

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

Docket No. XXX and RIN XXX

FEDERAL RESERVE SYSTEM

12 CFR Parts 217

Regulations Q; Docket No. XXX and RIN XXX

Regulatory Capital Rule: Eligible Retained Income

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064-AF40

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

ACTION: Interim Final Rule with Request for Comments

SUMMARY: In light of recent disruptions in economic conditions caused by the coronavirus disease 2019 (COVID-19) and current strains in U.S. financial markets, the Board, OCC and FDIC (together, the agencies) are issuing an interim final rule that revises the definition of eligible retained income for all depository institutions, bank holding companies, and savings and loan holding companies subject to the agencies' capital rule (together, a banking organization or banking organizations). The revised definition of eligible retained income will make any automatic limitations on capital distributions that could apply under the agencies' capital rules more gradual.

DATES: The interim final rule is effective [DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments on the interim final rule must be received no later than [45 DAYS AFTER AGENCY ACTION].

ADDRESSES:

OCC:

Board: You may submit comments, identified by Docket No.[•]; RIN 7100-AF[•], 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. 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.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Benjamin Pegg, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Special Counsel, or Kevin Korzeniewski, 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, Juan Climent, Manager, (202) 460 2180, Matthew McQueeney, Senior Financial Institution Policy Analyst II, (202) 452-2942, Division of Supervision and Regulation; Benjamin McDonough, Assistant General Counsel, (202) 452-2036, Asad Kudiya, Senior Counsel, (202) 475-6358, or Mary Watkins, Senior Attorney, (202) 452-3722, 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.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. The Interim Final Rule

III. Impact Assessment

IV. Administrative Law Matters

- A. Effective Date/Request for Comment
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Riegle Community Development and Regulatory Improvement Act of 1994
- E. Use of Plain Language
- F. Unfunded Mandates

I. Background

Under the capital rule, a banking organization¹ must maintain a minimum amount of regulatory capital.² In addition, a banking organization must maintain a buffer of regulatory capital above its minimum capital requirements to avoid restrictions on capital distributions and discretionary bonus payments. The agencies established the buffer requirements to encourage better capital conservation by banking organization and to enhance the resilience of the banking system during stress periods.³ In particular, the agencies intend for the buffer requirements to limit the ability of banking organizations to distribute capital in the form of dividends and

¹ Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, Appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

² See 12 CFR parts 3 (OCC), 217 (Board), and 324 (FDIC). See also [OCC]; 12 CFR 217.11 (Board); 12 CFR 324.11 (FDIC).

³ 78 FR 62018, 62034 (Oct. 11, 2013).

discretionary bonus payments and therefore strengthen the ability of firms to continue lending and conducting other financial intermediation activities during stress periods. The agencies are concerned, however, that the buffer requirements do not limit capital distributions in the gradual manner intended when the buffer requirements were developed. Rather, the limitations on capital distributions could be sudden and severe if such banking organizations were to experience even a modest reduction in their capital ratios, undermining the ability of banking organizations to use their capital buffers.

The agencies are adopting an interim final rule that revises the definition of eligible retained income. The interim final rule also addresses the impact of recent dislocations in the U.S. economy as a result of COVID-19. By modifying the definition of eligible retained income and therefore allowing banking organizations to more freely use their capital buffers, this rule should help to promote lending activity and other financial intermediation activities by depository institutions, bank holding companies, and savings and loan holding companies and avoid compounding negative impacts on the financial markets.⁴

During this stress period, the agencies encourage banking organizations to make prudent decisions regarding capital distributions. In addition, this interim final rule does not make changes to any other rule or regulation that may limit capital distributions or discretionary bonus payments. For instance, under the prompt corrective action framework, an insured depository institution that becomes less than adequately capitalized will be subject to dividend restrictions.⁵

⁴ The interim final rule also would apply to the U.S. intermediate holding companies of foreign banking organizations required to be established or designated under 12 CFR 252.153.

⁵ 12 CFR 208.40 (Board); 12 CFR 324.405 (FDIC).

II. The Interim Final Rule

The capital rule requires a firm to maintain minimum risk-based capital and leverage ratios.⁶ The capital rule also requires a banking organization to maintain certain buffers above its risk-based capital and leverage ratios, as applicable, to avoid increasingly stringent restrictions on capital distributions and discretionary bonus payments. All banking organizations are currently subject to a fixed capital conservation buffer equal to 2.5 percent of risk-weighted assets. Banking organizations subject to Category I, II, and III standards also are subject to a countercyclical capital buffer requirement, and the largest and most systemically important banking organizations—global systemically important bank holding companies, or U.S. GSIBs—are subject to an additional capital buffer based on a measure of their systemic risk, the GSIB surcharge.⁷ In addition, a minimum supplementary leverage ratio of 3 percent applies to banking organizations subject to Category I, II, and III standards. U.S. GSIBs also are subject to enhanced supplementary leverage ratio standards. U.S. GSIB bank holding companies must hold a leverage buffer of tier 1 capital to avoid limitations on distributions and discretionary bonus payments. The depository institution subsidiaries of U.S. GSIB holding companies generally must maintain a similarly higher supplementary leverage ratio to be considered “well capitalized” under the agencies’ respective prompt corrective action frameworks. On March 4, 2020, the Board adopted a final rule that simplified the Board’s capital framework for

⁶ 12 CFR [insert OCC], 217.10 (Board); 324.10 (FDIC).

⁷

In October 2019, the agencies finalized the tailoring rule, which more closely matches the regulations applicable to large banking organizations with their risk profile. The tailoring rule groups large U.S. and foreign banking organizations into four categories of standards (Category I through IV), with the most stringent standards applying to banking organizations subject to Category I standards. 84 FR 59032 (November 1, 2019); 84 FR 59230 (November 1, 2019).

large banking organizations with the introduction of a stress capital buffer requirement (SCB final rule).⁸ Under the SCB final rule, a banking organization will receive a new stress capital buffer requirement on an annual basis, which replaces the static 2.5 percent capital conservation buffer requirement.

Under the capital rule, if a banking organization's capital ratios fall within its buffer requirements, the maximum amount of capital distributions and discretionary bonus payments it can make is a function of its eligible retained income. For example, a banking organization in the bottom quartile of its capital conservation buffer may not make any capital distributions without prior approval from the Board, OCC, or FDIC, as applicable. The countercyclical capital buffer, the GSIB surcharge, and enhanced supplementary leverage ratio standards, use the same definition of eligible retained income. As adopted, eligible retained income was defined as four quarters of net income, *net* of distributions and associated tax effects not already reflected in net income.

Under a benign business environment when banking organizations have significant capital cushions above their capital requirements, some banking organizations decide to distribute all or nearly all of their net income. Because the measure of eligible retained income subtracts capital distributions made during the previous year, a period of sudden stress following a period of relatively benign conditions could result in very low or zero eligible retained income. Similarly, if a banking organization's stress capital buffer requirement increased, because, for

⁸ Amendments to the Regulatory Capital, Capital Plan, and Stress Test Rules, March 4, 2020, available at <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200304a2.pdf>. The SCB final rule applies to bank holding companies and U.S. intermediate holding companies of foreign banking organizations subject to the capital plan rule (covered holding company). 12 CFR 225.8.

example, the banking organization's risk profile changed, then the banking organization's capital levels might not be sufficient to meet the stress capital buffer requirement, and the banking organization's eligible retained income could be very low or negative. In either scenario, the banking organization could face sudden and severe distribution limitations even if its capital ratios only marginally fall below applicable buffer requirements.

To address this concern, the SCB final rule revised the definition of eligible retained income for the stress loss portion of a covered holding company's capital conservation buffer requirement. Under the SCB final rule, if a covered holding company's capital ratios are above minimum requirements plus the fixed 2.5 percent portion of the capital conservation buffer plus any applicable GSIB surcharge and countercyclical capital buffer, the covered holding company's eligible retained income is defined as the average of its previous four quarters of net income. Under the SCB final rule, if a covered holding company's capital ratios are below this level, the covered holding company's eligible retained income is defined as net income for the four preceding calendar quarters, net of any distributions.

Recent events have suddenly and significantly impacted financial markets. The spread of the COVID-19 virus has disrupted economic activity in many countries. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain. In light of these developments, banking organizations may realize a sudden, unanticipated drop in capital ratios. This could create a strong incentive for these banking organizations to limit their lending and other financial intermediation activities in order to avoid facing abrupt limitations on capital distributions. Thus, the current definition of eligible retained income, particularly in light of present market

uncertainty, could serve as a deterrent for banking organizations to continue lending to creditworthy businesses and households.

To better allow a banking organization to continue lending during times of stress, the agencies are issuing the interim final rule to revise the definition of eligible retained income to the greater of (1) a banking organization's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (2) average of a banking organization's net income over the preceding four quarters. This definition will apply with respect to all of a banking organization's buffer requirements, including the fixed 2.5 percent capital conservation buffer, and, if applicable, the countercyclical capital buffer, the GSIB surcharge, and enhanced supplementary leverage ratio standards. Once the SCB final rule is effective, this definition will also apply to all parts of a covered holding company's buffer requirements, including the stress loss portion of a covered holding company's capital conservation requirement. The agencies believe that having one definition for all banking organizations as part of this interim final rule simplifies the regulatory capital framework and ensures fairness across banking organizations of all sizes.

This interim final rule is intended to strengthen the incentives for banking organizations to use their capital buffers as intended in adverse conditions and serve as a financial intermediary and source of credit to the economy. This revision would reduce the likelihood that a banking organization is suddenly subject to abrupt and restrictive distribution limitations in a scenario of lower than expected capital levels.

Question 1: What would be the advantages and disadvantages of defining eligible retained income as average of a banking organization's net income over the preceding four quarters instead of the greater of (i) a banking organization's net income for the four preceding

calendar quarters, net of any distributions and associated tax effects not already reflected in net income, and (ii) average of a banking organization's net income over the preceding four quarters?

Question 2: What are the advantages and disadvantages of applying the revised definition of eligible retained income to depository institution subsidiaries? Would, and if so how would, applying the revised definition of eligible retained income to depository institutions be consistent with the purposes of the buffer requirements discussed above? How do, if at all, the incentives for using a capital buffer differ for depository institutions compared to bank holding companies and savings and loan holding companies? Similarly, would, and if so how would, applying the revised definition of eligible retained income to U.S. intermediate holding companies be consistent with the purposes of the buffer requirements discussed above? How do, if at all, the incentives for using a capital buffer differ for U.S. intermediate holding companies?

Question 3: Under what circumstances, if any, should a banking organization be restricted from making all capital distributions?

III. Impact Assessment

In ordinary economic circumstances, many banking organizations will pay out a significant portion of their net income, and retain the rest to support growth. As banking organizations enter stressful periods, the restrictions in the capital buffers limit distributions and help to preserve capital and support lending. However, if the limits to distributions are too restrictive, banking organizations can face a sharp increase in their distribution limitations when they enter the buffer due to stress. This may create an incentive for banking organizations to reduce lending or take other actions to avoid falling into the buffer. The revised definition of eligible net income in the interim final rule allows banking organizations to more gradually

reduce distributions as they enter stress, and provides banking organizations with stronger incentives to continue to lend in such a scenario. On the other hand, by enabling banking organizations to gradually decrease capital distributions in stress (rather than mandating a sharp decrease), the rule could incrementally reduce the banking organization's loss-absorption capacity in stress.

The definition of eligible retained income affects the distributions of banking organizations within their capital conservation or stress capital buffers. It does not have an impact on minimum capital requirements, *per se*. As such, the revised definition of eligible retained income in the interim final rule is not likely to have any noticeable effect on the capital requirements of banking organizations. Furthermore, banking organizations currently maintain robust capital levels, with only a small number of banking organizations having capital levels within the capital conservation buffer.

S-corporation banks do not pay federal income taxes. Income and losses are attributed to shareholders, potentially increasing their personal tax liability when the S-corporation has income and potentially reducing their personal tax liability if the S-corporation has losses. In a situation where the S-corporation has income but does not pay dividends, its shareholders are responsible for meeting the increased tax liability from their own resources. A situation in which S-corporation shareholders' dividends would be insufficient to pay their share of taxes on the banks' income because of the capital conservation buffer is most likely to occur when the bank is adequately capitalized but one or more of its risk-based capital ratios breach the capital conservation buffer requirements.⁹ The revised definition of eligible retained income would

⁹ FDIC, FIL-40-2014 (July 21, 2014).

assist in the ability of S-corporation banks to provide dividends to shareholders in order to meet their pass-through tax liabilities.

IV. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing the interim final rules 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 disrupted economic activity in the United States. In addition, U.S. financial markets have featured extreme levels of volatility. The magnitude and persistence of COVID-19 on the economy remain uncertain. In light of the current market uncertainty, banking organizations may have a strong incentive to limit their lending activity in order to avoid facing abrupt restrictions on distributions. By making the automatic limitations on a banking organization’s distributions more gradual as the banking organization’s capital ratios decline, the interim final rule would allow banking organizations to focus on continuing to lend to creditworthy households and businesses rather than on managing their capital buffers and

¹⁰ 5 U.S.C. 553.

¹¹ 5 U.S.C. 553(b)(B).

reducing the potential of exacerbating negative impacts on the financial markets. 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 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.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 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.

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.¹⁵ 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.¹⁶

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

¹² 5 U.S.C. 553(b)(B); 553(d)(3).

¹³ 5 U.S.C. 553(d).

¹⁴ 5 U.S.C. 553(d)(1).

¹⁵ 5 U.S.C. 801 *et seq.*

¹⁶ 5 U.S.C. 801(a)(3).

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.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 Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.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. In addition, as discussed above, the revised definition of eligible retained income in the interim final rule is not likely to have any significant effect on the capital requirements of banking organizations.

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

¹⁷ 5 U.S.C. § 804(2).

¹⁸ 5 U.S.C. 808.

the agencies' current information collections for the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051). The OMB control numbers for the agencies are: OCC OMB No. 1557-0081; Board OMB No. 7100-0036; and FDIC OMB No. 3064-0052. The Board has reviewed this interim final rule pursuant to authority delegated by the OMB.

Although there is a substantive change to the actual calculation of retained income 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 Call Reports and their related instructions will be addressed in a separate Federal Register notice.

The interim final rule will also require updates to the Board's Consolidated Financial Statements for Holding Companies (FR Y-9C; OMB No. 7100-0128). The changes to the FR Y-9C will be addressed in a separate Federal Register notice.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹⁹ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.²⁰ 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

¹⁹ 5 U.S.C. 601 et seq.

²⁰ 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.

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),²¹ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.²² 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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Nevertheless, the agencies seek comment on RCDRIA.

²¹ 12 U.S.C. 4802(a).

²² 12 U.S.C. 4802.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act²³ 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?
- 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

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

²³ 12 U.S.C. 4809.

million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this rule.

List of Subjects

12 CFR Part 3

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

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, 12 CFR part 3 is amended 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, and 5412(b)(2)(B).

2. Section 3.11 is amended by revising paragraph (a)(2)(i) to read as follows:

§3.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(i) *Eligible retained income.* The eligible retained income of a national bank or federal savings association is the greater of:

(A) the national bank's or federal savings association's net income, calculated in accordance with the instructions to the Call Report, as applicable, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) the average of the national bank's or federal savings association's net income, calculated in accordance with the instructions to the Call Report, as applicable, for the four calendar quarters preceding the current calendar quarter.

* * * * *

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

List of Subjects

12 CFR Part 217

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

Authority and Issuance

For the reasons stated in the Supplementary Information, 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)**

1. 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.

Effective May 18, 2020, § 217.11(a)(2)(i) as revised by FR Document 2020-04838 on March 18, 2020, is further revised to read as follows: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] § 217.11(a)(2)(i) is revised as follows:

§217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) ***

(2) ***

(i) *Eligible retained income.* The eligible retained income of a Board-regulated institution is the greater of:

(A) the Board-regulated institution’s net income, calculated in accordance with the instructions to the FR Y-9C or Call Report, as applicable, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) the average of the Board-regulated institution’s net income, calculated in accordance with the instructions to the FR Y 9C or Call Report, as applicable, for the four calendar quarters preceding the current calendar quarter.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information section, chapter III of title 12 of the Code of Federal Regulations is to be amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

1. 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).

§324.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

(a) * * *

(i) *Eligible retained income.* The eligible retained income of an FDIC-supervised institution is the greater of:

(A) the FDIC-supervised institution’s net income, calculated in accordance with the instructions to the Call Report, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(B) the average of the FDIC-supervised institution’s net income, calculated in accordance with the instructions to Call Report, for the four calendar quarters preceding the current calendar quarter.

* * * * *