

[Billing Codes: 4810-33-P; 6210-01-P; 6714-01-P]

DEPARTMENT OF TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
[Docket No. OCC-2020-0018; RIN 1557-AE90]

FEDERAL RESERVE SYSTEM
12 CFR Part 217
Regulations Q
[Docket No. R-1712; RIN 7100-AF86]

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 324
RIN 3064-AF49

Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans

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; request for comment.

SUMMARY: To provide liquidity to small business lenders and the broader credit markets, to help stabilize the financial system, and to provide economic relief to small businesses nationwide, the Board of Governors of the Federal Reserve System (Board) authorized each of the Federal Reserve Banks to participate in the Paycheck Protection Program Lending Facility (PPPL Facility), pursuant to section 13(3) of the Federal Reserve Act. Under the PPPL Facility, each of the Federal Reserve Banks will extend non-recourse loans to eligible financial institutions to fund loans guaranteed by the Small Business Administration under the Paycheck Protection Program established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). To facilitate use of this Federal Reserve facility, the Office of the Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation (together, the agencies) are adopting this interim final rule to allow banking organizations to neutralize the regulatory

capital effects of participating in the facility. This treatment is similar to the treatment extended previously by the agencies in connection with the Federal Reserve’s Money Market Mutual Fund Liquidity Facility. In addition, as mandated by section 1102 of the CARES Act, loans originated under the Small Business Administration’s Paycheck Protection Program will receive a zero percent risk weight under the agencies’ regulatory capital rule.

DATES: The interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the interim final rule must be received no later than [30 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: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans” 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-2020-0018” 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-2020-0018” 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 “Committer’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.

- *E-mail:* 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-2020-0018” 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-2020-0018” 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-2020-0018” 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.

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-1712; RIN 7100-AF86, by any of the following methods:

- Agency website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- E-mail: 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. Accordingly, comments will not be edited to remove any identifying or contact information. 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-AF49, by any of the following methods:

- Agency Website: <https://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency website.
- Email: Comments@FDIC.gov. Include "RIN 3064-AF49" on the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064-AF49, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Andrew Tschirhart, Risk Expert, Capital and Regulatory Policy, (202) 649-6370; or Carl Kaminski, Special Counsel, or Christopher Rafferty, Counsel, 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) 457-6316, Cecily Boggs, Senior Financial Institution Policy Analyst II, (202) 530-6209, or Eusebius Luk, Senior

Financial Institution Policy Analyst I, (202) 452–2874, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452-2036, Asad Kudiya, Senior Counsel, (202) 475-6358, or David Alexander, Senior Counsel, (202) 452-2877, 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; Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Noah Cuttler, Senior Policy Analyst, ncuttler@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Catherine Wood, Counsel, cawood@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 slowed economic activity in many countries, including the United States. Financial conditions have tightened markedly, and the cost of credit has risen for most borrowers. Small businesses are acutely impacted by the COVID-19 pandemic. As millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce, revenue streams for many small businesses have collapsed. This has resulted in severe liquidity constraints at small businesses and has forced many small businesses to close temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID-19 and, ultimately, to help restore economic activity.

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and in recognition of the exigent circumstances faced by small businesses, Congress created the Paycheck Protection Program (PPP). PPP covered loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA), the amount of each being determined at the time the guarantee is exercised. As a general matter, SBA guarantees are backed by the full faith and credit of the U.S. Government. PPP covered loans also afford borrowers forgiveness up to the principal amount of the PPP covered loan, if the proceeds of the PPP covered loan are used for certain expenses. The SBA reimburses PPP lenders for any amount of a PPP covered loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP covered loan forgiveness.

Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered by the SBA to be small, including individuals operating sole proprietorships or acting as independent contractors, certain franchisees, nonprofit corporations, veterans organizations, and Tribal businesses.¹ The loan amount under the PPP would be limited to the lesser of \$10 million and 250 percent of a borrower's average monthly payroll costs.²

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, on April 7, 2020, the Board, with approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the Paycheck Protection Program Lending Facility (PPPL Facility), pursuant to section 13(3) of the Federal Reserve Act.³ Under the PPPL Facility, each of the Federal Reserve Banks will extend non-recourse loans to institutions that are eligible to make PPP covered loans, including depository institutions subject to the agencies' capital rules.⁴ Under the PPPL Facility, only PPP covered loans that are guaranteed by the SBA under the Paycheck Protection Program with respect to both principal and interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks (eligible collateral).

To facilitate the use of this Federal Reserve facility, the agencies are adopting the interim final rule, which allows banking organizations to neutralize the regulatory capital effects of loans pledged to the PPPL Facility. This relief, which applies to both risk-based and leverage capital

¹ For more information on the Paycheck Protection Program, see <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

² *Id.*

³ 12 U.S.C. 343(3).

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

ratios, including the community bank leverage ratio, is consistent with the treatment that the agencies previously provided to banking organizations to facilitate use of the Federal Reserve's Money Market Mutual Fund Liquidity Facility.⁵

III. The Interim Final Rule

A. Regulatory capital treatment of PPPL Facility exposures

The agencies' capital rules require banking organizations to comply with risk-based and leverage capital requirements, which are expressed as a ratio of regulatory capital to assets and certain other exposures. Risk-based capital requirements are based on risk-weighted assets, whereas leverage capital requirements are based on a measure of average total consolidated assets or total leverage exposure. Participation in the PPPL Facility will affect the balance sheet of an eligible banking organization because, as a function of participating in the PPPL Facility, the banking organization must originate and hold PPP covered loans (that is, assets that are eligible collateral pledged to the Federal Reserve Banks) on its balance sheet.⁶ As a result, an eligible banking organization that participates in the PPPL Facility could potentially be subject to increased regulatory capital requirements.

The agencies believe that the regulatory capital requirements for PPP covered loans pledged by a banking organization to a Federal Reserve Bank as part of the PPPL Facility do not

⁵ See Regulatory Capital Rule: Money Market Mutual Fund Liquidity Facility, 80 FR 16232 (March 23, 2020). This treatment also is consistent with relief provided in connection with the Asset-Backed Commercial Paper Money Market Mutual Fund Facility in 2008, 73 Fed. Reg. 55706 (Sept. 26, 2008).

⁶ Under the Small Business Administration's the interim final rule, a lender may request that the Small Business Administration purchase the expected forgiveness amount of a PPP covered loan or pool of PPP covered loans at the end of week seven of the covered period. See Interim Final Rule "Business Loan Program Temporary Changes; Paycheck Protection Program," https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf.

reflect the substantial protections from risk provided to the banking organization by the facility. Because of the non-recourse nature of the Federal Reserve's extension of credit to the banking organization, the banking organization is not exposed to credit or market risk from the pledged PPP covered loans. Therefore, the agencies believe that it would be appropriate to exclude the effects of these pledged PPP covered loans from the banking organization's regulatory capital.⁷

Specifically, the interim final rule would permit banking organizations to exclude exposures pledged as collateral to the PPPL Facility from a banking organization's total leverage exposure, average total consolidated assets, advanced approaches-total risk-weighted assets, and standardized total risk-weighted assets, as applicable.⁸

Question 1: The agencies invite comment on the advantages and disadvantages of neutralizing the effects of participating in the PPPL Facility on regulatory capital requirements. How does the approach in the interim final rule support the objectives of the facility? What other steps could be taken to support the objectives of the facility? What safety and soundness concerns should the agencies consider in connection with the approach in the interim final rule?

B. Regulatory capital treatment of PPP covered loans

The agencies' regulatory capital rule requires a banking organization to apply a zero percent risk weight to the portion of exposures that is guaranteed by a U.S. government agency for purposes of the banking organization's risk-based capital requirements.⁹ Section 1102 of the CARES Act requires banking organizations to apply a zero percent risk weight to PPP covered loans. Accordingly, and consistent with Section 1102 of the CARES Act, the agencies are

⁷ This includes covered PPP loans originated beginning on April 3, 2020, and pledged to the Federal Reserve Banks in connection with this facility.

⁸ This treatment would extend to the community bank leverage ratio.

⁹ See 12 CFR 3.32(a)(1) (OCC); 12 CFR 217.32(a)(1) (Board); 12 CFR 324.32(a)(1) (FDIC).

amending sections 32 and 131 of the capital rule to clarify that PPP covered loans originated by a banking organization under the Paycheck Protection Program will receive a zero percent risk weight.

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

IV. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).¹⁰ 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.”¹¹

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. Financial conditions have tightened markedly, and the cost of credit has risen for most borrowers. Small businesses are acutely impacted by the COVID-19 pandemic. As millions of Americans have been ordered to stay home, severely reducing their ability to engage in normal commerce, revenue streams for many small businesses have collapsed. This has resulted in severe liquidity constraints at small businesses and has forced many small businesses to close

¹⁰ 5 U.S.C. 553.

¹¹ 5 U.S.C. 553(b)(B).

temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID-19 and, ultimately, to help restore economic activity.

In order to provide liquidity to small business lenders and the broader credit markets, and to stabilize the financial system, the Board, with approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the PPPL Facility, and the interim final rule will facilitate this Federal Reserve lending program. For these reasons, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.¹²

The APA also requires a 30-day delayed effective date, except for (1) substantive rules that 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.¹³ Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.¹⁴

While the agencies believe that there is good cause to issue the 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 requests comment on all aspects of the interim final rule.

¹² 5 U.S.C. 553(b)(B).

¹³ 5 U.S.C. 553(d).

¹⁴ 5 U.S.C. 553(d)(1).

B. Congressional Review Act

For purposes of Congressional Review Act (CRA), the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.¹⁵ If a rule is deemed a “major rule” by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.¹⁶

The CRA 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 (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) 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.¹⁷

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the CRA. The delayed effective date required by the CRA 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.¹⁸ In light of current market uncertainty, the agencies believe that delaying the effective date of the rule would be contrary to the public interest.

¹⁵ 5 U.S.C. 801 et seq.

¹⁶ 5 U.S.C. 801(a)(3).

¹⁷ 5 U.S.C. 804(2).

¹⁸ 5 U.S.C. 808.

As required by the CRA, the agencies will submit the interim 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 (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.¹⁹ The interim final rule affects the agencies' current information collections for the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051) and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101). The OMB control numbers for the Call Reports of the agencies are: OCC OMB No. 1557-0081; Board OMB No. 7100-0036; and FDIC OMB No. 3064-0052. The OMB control numbers for FFIEC 101 of the agencies are: OCC OMB No. 1557-0239; Board OMB No. 7100-0319; and FDIC OMB No. 3064-0159. The Board has reviewed the interim final rule pursuant to authority delegated by the OMB.

Although there is a substantive change to the actual calculation of total leverage exposure, average total consolidated assets, standardized total risk-weighted assets, and advanced approaches total risk-weighted assets, as applicable, for purposes of the Call Reports, the change should be minimal and result in a zero net change in hourly burden under the agencies' information collections. Submissions will, however, be made by the agencies to OMB. The changes to the instructions of the Call Reports and FFIEC 101 will be addressed in a separate Federal Register notice.

¹⁹ 4 U.S.C. 3501-3521.

The Board has temporarily revised the instructions to the Financial Statements for Holding Companies (FR Y-9 reports; OMB No. 7100-0128) to reflect the changes made in this interim final rule. 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 on a proposal to extend the temporary collection for a period not to exceed three years. Therefore, the Board is inviting comment to extend the FR Y-9 reports for three years, with revision. The Board invites public comment on the FR Y-9 reports, which are being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the collection of information in the interim final rule is necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy of the Board's estimate of the burden of the information collection in the interim final rule, 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 collection 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.

Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATON IN THE FEDERAL REGISTER]. 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 interim final rule.

Adopted Revision, With Extension for Three Years, 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; FR Y-9CS.

OMB control number: 7100-0128.

Effective date: June 30, 2020.

Frequency: Quarterly, semiannually, and annually.

Affected public: Businesses or other for-profit.

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

Estimated number of respondents:

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

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

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

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

²⁰ An SLHC must file one or more of the FR Y-9 family 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.

FR Y-9C (AA HCs) – 19,

FR Y-9LP – 434,

FR Y-9SP – 3,960,

FR Y-9ES – 83,

FR Y-9CS – 236.

Estimated average hours per response:

Reporting

FR Y-9C (non-AA CBLR HCs) with less than \$5 billion in total assets – 29.14,

FR Y-9C (non-AA CBLR HCs) with \$5 billion or more in total assets – 35.11,

FR Y-9C (non-AA non-CBLR HCs) with less than \$5 billion in total assets – 40.98,

FR Y-9C (non-AA non-CBLR HCs) with \$5 billion or more in total assets – 46.95,

FR Y-9C (AA HCs) – 48.59,

FR Y-9LP – 5.27,

FR Y-9SP – 5.40,

FR Y-9ES – 0.50,

FR Y-9CS – 0.50.

Recordkeeping

FR Y-9C – 1,

FR Y-9LP – 1,

FR Y-9SP – 0.50,

FR Y-9ES – 0.50,

FR Y-9CS – 0.50.

Estimated annual burden hours:

Reporting

FR Y-9C (non-AA CBLR HCs) with less than \$5 billion in total assets – 8,276,

FR Y-9C (non-AA CBLR HCs) with \$5 billion or more in total assets – 4,915,

FR Y-9C (non-AA non-CBLR HCs) with less than \$5 billion in total assets – 13,769,

FR Y-9C (non-AA non-CBLR HCs) with \$5 billion or more in total assets – 28,921,

FR Y-9C (AA HCs) – 3,693,

FR Y-9LP – 9,149,

FR Y-9SP – 42,768,

FR Y-9ES – 42,

FR Y-9CS – 472.

Recordkeeping

FR Y-9C – 1,452,

FR Y-9LP – 1,736,

FR Y-9SP – 3,960,

FR Y-9ES – 42,

FR Y-9CS – 472.

General description of report: The FR Y-9 reports continue to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate HC mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations. The FR Y-9C, FR Y-9LP, and FR Y-9SP serve as standardized financial statements for the consolidated HC.

The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y-9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the FR Y-9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y-9C on a quarterly basis, the FR Y-9LP quarterly, the FR Y-9SP semiannually, the FR Y-9ES annually, and the FR Y-9CS on a schedule that is determined when this supplement is used.

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 BHCs pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on SLHCs 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. 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 Act (12 U.S.C. 511(a)(1) and 5365); and on SHCs 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 reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory.

With respect to the FR Y-9C report, Schedule HI's memoranda 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 and the FR Y-9SP report, Schedule HC'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.

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 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 is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the 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: The Board has temporarily revised the instructions for the FR Y-9C to reflect the exclusion of PPP loans pledged to the PPPL Facility from the institution's total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable.²¹ Specifically, the Board has temporarily revised the FR Y-9C instructions to permit HCs to assign a zero percent risk weight to covered loans pledged to the PPPL Facility for purposes of determining the risk-weighted assets and leverage ratio. HCs would report these covered loans pledged to the PPPL Facility in Schedule HC-R, Part II, item 5.d., "Loans and leases held for investment: All other exposures" as appropriate, in both Column A (Totals) and Column C (0% risk-weight category).²² The average of such assets purchased would be reported in Schedule HC-R, part I, item 29, "LESS: Other deductions from (additions to) assets for leverage ratio purposes," and thus excluded from Schedule HC-R, item 30, "Total assets for the leverage ratio."

The Board has determined that the revisions 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

²¹ This treatment also would apply to those banking organizations that have elected to opt into the CBLR framework.

²² Reporting in Schedule HC-R, Part II, only applies to non CBLR holding companies.

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 proposes to extend the FR Y-9 reports for three years, with the revisions discussed above.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)²³ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.²⁴ 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),²⁵ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other

²³ 5 U.S.C. 601 et seq.

²⁴ 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.

²⁵ 12 U.S.C. 4802(a).

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.²⁶ For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish the interim final rule with an immediate effective date.

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

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act²⁷ 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?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?

²⁶ 12 U.S.C. 4802.

²⁷ 12 U.S.C. 4809.

- 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 Act*

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

List of Subjects in 12 CFR

12 CFR Part 3

Administrative practice and procedure, Capital, Federal savings associations, 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.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the 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 is revised 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. Amend the definition of *corporate exposure* in § 3.2, by revising paragraphs (12) and (13), and adding paragraph (14), to read as follows:

Corporate exposure means an exposure to a company that is not: * * *

(12) A policy loan;

(13) A separate account; or

(14) A Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

3. Amend § 3.32 by adding paragraph (a)(1)(iii) to read as follows:

§ 3.32 General risk weights.

(a) * * *

(1) * * *

(iii) A national bank or Federal savings association must assign a zero percent risk weight to a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

4. Add § 3.131(e)(3)(viii) to read as follows:

§ 3.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(e) * * *

(3) * * *

(viii) The risk-weighted asset amount for a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) equals zero.

* * * * *

5. Add § 3.305 to read as follows:

§ 3.305 Exposures Related to the Paycheck Protection Program Lending Facility.

Notwithstanding any other section of this part, a national bank or Federal savings association may exclude exposures pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Federal Reserve Board on April 7, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable. For the purpose of this provision, a national bank's or Federal savings association's liability under the facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the facility.

* * * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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

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

6. The authority citation for part 217 is revised 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 and 5371 note; Pub. L. 116-136, 134 Stat. 281.

7. Amend the definition of *corporate exposure* in § 217.2, by revising paragraphs (12) and (13), and adding paragraph (14), to read as follows:

Corporate exposure means an exposure to a company that is not: * * *

(12) A policy loan;

(13) A separate account; or

(14) A Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

8. Amend § 217.32 by adding paragraph (a)(1)(iii) to read as follows:

§ 217.32 General risk weights.

(a) ***

(1) ***

(iii) A Board-regulated institution must assign a zero percent risk weight to a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

9. Add § 217.131(e)(3)(viii) to read as follows:

§217.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(e) * * *

(3) * * *

(viii) The risk-weighted asset amount for a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) equals zero.

* * * * *

10. Add § 217.305 to read as follows:

§ 217.305 Exposures Related to the Paycheck Protection Program Lending Facility.

Notwithstanding any other section of this part, a Board-regulated institution may exclude exposures pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Board on April 7, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total risk-weighted assets, and standardized total risk-weighted assets, as applicable. For the purpose of this provision, a Board-regulated institution's liability under the facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the facility.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

11. 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. No. 115–174; Pub. L. No. 116–136, 134 Stat. 281.

12. Amend the definition of *corporate exposure* in § 324.2, by revising paragraphs (12) and (13), and adding paragraph (14), to read as follows:

Corporate exposure means an exposure to a company that is not: * * *

(12) A policy loan;

(13) A separate account; or

(14) A Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

13. Section 324.32 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 324.32 General risk weights.

(a) * * *

(1) * * *

(iii) An FDIC-supervised institution must assign a zero percent risk weight to a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).

* * * * *

14. Add § 324.131(e)(3)(viii) to read as follows:

§ 324.131 Mechanics for calculating total wholesale and retail risk-weighted assets.

* * * * *

(e) * * *

(3) * * *

(viii) The risk-weighted asset amount for a Paycheck Protection Program covered loan as defined in section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) equals zero.

* * * * *

15. Add § 324.304 to read as follows:

§ 324.304 Exposures Related to the Paycheck Protection Program Lending Facility.

Notwithstanding any other section of this part, an FDIC-supervised institution may exclude exposures pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Federal Reserve on April 7, 2020, from total leverage exposure, average total consolidated assets, advanced approaches total

risk-weighted assets, and standardized total risk-weighted assets, as applicable. For the purpose of this provision, an FDIC-supervised institution's liability under the facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the facility.

Brian P. Brooks,
First Deputy Comptroller of the Currency.

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

Ann Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on or about April 7, 2020.

Robert E. Feldman,
Executive Secretary.