for purposes of the 2020 CECL transition.⁸

The agencies adopted the 2020 CECL transition provision to mitigate the adverse effect of CECL on regulatory capital based on an estimated difference between allowances under the incurred loss methodology and CECL amid the uncertainty caused by recent strains on

⁸ See 85 FR 29839 (May 19, 2020).

the U.S. economy. To help achieve this goal, the final rule revises the capital rule to clarify that an electing banking organization is not required to apply the transitional amounts in any quarter in which it would not reflect a positive modified CECL transitional amount (*i.e.*, when applying the transition would result in a decrease to retained earnings for regulatory capital).⁹ During quarters in which a banking organization does not calculate a positive modified CECL transitional amount, the electing banking organization would not reflect any of the transitional amounts in its regulatory capital calculations. However, the banking organization subsequently could resume applying the transitional amounts in the remaining quarters of the transition period if the banking organization calculates a positive modified CECL transitional amount during any of those quarters. The agencies are incorporating this clarification in this final rule. The agencies also are adopting as final all other aspects of the interim final rule related to the calculation of the transitional amounts.

Under the final rule, an electing banking organization must adjust several key inputs to regulatory capital for purposes of the 2020 CECL transition, in addition to the day-one transitional amounts. In adjusting regulatory capital inputs, first an electing banking organization must increase retained earnings by a modified CECL transitional amount. The modified CECL transitional amount is adjusted to reflect changes in retained earnings due to CECL that occur during the first two years of the five-year transition period. The change in retained earnings due to CECL is calculated by taking the change in reported AACL relative to the first day of the fiscal year in which CECL was adopted and applying a scaling multiplier of 25 percent during the first two years of the transition period.

Second, an electing banking organization must decrease AACL by the modified AACL transitional amount. The modified AACL transitional amount reflects an estimate of the change in credit loss allowances attributable to CECL that occurs during the first two years of the five-year transition period. This estimated change in credit loss allowances due to CECL is calculated with the same method used for the modified CECL transitional amount.

Two additional regulatory capital inputs—temporary difference DTAs and average total consolidated assets—are also subject to adjustments. Reported average total consolidated assets for purposes of the leverage ratio is increased by the amount of the modified CECL transitional amount, and temporary difference DTAs are decreased by the DTA transitional amount as under the 2019 CECL rule. The agencies received one comment pertaining to the treatment of temporary difference DTAs. This commenter generally supported the approach for calculating the DTA transitional amount, but noted that not applying a dynamic adjustment to the DTA transitional amount during the first eight quarters of the transition could have a material impact on risk-weighted assets for particularly large banking organizations. Because revising the calculation for DTAs in a dynamic fashion, as suggested by commenters, likely would introduce undue complexity into the transition calculation, the final rule retains the calculation of the DTA transitional amount in the interim final rule, without revision.

Consistent with the interim final rule, under the final rule, the modified CECL and modified AACL transitional amounts are calculated on a quarterly basis during the first two years of the transition period. An electing banking organization reflects those modified transitional amounts, which includes 100 percent of the day-one impact of CECL plus a portion of the difference between AACL reported in the most recent regulatory report and AACL as of the beginning of the fiscal year that the banking organization adopts CECL, in transitional amounts applied to regulatory capital calculations. For the reasons described above, an electing banking organization would not apply the transitional amounts in any quarter in which the banking organization would not report a positive modified CECL transitional amount. After two years, the cumulative transitional amounts become fixed and are phased out of regulatory capital. The phase out of the transitional amounts from regulatory capital occurs over the subsequent three-year period: 75 percent are recognized in year three; 50 percent are recognized in year four; and 25 percent are recognized in year five.

Beginning in year six, the banking organization will not be able to adjust its regulatory capital by any of the transitional amounts.

Some commenters requested that the first two years of the transition be applied on a permanent basis. While this aspect of the transition is generally based on the difference between lifetime expected credit losses and incurred credit losses, the agencies adopted the interim final rule to provide burden relief for operational challenges resulting from the implementation of a significant change in credit loss accounting during a shock to the economy caused by the spread of COVID-19, not to permanently recalibrate the capital rule. The agencies intend to propose the final key features of the Basel III reforms related to risk-based capital requirements soon. As part of that implementation, the agencies intend generally to preserve the aggregate level of loss absorbency in the banking system throughout the economic cycle and will consider the effect of CECL in their analysis. The agencies will also continue to monitor the effect of CECL on capital ratios.

Finally, under the final rule, an electing banking organization applies the adjustments calculated above during each quarter of the transition period for purposes of calculating the banking organization's regulatory capital ratios. No adjustments are reflected in balance sheet or income statement amounts. The electing banking organization reflects the transition adjustment to the extent the banking organization has reflected CECL in the Call Report or FR Y-9C, as applicable, in that quarter. If a banking organization chooses to revert to the incurred loss methodology pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹⁰ in any quarter in 2020, the banking organization would not apply any transitional amounts in that quarter but would be allowed to apply the transitional amounts in subsequent quarters when the banking organization resumes use of CECL. However, a banking organization that has elected the transition, but subsequently elects to not apply the transitional amounts, in any quarter, would not receive any extension of the five-year transition period.

⁹ See 12 CFR 3.100(d) (OCC); 12 CFR 217.100(d) (Board); 12 CFR 324.100(d) (FDIC).

¹⁰ See Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 4014, 134 Stat.

281 (Mar. 27, 2020). The CARES Act provides banking organizations optional temporary relief from complying with CECL ending on the earlier of (1) the termination date of the current national

emergency, declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) concerning COVID-19, or (2) December 31, 2020.

TABLE 1—CECL TRANSITIONAL AMOUNTS TO APPLY TO REGULATORY CAPITAL COMPONENTS DURING THE FINAL THREE YEARS OF THE 2020 CECL TRANSITION

| | Year 3 | Year 4 | Year 5 |
|--|--------|--------|--------|
| Increase retained earnings and average total consolidated assets by the following percentages of the modified CECL transitional amount | 75% | 50% | 25% |
| Decrease temporary difference DTAs by the following percentages of the DTA transitional amount. | | | |
| Decrease AACL by the following percentages of the modified AACL transitional amount. | | | |

C. 2020 CECL Adopters

Consistent with the interim final rule, under the final rule, banking organizations that are required to adopt CECL under GAAP (as in effect January 1, 2020) in the 2020 calendar year are eligible for the 2020 CECL transition provision. A banking organization that is required to adopt CECL under GAAP in the 2020 calendar year, but chooses to delay use of CECL for regulatory reporting in accordance with section 4014 of the CARES Act, is also eligible for the 2020 CECL transition provision.¹¹

Many depository institution holding companies that are Securities and Exchange Commission (SEC) filers are required to adopt CECL for financial statement purposes under GAAP in the 2020 calendar year (in which case they are eligible for the 2020 CECL transition provision). Additionally, since issuing the interim final rule, supervisory experience has shown that depository institution subsidiaries of holding companies generally adopt CECL based on when their holding companies are required to adopt CECL. The agencies received comments through the supervisory process regarding CECL transition implementation challenges that can exist when the depository institution subsidiary of a holding company does not adopt CECL at the same time as its holding company, which would result in maintaining separate processes for calculating loan losses on the same exposure. However, because these depository institution subsidiaries are not required to adopt CECL under GAAP during the 2020 calendar year, they would not have been eligible to use the 2020 CECL transition provision under the interim final rule. Additionally, a banking organization that is not required to adopt CECL under GAAP in the 2020 calendar year, but nonetheless chooses to early adopt CECL in the 2020 calendar year would not have been eligible to use the 2020 CECL transition provision under the interim final rule. Due to the significant

differences between CECL and the incurred loss methodology, the agencies understand that these banking organizations would have incurred substantial time and cost prior to 2020 to implement CECL and it would be a significant burden to subsequently revert to the incurred loss methodology. To address these implementation challenges and facilitate more banking organizations to better focus on supporting lending to creditworthy borrowers, the final rule modifies the interim final rule. Specifically, the final rule permits use of the 2020 CECL transition provision by any banking organization that adopts CECL during the 2020 calendar year, including those not required to adopt CECL under GAAP in the 2020 calendar year and those that adopt CECL in an interim period in the 2020 calendar year. A banking organization that initially elected the three-year transition provision under the 2019 CECL rule earlier in 2020 because it was not eligible to elect the 2020 CECL transition provision under the interim final rule at that time may change its election to the 2020 CECL transition provision in its Call Report or FR Y-9C (as applicable) filed later in the 2020 calendar year. In all cases, an electing banking organization must follow the calculations for determining the transitional amounts as described in the capital rule.

D. Transitions Applicable to Advanced Approaches Banking Organizations

Consistent with the interim final rule, the final rule adjusts the transitional amounts related to eligible credit reserves for advanced approaches banking organizations¹² that elect to use the 2020 CECL transition provision. The final rule also adjusts the transitional

¹² A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approached banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. See 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

amounts related to the supplementary leverage ratio's total exposure amount. An advanced approaches banking organization that elects the 2020 CECL transition provision continues to be required to disclose two sets of regulatory capital ratios under the capital rule: One set would reflect the banking organization's capital ratios with the CECL transition provision and the other set would reflect the banking organization's capital ratios on a fully phased-in basis.¹³

E. Other Considerations

The agencies received a few comments on topics not discussed in the interim final rule. One commenter requested that the FASB and the agencies allow banking organizations of all sizes the option to defer the implementation of CECL until 2025, given current economic uncertainties. Other commenters requested that the agencies study further the relationship between regulatory capital and credit loss allowances and whether the impact of CECL on banking organizations' regulatory capital should result in permanent revisions to the capital rule. One commenter requested that the agencies increase the amount of ACL that would be eligible to be added back to tier 2 capital.

The agencies will continue to study the need for further revisions to the regulatory capital framework to account for CECL and take warranted actions as the agencies deem necessary. The agencies will continue to use GAAP as the basis for accounting principles applicable to reports or statements required to be filed with the agencies, consistent with section 37 of the Federal Deposit Insurance Act.¹⁴ The agencies will continue to use the supervisory process to examine credit loss estimates and allowance balances of banking organizations regardless of their election to use CECL transition provisions. In addition, the agencies may assess the capital plans at electing banking organizations for ensuring

¹³ See 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

¹⁴ See 12 U.S.C. 1831n(a)(2)(A).

¹¹ The option to delay the use of CECL in accordance with section 4014 of the CARES Act also is available for other GAAP-based reporting.

sufficient capital at the expiration of such transition periods.¹⁵

F. Technical Amendments to the Interim Final Rule

The agencies are making technical, non-substantive edits in the final rule to correct typographical errors in the interim final rule. Specifically, the amendments correct and clarify certain definitions and terminology used in the 2020 CECL transition provision and remove extraneous language that was inadvertently included in the interim final rule.

IV. Impact Assessment

As discussed in the Supplementary Information to the interim final rule, CECL is expected to affect the timing and magnitude of banking organizations' loss provisioning, particularly around periods of economic stress. As recently as late last year, economic conditions appeared stable and the introduction of CECL was expected to have only a modest effect on operations. However, the additional uncertainty due to the introduction of a new credit loss accounting standard in a period of stress associated with COVID-19 poses a unique and unanticipated challenge to business operations.

The agencies issued the interim final rule to mitigate the extent to which CECL implementation complicates capital planning challenges posed by the economic effects of the COVID-19 pandemic by making the regulatory capital impact of near-term accounting for credit losses under CECL through the crisis roughly comparable to the regulatory capital impact under the incurred loss methodology. To do so, the 2020 CECL transition provision includes the entire day-one impact as well as an estimate of the incremental increase in credit loss allowances attributable to CECL as compared to the

incurred loss methodology. With the 2020 CECL transition provision provided by the interim final rule, as clarified by the final rule, banking organizations have time to adapt capital planning under stress to the new credit loss accounting standard, improving their flexibility and enhancing their ability to serve as a source of credit to the U.S. economy.

The uniform 25 percent scaling factor is only an approximation of the average after-tax provision for credit losses attributable to CECL, relative to the incurred loss methodology, in a given reporting quarter. Banking organizations may realize effects that are higher or lower than the amount calculated using the scaling factor. Additionally, the transition provision does not directly address likely differences in the timing of loss recognition under CECL and the incurred loss methodology. To the extent that allowances related to the economic effects of the COVID-19 pandemic build sooner under CECL than they would have under the incurred loss methodology, the transition provision provided in the final rule will not fully offset the regulatory capital impact of CECL. However, there is a significant benefit to operational simplicity from using a single scalar for the quarterly adjustments for all electing banking organizations.

As discussed previously, any banking organization that chooses to adopt, or is required to adopt CECL during the 2020 calendar year, as well as any banking organization that is part of a consolidated group whose holding company adopts CECL under GAAP during the 2020 calendar year will be covered by the final rule. However, the final rule will only directly affect those institutions that opt to utilize the 2020 CECL transition provision. The choice to adopt the 2020 CECL transition provision will depend on the characteristics of each individual institution, therefore the agencies do not know how many institutions will choose to do so.

As mentioned previously, under the interim final rule and the final rule, banking organizations that are required to adopt CECL under GAAP (as in effect January 1, 2020) in the 2020 calendar year would be eligible for the 2020 CECL transition provision. Under the final rule, the agencies are also permitting use of the 2020 CECL transition provision by any banking organization that is part of a consolidated group in which its holding company is required under GAAP to adopt CECL during the 2020 calendar year. Also, the agencies are expanding

the scope of the 2020 CECL transition provision to include any banking organization that is not required to adopt CECL under GAAP in the 2020 calendar year, but nonetheless chooses to early adopt CECL in the 2020 calendar year, including a banking organization that adopts CECL in an interim period in the 2020 calendar year. The agencies do not have information necessary to estimate the number of institutions that may choose to adopt CECL in the 2020 calendar year and may avail themselves of the 2020 CECL transition provision.

The final rule provides electing banking organizations relief in response to the additional operational challenges and resource burden of implementing CECL amid the uncertainty caused by recent strains on the U.S. economy, so that electing banking organizations may better focus on supporting lending to creditworthy households and businesses, while maintaining the quality of regulatory capital and reducing the potential for competitive inequities across banking organizations. Banking organizations that are eligible for, and opt to utilize the 2020 CECL transition provision may incur some regulatory costs associated with making changes to their systems and processes.

V. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing this final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an "agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

The agencies recognize that the public interest is best served by implementing the final rule as soon as possible. As discussed above, recent events have suddenly and significantly affected global economic activity. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain.

The 2019 CECL rule, as amended by the interim final rule, was adopted by the agencies to address concerns that despite adequate capital planning, uncertainty about the economic environment at the time of CECL

¹⁵ The Board extended the due date for the Y-14A collection of supplemental CECL information from April 6th until May 11th (due date of the March 31 FR Y-9C) and is including changes in the Y-14A instructions to align with the changes outlined in the interim final rule. These changes are effective for the submission associated with the FR Y-14 as of December 31, 2019.

Under the Board's December 2018 amendments to its stress test rules, a banking organization that had adopted CECL in 2020 was required to include the impact of CECL into their stressed projections beginning in the 2020 stress testing cycle. As a result of the interim final rule, firms that have already adopted CECL have the option to either include the adjustments from the interim final rule in their 2020 stress projections or delay doing so. As noted in the 2020 CCAR summary instructions, the Board will not issue supervisory findings on banking organizations' stressed estimates of allowances under CECL until the 2022 CCAR cycle, at the earliest.

adoption could result in higher-than-anticipated increases in credit loss allowances. Because of recent economic dislocations and disruptions in financial markets, banking organizations may face higher-than-anticipated increases in credit loss allowances. The final rule is intended to mitigate some of the uncertainty that comes with the increase in credit loss allowances during a challenging economic environment by temporarily limiting the approximate effects of CECL in regulatory capital. This will allow banking organizations to better focus on supporting lending to creditworthy households and businesses.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause. Because the rule relieves a restriction, the final rule is exempt from the APA's delayed effective date requirement. Additionally, the agencies find good cause to publish the final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.¹⁶ If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.¹⁷

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.¹⁸

For the same reasons set forth above, the agencies are adopting the final rule

without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In light of current market uncertainty, the agencies have determined that delaying the effective date of the final rule would be contrary to the public interest.

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.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not contain any information collection requirements. However, in connection with the interim final rule, the Board temporarily revised the Financial Statements for Holding Companies (FR Y–9 reports; OMB No. 7100–0128) and the Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341) and invited comment on a proposal to extend those collections of information for three years, with revision. No comments were received regarding this proposal under the PRA. The Board has now extended, with revision, the FR Y–9 and FR Y–14A/Q/M reports as proposed, except for minor clarifications discussed below to align the reporting instructions with this final rule.

Additionally, in connection with the interim final rule, the agencies made revisions to the Call Reports (OCC OMB Control No. 1557–0081; Board OMB Control No. 7100–0036; and FDIC OMB Control No. 3064–0052) and the FFIEC 101 (OCC OMB Control No. 1557–0239; Board OMB Control No. 7100–0319; FDIC OMB Control No. 3064–0159). The final changes to the Call Reports, the FFIEC 101 and their related instructions are addressed in a separate **Federal Register** notice.¹⁹

Current Actions

The Board has extended the FR Y–9C and FR Y–14A/Q/M for three years, with revision, as originally proposed,

except for minor clarifications to the instructions to the reports to accurately reflect the CECL transition provision as modified by this final rule. In addition to the specific changes mentioned in the interim final rule, the final rule expands eligibility for the new transition to banking organizations that voluntarily early adopt CECL in the 2020 calendar year. The final rule also includes minor adjustments to clarify calculation of the transition provision. Specifically, the FR Y–9C instructions would be clarified to note that an electing banking organization that opted to apply the transition in the first quarter in which it was eligible is not required to apply the transition in any quarter in which it would not reflect a positive modified CECL transitional amount (that could result in negative retained earnings). Also, the FR Y–9C instructions would be clarified to note that the day-one transitional amounts (CECL transitional amount, AACL transitional amount, and DTA transitional amount) may be calculated as a positive or negative number. All of the updates to the FR Y–9C and FR Y–14A/Q/M noted in the interim and final rule result in a zero estimated net change in hourly burden.

Revision, With Extension, of the Following Information Collections

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

Agency Form Number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB Control Number: 7100–0128.

Effective Date: September 30, 2020

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,²⁰ securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated Number of Respondents: FR Y–9C (non-advanced approaches community bank leverage ratio (CBLR) HCs with less than \$5 billion in total assets): 71; FR Y–9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35; FR Y–9C (non-advanced approaches, non CBLR, HCs with less than \$5 billion in total assets): 84; FR Y–9C (non-advanced approaches, non CBLR HCs, with \$5 billion or more in total assets): 154; FR Y–9C (advanced

²⁰ A savings and loan holding company (SLHC) must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

¹⁶ 5 U.S.C. 801 *et seq.*

¹⁷ 5 U.S.C. 801(a)(3).

¹⁸ 5 U.S.C. 804(2).

¹⁹ See 85 FR 44361 (July 22, 2020).

approaches HCs): 19; FR Y-9LP: 434; FR Y-9SP: 3,960; FR Y-9ES: 83; FR Y-9CS: 236.

Estimated average hours per response:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 29.17 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35.14; FR Y-9C (non-advanced approaches, non CBLR HCs, with less than \$5 billion in total assets): 41.01; FR Y-9C (non-advanced approaches, non CBLR, HCs with \$5 billion or more in total assets): 46.98 hours; FR Y-9C (advanced approaches HCs): 48.80 hours; FR Y-9LP: 5.27 hours; FR Y-9SP: 5.40 hours; FR Y-9ES: 0.50 hours; FR Y-9CS: 0.50 hours.

Recordkeeping

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

Estimated annual burden hours:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 8,284 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 4,920; FR Y-9C (non-advanced approaches non CBLR HCs with less than \$5 billion in total assets): 13,779; FR Y-9C (non-advanced approaches non CBLR HCs with \$5 billion or more in total assets): 28,940 hours; FR Y-9C (advanced approaches HCs): 3,709 hours; FR Y-9LP: 9,149 hours; FR Y-9SP: 42,768 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

Recordkeeping

FR Y-9C: 1,452 hours; FR Y-9LP: 1,736 hours; FR Y-9SP: 3,960 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

General description of report:

The FR Y-9C consists of standardized financial statements similar to the Call Reports filed by banks and savings associations.²¹ The FR Y-9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total

consolidated assets of \$3 billion or more.²²

The FR Y-9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y-9C, as well as by each of its subsidiary HCs.²³ The report consists of standardized financial statements.

The FR Y-9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than \$3 billion. In a banking organization with total consolidated assets of less than \$3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y-9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y-9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y-9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y-9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y-9 reports. The data items included on the FR Y-9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y-9 family of reports on bank holding companies pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)), as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act); on U.S. intermediate holding companies pursuant to section 5 of the BHC Act (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. 511(a)(1) and

5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The obligation to submit the FR Y-9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y-9CS, which is voluntary.

With respect to the FR Y-9C report, Schedule HI's data item 7(g) "FDIC deposit insurance assessments," Schedule HC P's data item 7(a) "Representation and warranty reserves for 1-4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies," and Schedule HC P's data item 7(b) "Representation and warranty reserves for 1-4 family residential mortgage loans sold to other parties" are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y-9C report, Schedule HC's memorandum item 2.b. and the FR Y-9SP report, Schedule SC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y-9C, Schedule HC-C for loans modified under Section 4013, data items Memorandum items 16.a, "Number of Section 4013 loans outstanding"; and Memorandum items 16.b, "Outstanding balance of Section 4013 loans" are considered confidential. While the Board generally makes institution-level FR Y-9C report data publicly available, the Board is collecting Section 4013 loan information as part of condition

²¹ The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than \$5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

²² Under certain circumstances described in the FR Y-9C's General Instructions, HCs with assets under \$3 billion may be required to file the FR Y-9C.

²³ A top-tier HC may submit a separate FR Y-9LP on behalf of each of its lower-tier HCs.

reports for the impacted HCs and the Board considers disclosure of these items at the HC level would not be in the public interest. Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. 552(b)(8). In addition, holding companies may be reluctant to offer modifications under Section 4013 if information on these modifications made by each holding company is publicly available, as analysts, investors, and other users of public FR Y-9C report information may penalize an institution for using the relief provided by the CARES Act. The Board may disclose Section 4013 loan data on an aggregated basis, consistent with confidentiality.

Aside from the data items described above, the remaining data items on the FR Y-9C report and the FR-Y 9SP report are generally not accorded confidential treatment. The data items collected on FR Y-9LP, FR Y-9ES, and FR Y-9CS reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports each respectively direct the financial institution to retain the work papers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's work papers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

(2) *Report title:* Capital Assessments and Stress Testing Reports.

Agency Form Number: FR Y-14A/Q/M.

OMB Control Number: 7100-0341.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to BHCs, U.S. intermediate holding companies (IHCs), and savings and loan holding

companies (SLHCs)²⁴ (collectively, "holding companies") with \$100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y-9C); or (ii) if the firm has not filed an FR Y-9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y-9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y-14A/Q: 36; FR Y-14M: 34.²⁵

Estimated average hours per response: FR Y-14A: 1,085 hours; FR Y-14Q: 2,142 hours; FR Y-14M: 1,072 hours; FR Y-14 On-going Automation Revisions: 480 hours; FR Y-14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y-14A: 39,060 hours; FR Y-14Q: 308,448 hours; FR Y-14M: 437,376 hours; FR Y-14 On-going Automation Revisions: 17,280 hours; FR Y-14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

The annual²⁶ FR Y-14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.²⁷

²⁴ SLHCs with \$100 billion or more in total consolidated assets become members of the FR Y-14Q and FR Y-14M panels effective June 30, 2020, and the FR Y-14A panel effective December 31, 2020. See 84 FR 59032 (Nov. 1, 2019).

²⁵ The estimated number of respondents for the FR Y-14M is lower than for the FR Y-14Q and FR Y-14A because, in recent years, certain respondents to the FR Y-14A and FR Y-14Q have not met the materiality thresholds to report the FR Y-14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

²⁶ In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. See 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y-14A in connection with their resubmission.

²⁷ On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. See 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y-14 substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its

The quarterly FR Y-14Q collects granular data on various asset classes, including loans, securities, trading positions, and pre-provision net revenue for the reporting period.

The monthly FR Y-14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y-14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Compliance with the information collection is mandatory.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y-14 reports pursuant to section 5(c) of the BHC Act, 12 U.S.C. 1844(c), and pursuant to section 165(i) of the Dodd-Frank Act, 12 U.S.C. 5365(i). The Board has authority to require SLHCs to file the FR Y-14 reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)). Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y-14 reports pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act, 12 U.S.C. 5311(a)(1) and 5365. In addition, section 401(g) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), 12 U.S.C. 5365 note, provides that the Board has the authority to establish enhanced

supervised firms. However, as noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y-14 forms as part of a separate proposal. See 84 FR 59032, 59063 (Nov. 1, 2019).

prudential standards for foreign banking organizations with total consolidated assets of \$100 billion or more, and clarifies that nothing in section 401 “shall be construed to affect the legal effect of the final rule of the Board. . . . entitled ‘Enhanced Prudential Standard for [BHCs] and Foreign Banking Organizations’ (79 FR 17240 (March 27, 2014)), as applied to foreign banking organizations with total consolidated assets equal to or greater than \$100 million.”²⁸ The FR Y–14 reports are mandatory. The information collected in the FR Y–14 reports is collected as part of the Board’s supervisory process, and therefore, such information is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). In addition, confidential commercial or financial information, which a submitter actually and customarily treats as private, and which has been provided pursuant to an express assurance of confidentiality by the Board, is considered exempt from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²⁹ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.³⁰ The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). Since the agencies were not required to issue a general notice of proposed rulemaking associated with this final rule, no RFA is required. Accordingly, the agencies have concluded that the RFA’s requirements relating to initial and final regulatory flexibility analysis do not apply.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCRDIA),³¹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured

depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.³² The agencies have determined that the final rule does not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act³³ requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the final rule in a simple and straightforward manner.

G. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Since there was no general notice of proposed rulemaking, the OCC has not prepared an economic analysis of the final rule under the UMRA.

List of Subjects

12 CFR Part 3

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

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital,

Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

■ For the reasons set forth in the preamble, the interim final rule amending chapter I of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

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, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 2. Revise § 3.301 to read as follows:

§ 3.301 Current Expected Credit Losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, a national bank or Federal savings organization may elect to use a CECL transition provision pursuant to this section only if the national bank or Federal savings association records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL.

(2) Except as provided in paragraph (d) of this section, a national bank or Federal savings association that elects to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report that includes CECL filed by the national bank or Federal savings association after it adopts CECL.

(3) A national bank or Federal savings association that does not elect to use the CECL transition provision as of the first Call Report that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL

²⁸ The Board’s Final Rule referenced in section 401(g) of EGRRCPA specifically stated that the Board would require IHCs to file the FR Y–14 reports. See 79 FR 17240, 17304 (Mar. 27, 2014).

²⁹ 5 U.S.C. 601 *et seq.*

³⁰ Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

³¹ 12 U.S.C. 4802(a).

³² 12 U.S.C. 4802.

³³ Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a national bank or Federal savings association adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date a national bank or Federal savings association was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the national bank or Federal savings association files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference, net of any DTAs, in the amount of a national bank's or Federal savings association's retained earnings as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's retained earnings as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of a national bank's or Federal savings association's DTAs arising from temporary differences as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a national bank's or Federal savings association's AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL and the amount of the national bank's or Federal savings association's ALLL as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of a national bank's or Federal savings association's eligible credit reserves as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's

or Federal savings association's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a national bank or Federal savings association must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this

section, an advanced approaches or Category III national bank or Federal savings association must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, a national bank or Federal savings association that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a national bank or Federal savings association uses CECL for purposes of its Call Report. A national bank or Federal savings association may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020, and makes the election in the Call Report filed for the same quarter. A national bank or Federal savings association that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the adjustments in its calculation of regulatory capital ratios in

paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A national bank or Federal savings association that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its

modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its modified AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its modified AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the

fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III national bank or Federal savings association that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) Eligible credit reserves shortfall.

An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d), and whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount (or modified CECL transitional amount) used in paragraph (c) of this section by the full amount of its DTA transitional amount.

(f) Business combinations.

Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving a national bank or Federal savings association where one or both of the national banks or Federal savings associations have elected the treatment described in this section:

(1) If the acquirer national bank or Federal savings association (as determined under GAAP) elected the treatment described in this section, the acquirer national bank or Federal savings association must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting national bank or Federal savings association.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the preamble, the interim final rule amending chapter II of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

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–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, 5371 note, and sec. 4012, Pub. L. 116–136, 134 Stat. 281.

Subpart G—Transition Provisions

■ 4. Revise § 217.301 to read as follows:

§ 217.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, a Board-regulated institution may elect to use a CECL transition provision pursuant to this section only if the Board-regulated institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL.

(2) Except as provided in paragraph (d) of this section, a Board-regulated institution that elects to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report or FR Y–9C that includes CECL filed by the Board-regulated institution after it adopts CECL.

(3) A Board-regulated institution that does not elect to use the CECL transition provision as of the first Call Report or FR Y–9C that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a Board-regulated institution adopts CECL and reflects CECL in its first Call Report or FR Y–9C filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date a Board-regulated institution was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the Board-regulated institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference net of any DTAs, in the

amount of a Board-regulated institution's retained earnings as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's retained earnings as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of a Board-regulated institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a Board-regulated institution's AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL and the amount of the Board-regulated institution's ALLL as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of a Board-regulated institution's eligible credit reserves as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a Board-regulated institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of

DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches or Category III Board-regulated institution must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period,

decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, a Board-regulated institution that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a Board-regulated institution uses CECL for purposes of its Call Report or FR Y-9C. A Board-regulated institution may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020, and makes the election in the Call Report or FR Y-9C filed for the same quarter. A Board-regulated institution that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the adjustments in its calculation of regulatory capital ratios in paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report or FR Y-9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or Y-9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most

recent Call Report or FR Y-9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or FR Y-9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A Board-regulated institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one

hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y-9C for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III Board-regulated institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition

period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.* An advanced approaches Board-regulated institution that has completed the parallel run process and that has received notification from the Board pursuant to § 217.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount.

(f) *Business combinations.* Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving a Board-regulated institution where one or both Board-regulated institutions have elected the treatment described in this section:

(1) If the acquirer Board-regulated institution (as determined under GAAP) elected the treatment described in this section, the acquirer Board-regulated institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired company (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired company does not transfer to the resulting Board-regulated institution.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the preamble, the interim final rule amending chapter III of title 12 of the Code of Federal Regulations, which was published at 85 FR 17723 on March 31, 2020, and amended at 85 FR 29839 on May 19, 2020, is adopted as final with the following changes:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 5. The authority citation for part 324 is revised to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111-203, 124 Stat. 1376, 1887 (15 U.S.C. 78o-7 note), Pub. L. 115-174; section 4014, Pub. L. 116-136, 134 Stat. 281 (15 U.S.C. 9052).

■ 6. Revise § 324.301 to read as follows:

§ 324.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, an FDIC-supervised institution may elect to use a CECL transition provision pursuant to this section only if the FDIC-supervised institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL.

(2) Except as provided in paragraph (d) of this section, an FDIC-supervised institution that elects to use the CECL transition provision must elect to use the CECL transition provision in the

first Call Report that includes CECL filed by the FDIC-supervised institution after it adopts CECL.

(3) An FDIC-supervised institution that does not elect to use the CECL transition provision as of the first Call Report that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period, beginning the first day of the fiscal year in which an FDIC-supervised institution adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 CECL transition provision under paragraph (d) of this section, the five-year period beginning on the earlier of the date an FDIC-supervised institution was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020), or the first day of the fiscal year that begins during the 2020 calendar year in which the FDIC-supervised institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the difference, net of any DTAs, in the amount of an FDIC-supervised institution's retained earnings as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's retained earnings as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(3) *DTA transitional amount* means the difference in the amount of an FDIC-supervised institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of an FDIC-supervised institution's AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL and the amount of the FDIC-supervised institution's ALLL as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the difference in the amount of an FDIC-supervised

institution's eligible credit reserves as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, an FDIC-supervised institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional

amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches or Category III FDIC-supervised institution must make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *2020 CECL transition provision.* Notwithstanding paragraph (a) of this section, an FDIC-supervised institution that adopts CECL for accounting purposes under GAAP as of the first day of a fiscal year that begins during the 2020 calendar year may elect to use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition provision calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which an FDIC-supervised institution uses CECL for purposes of its Call Report. An FDIC supervised-institution may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020 and makes the election in the Call Report filed for the same quarter. An FDIC-supervised institution that does not calculate a positive modified CECL transitional amount in any quarter is not required to apply the

adjustments in its calculation of regulatory capital ratios in paragraph (d)(2) of this section in that quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition provision calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report, and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) An FDIC-supervised institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified

CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its modified AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its modified AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-

five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches or Category III FDIC-supervised institution that has elected the 2020 CECL transition provision described in this paragraph (d) may make the following additional adjustments to its calculation of its applicable regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.*

An advanced approaches FDIC-supervised institution that has completed the parallel run process and that has received notification from the

FDIC pursuant to § 324.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount.

(f) *Business combinations.*

Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving an FDIC-supervised institution where one or both FDIC-supervised institutions have elected the treatment described in this section:

(1) If the acquirer FDIC-supervised institution (as determined under GAAP) elected the treatment described in this section, the acquirer FDIC-supervised institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting FDIC-supervised institution.

Brian P. Brooks,

Acting Comptroller of the Currency.

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

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about August 21, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020-19782 Filed 9-29-20; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1301, 1304, and 1306

[Docket No. DEA-322]

RIN 1117-AB20

Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: On April 6, 2009, the Drug Enforcement Administration published the interim final rule titled “Implementation of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008,” which amended DEA’s regulations by adding several new provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. This action adopts the interim final rule as a final rule without change, apart from a minor technical amendment and certain changes to DEA regulations already made by intervening rules. This action also reinstates amendments that were inadvertently removed by the Controlled Substances and List I Chemical Registration and Reregistration Fees final rule published on March 15, 2012.

DATES: This final rule is effective October 30, 2020.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, VA 22152; Telephone: (571) 362-3261.

SUPPLEMENTARY INFORMATION:

Outline

- I. Purpose of Regulatory Action
- II. Summary of Key Provisions of the Ryan Haight Act
 - A. In-Person Medical Evaluation
 - B. Requirement of Modified Registration
 - C. Criminal Offenses
- III. The Interim Final Rule and Subsequent Changes to DEA Regulations
- IV. Discussion of Comments
 - A. Distributors’ Responsibilities
 - B. Pharmacies’ Responsibilities
 - C. Exceptions to the Definition of “Online Pharmacy”
 - D. Access to Medication
 - E. Verification of Registration
- V. Section-by-Section Summary of the Final Rule
- VI. Regulatory Analyses

I. Purpose of Regulatory Action

The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110-425) (hereafter, the “Ryan Haight Act” or the “Act”) was enacted on October 15, 2008. The Act amended the Controlled Substances Act (CSA) by adding various provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. The Ryan Haight Act makes it illegal under Federal law to “deliver, distribute, or dispense a controlled substance by means of the internet, except as authorized by [the CSA]” or to aid or abet such activity. 21 U.S.C. 841(h)(1).

On April 6, 2009, the Drug Enforcement Administration (DEA) published an interim final rule that served (1) to explain the Ryan Haight Act, (2) to announce amendments to DEA regulations that implemented the Act, and (3) to request comments on these amendments to the regulations. *See* 74 FR 15596.

Through this final rule, DEA is responding to the comments it received on the April 6, 2009, interim final rule and adopting the interim final rule as final without change (aside from a minor technical amendment and certain minor changes, discussed below, that were already made by intervening rules).

II. Summary of Some of the Key Provisions of the Ryan Haight Act

Congress passed the Ryan Haight Act because of “the increasing use of prescription controlled substances by adolescents and others for non-medical purposes, which [had] been exacerbated by drug trafficking on the internet.”¹ Recognizing that rogue websites fueled the abuse of prescription controlled substances and thereby increased the number of resulting overdoses and other harmful consequences, Congress passed the Ryan Haight Act to prevent the internet from being exploited to facilitate such unlawful drug activity.

Consistent with the CSA, the Ryan Haight Act set out numerous regulatory requirements and other substantive provisions. These provisions and other aspects of the Act are explained in detail in the interim final rule. *See* 74 FR 15597-15610. For this final rule, a summary of three key provisions of the Act will suffice: The in-person medical evaluation requirement for prescribing practitioners, the modified registration requirement for online pharmacies, and the criminal offenses the Act added to the CSA.

¹ S. Rep. No. 110-521, at 1 (2008).