

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 3 and 6**

**Docket No. OCC-2020-0013**

**RIN 1557-AE85**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 208 and 217**

**Regulations H and Q; Docket No. R-1718; RIN 7100-AF91**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 324**

**RIN 3064-AF44**

**Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks from the Supplementary Leverage Ratio for Depository Institutions**

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

**ACTION:** Interim final rule and request for comment.

**SUMMARY:** In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 and strains in U.S. financial markets, the OCC, the Board, and the FDIC (together, the agencies) are issuing an interim final rule that temporarily revises the supplementary leverage ratio calculation for depository institutions. Under the interim final rule, any depository institution subsidiary of a U.S. global systemically important bank holding company or any depository institution subject to Category II or Category III capital standards may elect to exclude temporarily U.S. Treasury securities and deposits at Federal Reserve Banks from the

supplementary leverage ratio denominator. Additionally, under this interim final rule, any depository institution making this election must request approval from its primary Federal banking regulator prior to making certain capital distributions so long as the exclusion is in effect. The interim final rule is effective as of the date of Federal Register publication and will remain in effect through March 31, 2021. The agencies are adopting this interim final rule to allow depository institutions that elect to opt into this treatment additional flexibility to act as financial intermediaries during this period of financial disruption. The tier 1 leverage ratio is not affected by this interim final rule.

**DATES:** *Effective date:* This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the interim final rule must be received no later than [45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

*OCC:* Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Regulatory Capital Rule: Temporary Exclusion of U.S. Treasury Securities and Deposits at Federal Reserve Banks from the Supplementary Leverage Ratio” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal – Regulations.gov Classic or Regulations.gov Beta:*  
*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0013” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov Site*” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC-2020-0013” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

- *E-mail:* [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2020-0013” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically – Regulations.gov Classic or Regulations.gov Beta:*

*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2020-0013” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC-2020-0013” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the *Regulations.gov* Beta site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Board:* You may submit comments, identified by Docket No. R-1718; RIN 7100-AF91, by any of the following methods:

- Agency website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket and RIN numbers in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue, NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684.

*FDIC*: You may submit comments, identified by RIN 3064-AF44, by any of the following methods:

- *Agency Website*: <https://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency website.

- *E-mail*: [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include "RIN 3064-AF44" on the subject line of the message.

- *Mail*: Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064-AF44, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- *Hand Delivery/Courier*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064-AF44 and

will be posted without change to <https://www.fdic.gov/regulations/laws/federal>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Margot Schwadron, Director, or Venus Fan, Risk Expert, Capital and Regulatory Policy, (202) 649-6370; or Carl Kaminski, Special Counsel, or Chris Rafferty, Senior Attorney, Chief Counsel's Office, (202) 649-5490, for persons who are deaf or hearing impaired, TTY, (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

*Board:* Anna Lee Hewko, Associate Director, (202) 530-6360; Constance Horsley, Deputy Associate Director, (202) 452-5239; Elizabeth MacDonald, Manager, (202) 475-6316; Sviatlana Phelan, Lead Financial Institution Policy Analyst, (202) 912-4306; or Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973-6862, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452-2036; Mark Buresh, Senior Counsel, (202) 452-5270; Andrew Hartlage, Counsel, (202) 452-6483; Jonah Kind, Senior Attorney, (202) 452-2045; or Jasmin Keskinen, Legal Assistant, (202) 475-6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263-4869.

*FDIC:* Bobby R. Bean, Associate Director, [bbean@fdic.gov](mailto:bbean@fdic.gov); Benedetto Bosco, Chief, Capital Policy Section, [bbosco@fdic.gov](mailto:bbosco@fdic.gov); Noah Cuttler, Senior Policy Analyst, [ncuttler@fdic.gov](mailto:ncuttler@fdic.gov); [regulatorycapital@fdic.gov](mailto:regulatorycapital@fdic.gov); Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Michael Phillips, Counsel, [mphillips@fdic.gov](mailto:mphillips@fdic.gov); Catherine Wood, Counsel, [cawood@fdic.gov](mailto:cawood@fdic.gov); Francis Kuo, Counsel, [fkuo@fdic.gov](mailto:fkuo@fdic.gov); Supervision and Legislation Branch,

Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925-4618.

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### **I. Background**

The spread of the coronavirus disease 2019 (COVID-19) has significantly and adversely affected global financial markets, including depository institutions' role as financial intermediaries. In particular, disruptions in financial markets, and the resulting flight to liquid assets by market participants, have caused depository institutions' balance sheets to expand to accommodate inflows of deposits. This balance sheet expansion has contributed to depository

institutions making substantial deposits in their accounts at Federal Reserve Banks (deposits at Federal Reserve Banks). In addition, customer draws on credit lines and depository institutions' holdings of significant amounts of U.S. Treasury securities (Treasuries) have contributed to balance sheet expansion. These trends are expected to continue temporarily while depository institutions and their customers respond to disruptions in the financial markets.

For a depository institution subsidiary of a U.S. global systemically important bank holding company (GSIB), or a depository institution subject to the Category II or Category III capital standards, the agencies' regulatory capital rule (capital rule) requires a minimum supplementary leverage ratio of 3 percent, measured as the ratio of a depository institution's tier 1 capital to its total leverage exposure.<sup>1</sup> Total leverage exposure, the denominator of the supplementary leverage ratio, includes certain off-balance sheet exposures in addition to on-balance sheet assets.

GSIB depository institution subsidiaries also are subject to enhanced supplementary leverage ratio (eSLR) standards established by the agencies in 2014.<sup>2</sup> Under the eSLR standards, GSIB depository institution subsidiaries must maintain a 6-percent supplementary leverage ratio

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<sup>1</sup> See 84 FR 59230 (Nov. 1, 2019). Banking organizations that are subject to Category II standards include those with (1) at least \$700 billion in total consolidated assets or (2) at least \$75 billion in cross-jurisdictional activity and at least \$100 billion in total consolidated assets. Banking organizations that are subject to Category III standards include those with (1) at least \$250 billion in average total consolidated assets or (2) at least \$100 billion in average total consolidated assets and at least \$75 billion in average total nonbank assets, average weighted short-term wholesale funding; or average off-balance sheet exposure. See 12 CFR 217.2.

<sup>2</sup> See 79 FR 24528 (May 1, 2014). The eSLR standards, as adopted in 2014, applied to U.S. top-tier bank holding companies with consolidated assets over \$700 billion or more than \$10 trillion in assets under custody, and depository institution subsidiaries of holding companies that meet those thresholds. The Board subsequently revised its capital rule so that the applicability of the eSLR standards is to bank holding companies identified as U.S. GSIBs and their depository institution subsidiaries. See 80 FR 49082 (August 14, 2015). The banking organizations currently subject to the eSLR standards are the same under either applicability standard.



to be considered “well capitalized” under the prompt corrective action (PCA) framework of each agency.

In contrast to the risk-based capital requirements in the capital rule, a leverage ratio does not differentiate the amount of capital required by the type of exposure. Rather, a leverage ratio places an upper bound on depository institution leverage. A leverage ratio protects against underestimating risk and serves to complement the risk-based capital requirements. Under the supplementary leverage ratio, depository institutions include all on-balance sheet assets, including Treasuries and deposits at Federal Reserve Banks, in their total leverage exposure calculation.<sup>3</sup>

## **II. The Interim Final Rule**

The ability of depository institutions to hold certain assets, most notably deposits at a Federal Reserve Bank and Treasuries, is essential to market functioning, financial intermediation, and funding market activity, particularly in periods of financial uncertainty. In response to volatility and market strains, the Federal Reserve has taken a number of actions to support market functioning and the flow of credit to the economy. The response to COVID-19 has notably increased the size of the Federal Reserve’s balance sheet and resulted in a large increase in the amount of reserves in the banking system. The agencies anticipate that the Federal Reserve’s balance sheet may continue to expand in the near term, as customer deposits continue to expand, and recently announced facilities to support the flow of credit to households and businesses begin or continue operations. In addition, market participants have liquidated a

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<sup>3</sup> The agencies recently issued a final rule, effective April 1, 2020, which implements section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), 12 U.S.C. § 1831o note, by amending the capital rule to allow a banking organization that qualifies as a custodial banking organization to exclude from total leverage exposure deposits at qualifying central banks, subject to limits (402 rule). 85 FR 4569 (January 27, 2020).

high volume of assets, and customers have drawn down credit lines and deposited the cash proceeds with depository institutions in recent weeks, further increasing the size of depository institutions' balance sheets. Absent any adjustments to the supplementary leverage ratio, the resulting increase in the size of depository institutions' balance sheets may cause a sudden and significant increase in the regulatory capital needed to meet a depository institution's leverage ratio requirement.<sup>4</sup> This is particularly the case for many of the depository institutions subject to the supplementary leverage ratio, which are significant participants in financial intermediation services, including as clearing banks for dealers in the open market operations of the Federal Open Market Committee and as major custodians of securities.

In order to facilitate depository institutions' significant increase in reserve balances resulting from the Federal Reserve's asset purchases and the establishment of various programs to support the flow of credit to the economy, as well as the need to continue to accept exceptionally high levels of customer deposits, the agencies are issuing this interim final rule to provide depository institutions subject to the supplementary leverage ratio (qualifying depository institutions) the ability to exclude temporarily Treasuries and deposits at Federal Reserve Banks from total leverage exposure through March 31, 2021. For example, depository institutions would be able to exclude temporarily on-balance sheet Treasuries that they hold, including Treasuries that they have borrowed and re-pledged in a repo-style transaction, provided such

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<sup>4</sup> The Board recently issued an interim final rule to revise, on a temporary basis for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations, the calculation of total leverage exposure, the denominator of the supplementary leverage ratio in the Board's capital rule, to exclude Treasuries and deposits at Federal Reserve Banks. The exclusion will remain in effect until March 31, 2021. 85 FR 20578 (April 14, 2020).

Treasuries are included in the depository institution's total leverage exposure prior to the effect of the exclusion.<sup>5</sup>

Under the interim final rule, a depository institution that opts into this treatment (electing depository institution) would be required to obtain prior approval of distributions from its primary Federal banking regulator. An electing depository institution must notify its primary Federal banking regulator of its election within 30 days after the interim final rule is effective.<sup>6</sup> The primary Federal banking regulator will consider a notice received from a qualifying depository institution more than 30 days after the effective date of the interim final rule on a case-by-case basis. The election will not affect the electing depository institution's ability to pay distributions already declared or to declare distributions for payment in the second quarter of 2020. The prior approval requirement applies to distributions to be paid beginning in the third quarter of 2020. The interim final rule will terminate after March 31, 2021.

For purposes of reporting the supplementary leverage ratio as of June 30, 2020, an electing depository institution may reflect the exclusion of Treasuries and deposits at Federal Reserve Banks from total leverage exposure as if this interim final rule had been in effect for the entire second quarter of 2020. Because the supplementary leverage ratio is calculated as an average over the quarter, this will have the effect of maximizing the effect of the exclusion starting in the second quarter of 2020. The agencies are not making similar adjustments to risk-based capital ratios because Treasuries and deposits at Federal Reserve Banks are risk-weighted at zero percent.

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<sup>5</sup> This scope is consistent with the Board's recent interim final rule to revise the supplementary leverage ratio. See supra note 4.

<sup>6</sup> An FDIC supervised institution must provide this notice in writing to the appropriate FDIC regional director of the FDIC Division of Risk Management Supervision.

Under the interim final rule, beginning in the third quarter of 2020, an electing depository institution will be required to obtain approval from its primary Federal banking regulator before making a distribution<sup>7</sup> or creating an obligation to make such a distribution so long as the temporary exclusion is in effect. The primary Federal banking regulator will endeavor to respond within 14 days to the request with an approval, disapproval, or request for additional information. This prior-approval requirement will help support the objective of the interim final rule to strengthen the ability of electing depository institutions to continue taking deposits, lending, and conducting other financial intermediation activities during this period of stress.

When evaluating any such request, the primary Federal banking regulator will consider all relevant factors, including whether any distribution would be contrary to safety and soundness and limitations on distributions in the existing rules applicable to the electing depository institution.<sup>8</sup> Factors that the primary Federal banking regulator will take into account include the depository institution's current earnings and forecasts, the nature, purpose, and extent of the request, and the particular circumstances giving rise to the request.<sup>9</sup> For example, the primary Federal banking regulator may consider the expected future capital needs of the depository

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<sup>7</sup> See 12 CFR 3.2 (defining "distribution") (OCC); 12 CFR 217.2 (defining "distribution") (Board); 12 CFR 324.2 (defining "distribution") (FDIC).

<sup>8</sup> Additional limitations on distributions may apply under 12 CFR part 3, subparts H and I; 12 CFR 5.46, 12 CFR part 5, subpart E; 12 CFR part 6; 12 CFR part 208, subparts A and D; 12 CFR part 303, subparts K and M. The restrictions set forth in this interim final rule are in addition to, and therefore do not supersede, any existing statutory or regulatory limitations on making capital distributions. For purposes of the FDIC's PCA rules, regarding capital distribution restrictions for undercapitalized FDIC-supervised institutions, see 12 CFR 324.405.

<sup>9</sup> Holding companies use dividends from their subsidiaries for various purposes. For example, dividends to the holding company can support the efficient internal allocation of capital within a holding company, allowing excess capital from one subsidiary, such as the depository institution, to be redeployed to other subsidiaries. As such, an effective dividend strategy can both ensure the safety and soundness of the depository institution and promote the safety and soundness of the entire banking organization.

institution and its ability to meet capital requirements after the temporary relief provided under this interim final rule expires. The requirement that a depository institution request approval for distributions is not intended to prohibit electing depository institutions from paying dividends in all cases. Rather, the primary Federal banking regulator will evaluate each request to ensure that the electing depository institution will be able to continue supporting the economy by lending and accepting deposits consistent with the goal of this interim final rule.

The interim final rule revises the measure of total leverage exposure on a temporary basis for electing depository institutions for the limited purposes of the agencies' capital rule. Depository institutions subject to supplementary leverage ratio requirements report their supplementary leverage ratios on the Consolidated Reports of Condition and Income (Call Reports), Schedule RC-R and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), Schedule A.<sup>10</sup> The agencies expect in the near future to make all necessary revisions to the Call Reports and the FFIEC 101, Schedule A to implement the interim final rule's revisions to the supplementary leverage ratio for electing depository institutions and to require such institutions to disclose the election publicly.<sup>11</sup> In addition, the interim final rule provides for the necessary modifications of the disclosure requirements of section 173 of the capital rule to reflect the optional temporary exclusion provided by the interim final rule.

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<sup>10</sup> Depository institutions that are required to submit the OCC Reporting Form DFAST-14A on April 6, 2021, or the FDIC DFAST-14A, have the option to include these changes in their company-run stress test results.

<sup>11</sup> The instructions for Board's FR Y-9C, Schedule HC-R, Line Item 45 (Advanced approaches holding companies only: Supplementary leverage ratio) state that respondents must report the supplementary leverage ratio from FFIEC 101 Schedule A, Table 2, Item 2.22. Therefore, revisions to the FFIEC 101 regarding how to report the supplementary leverage ratio would flow through to the FR Y-9C. The Board plans to amend the instructions for FR Y-9C as necessary.

The agencies seek comment on all aspects of this interim final rule.

*Question 1: Discuss the advantages and disadvantages of removing temporarily Treasuries and deposits at Federal Reserve Banks from total leverage exposure for depository institutions. How does the interim final rule support the objectives of facilitating financial intermediation by depository institutions? How does the interim final rule affect the concurrent objective of safety and soundness? How would the end date of March 31, 2021, for the exclusion under the interim final rule be consistent with the objectives of the rule, or what earlier or later end date should be used instead?*

*Question 2: What additional assets or exposure types should the agencies consider to exclude temporarily from total leverage exposure in order to achieve the interim final rule's objectives? For example, what consideration should the agencies give to excluding deposits at certain foreign central banks, foreign sovereign debt instruments, or exposures guaranteed by the U.S. federal government and why? Which specific repo-style transactions that would support depository institutions' role serving as financial intermediaries should the agencies exclude, if any, and why?*

### **III. Impact Assessment**

The supplementary leverage ratio requirement generally has not prevented depository institutions from accommodating customer deposit inflows or serving as financial intermediaries. However, as a result of the spread of COVID-19, stress has materialized in numerous financial markets. Disruptions in financial markets have resulted in expansion of depository institutions' balance sheets to accommodate inflows of deposits. In particular, using data from the fourth quarter of 2019, the agencies expect that the interim final rule would temporarily decrease binding tier 1 capital requirements by approximately \$55 billion for depository institutions if all

depository institutions subject to the supplementary leverage ratio elect to opt in.<sup>12</sup> In light of the exclusions under this interim final rule, this temporary reduction in capital requirements is expected to increase leverage exposure capacity at depository institutions by approximately \$1.2 trillion. In particular, the agencies expect that the increase in leverage exposure capacity will strengthen the depository institutions' ability to continue to accept customer deposits, and therefore ensure that depository institutions remain able to fulfill this important function.

Depository institutions that opt into the temporary exclusion of Treasuries and deposits at Federal Reserve Banks from the denominator of the supplementary leverage ratio will likely incur some costs associated with making changes to internal systems or processes for managing supplementary leverage ratio compliance. However, these costs are likely to be very small.

Aside from increases in balance sheets caused by increases in customer deposits, the balance sheets of depository institutions also have increased as households and businesses draw down credit lines. If depository institutions become constrained by supplementary leverage ratio requirements, this could adversely affect their ability to intermediate in financial markets and hamper their ability to provide credit to households and businesses. Therefore, the temporary increase in leverage exposure capacity could have countercyclical benefits as it supports

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<sup>12</sup> This analysis takes into account the exclusion of qualifying central bank deposits for custodial banking organizations as provided under the capital rule. As of April 1, 2020, custodial banking organizations may exclude deposits with qualifying foreign central banks, in addition to the exclusions of deposits at Federal Reserve Banks provided under this interim final rule. (See supra note 3.) In addition, the analysis in this interim final rule uses balances due from banks in foreign countries and foreign central banks, as reported under line item 3 of Schedule RC-A of the Call Report. Line item 3 of Schedule RC-A may slightly overstate amounts eligible for exclusion by custodial banking organizations because it includes balances due from banks in foreign countries and foreign central banks that are not eligible for exclusion under this interim final rule.

financial market liquidity and increases depository institutions' lending capacities in a time of economic stress.

Although a temporary increase in leverage exposure capacity could lead to an increase in overall leverage in the banking system, the temporary exclusion of Treasuries and deposits at Federal Reserve Banks will help alleviate ongoing stresses on the financial system and the real economy arising from COVID-19. The agencies will closely monitor the balance sheets of electing depository institutions in the coming months while the exclusion is in effect with a particular view toward any resulting increase in risks in conjunction with this interim final rule.

#### **IV. Technical Amendments**

Finally, the agencies are making technical corrections and clarifications to the Prompt Corrective Action regulations. In their respective Prompt Corrective Action regulations, the agencies are correcting an unintentional omission of "Category III" to clarify that depository institutions subject to Category III standards must meet their minimum supplementary leverage ratio requirement of 3 percent in order to be considered "adequately capitalized."<sup>13</sup> When the minimum supplementary leverage ratio requirement was initially added to the capital rule in 2013, the term "advanced approaches" banking organizations referred to all banking organizations that were subject to the supplementary leverage ratio.<sup>14</sup> However, the tailoring rule that became effective on December 31, 2019, redefined "advanced approaches." Under that rule, advanced approaches banking organizations now include a smaller group of banking organizations (i.e., banking organizations subject to Category I and II standards), while certain banking organizations are no longer defined as advanced approaches but remain subject to the

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<sup>13</sup> 12 CFR 6.4(b) (OCC); 12 CFR 208.43(b) (Board); 12 CFR 324.403(b) (FDIC).

<sup>14</sup> 78 FR 62018 (Oct. 11, 2013).



supplementary leverage ratio requirements (i.e., banking organizations subject to Category III standards). The agencies did not intend to change the applicability of the minimum supplementary leverage ratio requirement in their respective Prompt Corrective Action regulations. Rather, the Prompt Corrective Action requirement should continue to apply to all banking organizations that are required to calculate the supplementary leverage ratio. Therefore, consistent with the capital rule, the agencies are now clarifying that the supplementary leverage ratio provisions in their respective Prompt Corrective Action regulations apply to all banking organizations subject to Category III standards, in addition to banking organizations subject to Category I and II standards.

## **V. Administrative Law Matters**

### ***A. Administrative Procedure Act***

The agencies are issuing the interim final rule and its accompanying technical edits without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>15</sup> 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.”<sup>16</sup>

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the *Federal Register*. As discussed above, the spread of COVID-19 has slowed economic activity in many countries, including the United States.

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<sup>15</sup> 5 U.S.C. 553.

<sup>16</sup> 5 U.S.C. 553(b)(B).

Specifically, the disruptions in financial markets have caused depository institutions to receive inflows of deposits—contributing to the increase of deposits at Federal Reserve Banks—and to hold significant amounts of Treasuries. Notably, these deposits at Federal Reserve Banks and holdings of Treasuries are essential to the normal functioning of the financial markets, especially in times of stress. If depository institutions cannot sustain the rapid increase in deposits at Federal Reserve Banks and holdings of Treasuries, the financial markets would experience a marked decline in financial intermediation and a further increase in general market volatility. Because the interim final rule will mitigate these potential negative effects, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.<sup>17</sup> This final rule makes additional technical edits and corrections to more clearly articulate the scope of the supplementary leverage ratio requirements. Because the additional technical edits and corrections are not substantive, the agencies find there is good cause to issue the rule without advance notice and comment.

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.<sup>18</sup> Because the interim final rule will provide temporary capital relief, the interim final rule is exempt from the APA's delayed effective date requirement.<sup>19</sup> Additionally, the agencies find good cause to publish the technical edits and corrections, which clarify the scope of the supplementary leverage

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<sup>17</sup> 5 U.S.C. 553(b)(B); 553(d)(3).

<sup>18</sup> 5 U.S.C. 553(d).

<sup>19</sup> 5 U.S.C. 553(d)(1).

ratio for purposes of the Prompt Corrective Action regulations, with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe that there is good cause to issue this interim final rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rule.

### ***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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup>

For the same reasons set forth above, the agencies are adopting the interim 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

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<sup>20</sup> 5 U.S.C. 801 et seq.

<sup>21</sup> 5 U.S.C. 801(a)(3).

<sup>22</sup> 5 U.S.C. 804(2).

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.<sup>23</sup> In light of current market uncertainty, the agencies believe that delaying the effective date of the 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. The interim final rule affects the agencies' current information collections for the Call Reports (OCC OMB No. 1557-0081; Board OMB No. 7100-0036; and FDIC OMB No. 3064-0052) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OCC OMB No. 1557-0239; Board OMB No. 7100-0319; and FDIC OMB No. 3064-0159). The revisions to the Call Reports and the FFIEC 101 will be addressed in a separate *Federal Register* notice.

The interim final rule also introduces a new notice opt-in requirement and a requirement for prior approval for distributions, which would affect the agencies' capital rule information collections. The agencies believe that these new requirements will amount to 12 burden hours per respondent (two responses per respondent at six hours per response).

*OCC:*

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<sup>23</sup> 5 U.S.C. 808.

*Title of Information Collection:* Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

*OMB Control No.:* 1557-0318.

*Respondents for Interim Final Rule:* 21.

*Responses per Respondent:* 2.

*Burden per Response:* 6 hours.

*Burden for Interim Final Rule:* 252 hours.

*Total Burden for Collection:* 66,333 hours.

*FDIC:*

*Title of Information Collection:* Regulatory Capital Rules.

*OMB Control No.:* 3064-0153.

*Respondents for Interim Final Rule:* 7.

*Responses per Respondent:* 2.

*Burden per Response:* 6 hours.

*Burden for Interim Final Rule:* 84 hours.

*Total Burden for Collection:* 128,140 burden hours.

The agencies request comment on:

- a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
- b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected;

- d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The Board has temporarily revised the Financial Statements for Holding Companies (FR Y-9C; OMB No. 7100-0128) and the Recordkeeping and Disclosure Requirements Associated with Regulation Q (FR Q; OMB No. 7100-0313) information collections to accurately reflect certain aspects of this and other interim final rules. On June 15, 1984, OMB delegated to the Board authority under the PRA to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation. The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment to extend information collections for a period not to exceed three years. Therefore, the Board is inviting comment to extend the FR Q information collection for three years, with the revisions discussed below. The Board is not inviting comment on the FR Y-9 information collection for the reasons discussed below.

The Board invites public comment on the FR Q information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before [insert date 60 days after date of publication in the Federal Register]. Comments are invited on the following:

- f. Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- g. The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- h. Ways to enhance the quality, utility, and clarity of the information to be collected;
- i. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- j. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the collections.

**Final Approval under OMB Delegated Authority of the Temporary Revision of the Following Information Collection:**

*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:* March 31, 2020

*Frequency:* Quarterly, semiannually, and annually.

*Respondents:* Bank holding companies, savings and loan holding companies,<sup>24</sup> securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

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<sup>24</sup> An 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

*Estimated number of respondents:* FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 7; 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 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): 29.14 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 35.11; FR Y-9C (non-advanced approaches, non CBLR HCs, with less than \$5 billion in total assets): 40.98; FR Y-9C (non-advanced approaches, non CBLR, HCs with \$5 billion or more in total assets): 46.95 hours; FR Y-9C (advanced approaches HCs): 48.59 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***

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consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.



FR Y-9C (non-advanced approaches CBLR HCs with less than \$5 billion in total assets): 8,276 hours; FR Y-9C (non-advanced approaches CBLR HCs with \$5 billion or more in total assets): 4,915; FR Y-9C (non-advanced approaches non CBLR HCs with less than \$5 billion in total assets): 13,769; FR Y-9C (non-advanced approaches non CBLR HCs with \$5 billion or more in total assets): 28,921 hours; FR Y-9C (advanced approaches HCs): 3,693 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 (non-advanced approaches HCs with less than \$5 billion in total assets): 620 hours; FR Y-9C (non-advanced approaches HCs with \$5 billion or more in total assets): 756 hours; FR Y-9C (advanced approaches HCs): 76 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 commercial banks.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> The report consists of standardized financial statements.

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<sup>25</sup> 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).

<sup>26</sup> 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.

<sup>27</sup> A top-tier HC may submit a separate FR Y-9LP on behalf of each of its lower-tier HCs.

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 Y-9 family of reports on bank holding companies ("BHCs") pursuant to section 5 of the Bank Holding Company Act ("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)); on U.S. intermediate holding companies ("U.S. IHCs") 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 Wall Street Reform and Consumer

Protection Act (“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 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, Schedule HI’s memoranda item 7(g), Schedule HC-P’s item 7(a), and Schedule HC-P’s item 7(b) are considered confidential commercial and financial information under exemption 4 of the Freedom of Information Act (“FOIA”), (5 U.S.C. 552(b)(4)), as is Schedule HC’s memorandum item 2.b. for both the FR Y-9C and FR Y-9SP reports.

Aside from the data items described above, the remaining data items on the FR Y-9 reports are 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 that the instructions, to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports, each respectively direct a financial institution to retain the workpapers 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 may be considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution’s workpapers 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)).

*Current Actions:* On April 1, 2020, the Board announced that it had temporarily revised the instructions to the FR Y-9C to accurately reflect the calculation of the supplementary leverage ratio pursuant to the Board’s interim final rule (the “holding company SLR IFR”) that revised, on a temporary basis for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations, the calculation of total leverage exposure, the denominator of the supplementary leverage ratio in the Board’s capital rule, to exclude the on-balance sheet amounts of Treasuries and deposits at Federal Reserve Banks.<sup>28</sup> This temporary revision to the FR Y-9C was necessary because holding companies were previously instructed to report their supplementary leverage ratio as reported in the FFIEC 101; because the FFIEC 101 was not revised to account for the holding company SLR IFR, retaining these instructions would have resulted in inaccurate reporting by holding companies on the FR Y-9C.

The agencies now intend to revise the FFIEC 101 to account for this interim final rule and the holding company SLR IFR. Following such revisions, holding companies would be able to report their supplementary leverage ratio on the FR Y-9C using the data reported on the FFIEC 101, as they did previously. Therefore, the temporary revisions to the FR Y-9C to account for the holding company SLR IFR, announced by the Board on April 1, 2020, are no longer necessary, and the Board has retracted these revisions. The Board has determined that this revision to the FR Y-9C must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the

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<sup>28</sup> 85 FR 20578 (April 14, 2020).

revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

Because these revisions result completely revert the temporary revisions made by the Board to the FR Y-9C in connection with the holding company SLR IFR, the resulting instructions regarding the supplementary leverage ratio are identical to those adopted following notice and comment. Therefore, the Board does not intend to request further comment in order to retain these instructions.

**Final Approval under OMB Delegated Authority of the Temporary Revision of, and Solicitation of Comment to Extend for Three Years, With Revision, of the Following Information Collections:**

*Title of Information Collection:* Recordkeeping and Disclosure Requirements Associated with Regulation Q.

*Agency form number:* FR Q.

*OMB control number:* 7100-0313.

*Frequency:* Quarterly, annual.

*Affected Public:* Businesses or other for-profit.

*Respondents:* State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

*Legal authorization and confidentiality:* This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The

obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)). Estimated number of respondents: 1,431 (of which 19 are advanced approaches institutions).

*Estimated average hours per response:*

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—328.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—41.

Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs

Recordkeeping (Ongoing)—0.5.

Reporting (Twice) —6.

*Total estimated annual burden:* 1,136 hours initial setup, 80,245 hours for ongoing.

*Current actions:* The Board has temporarily revised the FR Q information collection to reflect a revision to the disclosure requirements contained in the Board's Regulation Q. Generally, section 217.173 of the Board's Regulation Q requires each advanced approaches Board-regulated institution and a Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to section 217.172(d) of Regulation Q to make certain disclosures, which are listed in Table 13 of section 217.173. Pursuant to this interim final rule, a Board-regulated institution that is required to make such disclosures will be required exclude the balance sheet carrying value of U.S. Treasury securities and funds on deposit at a Federal Reserve Bank from its disclosures under Table 13 of section 217.173. The interim final rule also introduces a new notice opt-in requirement and a requirement for prior approval for distributions, which would affect the agencies' capital rule information collections. The agencies believe that these new requirements will amount to 12 burden hours per respondent (two responses per respondent at six hours per response).

Additionally, the Board has temporarily revised the FR Q information collection to include the notification that an electing depository institution must provide to its primary Federal banking regulator, as well as the request for approval that an electing depository institution must submit to its primary Federal banking regulator prior to making certain capital distributions.

The Board has determined that these revisions to the FR Q described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of

inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment on a proposal to extend the FR Y-Q for three years, with the revision described above. This revision would be effective for FR Q through March 31, 2021, the date after which the exclusions in this interim final rule will no longer be effective

#### ***D. Regulatory Flexibility Act***

The Regulatory Flexibility Act (RFA)<sup>29</sup> requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.<sup>30</sup> 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). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

#### ***E. Riegle Community Development and Regulatory Improvement Act of 1994***

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>31</sup> in determining the effective date and administrative compliance

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<sup>29</sup> 5 U.S.C. 601 et seq.

<sup>30</sup> 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 average annual receipts of \$41.5 million or less. See 13 CFR 121.201.

<sup>31</sup> 12 U.S.C. 4802(a).



requirements for new regulations that impose additional reporting, disclosure, or other requirements on 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.<sup>32</sup> For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective on immediately. Nevertheless, the agencies seek comment on RCDRIA.

#### ***F. Use of Plain Language***

Section 722 of the Gramm-Leach-Bliley Act<sup>33</sup> requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

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<sup>32</sup> 12 U.S.C. 4802.

<sup>33</sup> 12 U.S.C. 4809.

- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

#### ***G. Unfunded Mandates Reform Act of 1995***

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

#### **List of Subjects**

##### **12 CFR Part 3**

Administrative practice and procedure, Capital, Federal savings associations, National banks, Risk.

##### **12 CFR Part 6**

Prompt corrective action, Federal savings associations, National banks.

## **12 CFR Part 208**

Accounting; Agriculture; Banks, banking; Confidential business information; Consumer protection; Crime; Currency; Federal Reserve System; Flood insurance; Insurance; Investments; Mortgages; Reporting and recordkeeping requirements; Securities.

## **12 CFR Part 217**

Administrative practice and procedure; Banks, banking; Federal Reserve System; Holding companies; Reporting and recordkeeping requirements; Securities.

## **12 CFR Part 324**

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

### **Authority and Issuance**

For the reasons stated in the joint preamble, the Office of the Comptroller of the Currency amends Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

### **PART 3—CAPITAL ADEQUACY STANDARDS**

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. No. 116-136, 134 Stat. 281.

2. Section 3.304 is added to read as follows:

#### **§3.304 Temporary exclusions from total leverage exposure.**

(a) *In general.* Subject to paragraphs (b) through (g) of this section, and notwithstanding any other requirement in this part, a national bank or Federal savings association, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of

determining the national bank's or Federal savings association's total leverage exposure under §3.10(c)(4), may exclude the balance sheet carrying value of the following items:

- (1) U.S. Treasury securities; and
- (2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, a national bank or Federal savings association must first notify the OCC before [insert date 30 days after FR publication].

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the national bank or Federal savings association filed an opt-in notice through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custody bank.* A custody bank must reduce the amount in §3.10(c)(4)(ii)(J)(1) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to §3.173, a national bank or Federal savings association that is required to make the disclosures pursuant to §3.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to §3.173.

(g) *OCC approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no national bank or Federal savings association that has opted in to the relief provided under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior OCC approval. When reviewing a request under this paragraph, the OCC will consider all relevant factors, including whether the

distribution would be contrary to the safety and soundness of the national bank or federal savings association; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

**PART 6—PROMPT CORRECTIVE ACTION**

3. The authority citation for part 6 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 1831o, 5412(b)(2)(B).

4. Amend § 6.4 by revising paragraphs (b)(2)(iv)(B) and (b)(3)(iv)(B) to read as follows:

**§6.4 Capital measures and capital categories.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III Federal savings association, the national bank or Federal savings association has a supplementary leverage ratio of 3.0 percent or greater; and

\* \* \* \* \*

(3) \* \* \*

(iv) \* \* \*

(B) With respect to an advanced approaches or Category III national bank or advanced approaches or Category III Federal savings association, on January 1, 2018, and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of less than 3.0 percent.

\* \* \* \* \*

### **Authority and Issuance**

For the reasons stated in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

### **PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)**

5. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1817(a)(3), 1817(a)(12), 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, 3905-3909, 5371, and 5371 note; 15 U.S.C. 78b, 78I(b), 78I(i), 780-4(c)(5), 78q, 78q-1, 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

6. Section 208.43(b)(2)(iv)(B) and (b)(3)(iv)(B) are revised to read as follows:

#### **§208.43 Capital measures and capital categories.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in §217.2 of this chapter), the bank has a supplementary leverage ratio of 3.0 percent or greater; and

\* \* \* \* \*

(3) \* \* \*

(iv) \* \* \*

(B) With respect to an advanced approaches bank or bank that is a Category III Board-regulated institution (as defined in §217.2 of this chapter), the bank has a supplementary leverage ratio of less than 3.0 percent.

\* \* \* \* \*

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

7. 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 section 4012, Pub. L. 116-136, 134 Stat. 281.

**Subpart G – Transition Provisions**

8. Revise § 217.303 to read as follows:

**§217.303 Temporary Exclusions from Total Leverage Exposure.**

(a) *In general.* Subject to paragraphs (b) through (g) of this section and notwithstanding any other requirement in this part, when calculating on-balance sheet assets as of each day of a

reporting quarter for purposes of determining the Board-regulated institution's total leverage exposure under §217.10(c)(4), a Board-regulated institution that is a depository institution holding company or a U.S. intermediate holding company must, and a Board-regulated institution that is a state member bank may, exclude the balance sheet carrying value of the following items:

(1) U.S. Treasury securities; and

(2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, a state member bank must first notify the Board before [insert date 30 days after FR publication].

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the state member bank filed an opt-in notice through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custodial banking organizations.* A custodial banking organization must reduce the amount in §217.10(c)(4)(ii)(J)(I) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to §217.173, a Board-regulated institution that is required to make the disclosures pursuant to §217.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to §217.173.

(g) *Board approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no state member bank that has opted in to the relief provided



under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior Board approval. When reviewing a request under this paragraph, the Board will consider all relevant factors, including whether the distribution would be contrary to the safety and soundness of the state member bank; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

## **Federal Deposit Insurance Corporation**

### **12 CFR Chapter III**

#### **Authority and Issuance**

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

#### **PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS**

9. The authority citation for part 324 continues to read as follows:

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

#### **Subpart G – Transition Provisions**

10. Redesignate §324.304 as §324.305.

11. Section 324.304 is added to read as follows:

**§324.304 Temporary Exclusions from Total Leverage Exposure.**

(a) *In general.* Subject to paragraphs (b) through (g) of this section, and notwithstanding any other requirement in this part, an FDIC-supervised institution, when calculating on-balance sheet assets as of each day of a reporting quarter for purposes of determining the FDIC-supervised institution's total leverage exposure under §324.10(c)(4), may exclude the balance sheet carrying value of the following items:

- (1) U.S. Treasury securities; and
- (2) Funds on deposit at a Federal Reserve Bank.

(b) *Opt-in period.* Before applying the relief provided in paragraph (a) of this section, an FDIC-supervised institution must first notify the appropriate regional director of the FDIC Division of Risk Management Supervision before [insert date 30 days after FR publication].

(c) *Calculation of relief.* When calculating on-balance sheet assets as of each day of a reporting quarter, the relief provided in paragraph (a) of this section applies from the beginning of the reporting quarter in which the FDIC-supervised institution filed an opt-in notice through the termination date specified in paragraph (d) of this section.

(d) *Termination of exclusions.* This section shall cease to be effective after the reporting period that ends March 31, 2021.

(e) *Custody bank.* A custody bank must reduce the amount in §324.10(c)(4)(ii)(J)(1) (to no less than zero) by any amount excluded under paragraph (a)(2) of this section.

(f) *Disclosure.* Notwithstanding Table 13 to §324.173, an FDIC-supervised institution that is required to make the disclosures pursuant to §324.173 must exclude the items excluded pursuant to paragraph (a) of this section from Table 13 to §324.173.

(g) *FDIC approval for distributions.* During the calendar quarter beginning on July 1, 2020, and until March 31, 2021, no FDIC-supervised institution that has opted in to the relief provided under paragraph (a) of this section may make a distribution, or create an obligation to make such a distribution, without prior FDIC approval. When reviewing a request under this paragraph, the FDIC will consider all relevant factors, including whether the distribution would be contrary to the safety and soundness of the FDIC-supervised institution; the nature, purpose, and extent of the request; and the particular circumstances giving rise to the request.

12. Section 324.403(b)(2)(vi) and (b)(3)(v) are revised to read as follows:

**§324.403 Capital measures and capital categories definitions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be “adequately capitalized” if it satisfies paragraphs (b)(2)(i) through (v) of this section and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with §324.10.

(3) \* \* \*

(v) Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be “undercapitalized” if it has a supplementary leverage ratio of less than 3.0 percent, as calculated in accordance with §324.10.

\* \* \* \* \*

*Brian P. Brooks,*

*First Deputy 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 May 14, 2020.  
**Robert E. Feldman,**  
*Executive Secretary.*