



## **DEPARTMENT OF TREASURY**

### **Office of the Comptroller of the Currency**

12 CFR Part 3

Docket ID OCC-2017-0018

RIN 1557-AE10

## **FEDERAL RESERVE SYSTEM**

12 CFR Part 217

Regulation Q; Docket No. R-1576

RIN 7100 AE-74

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

12 CFR Part 324

RIN 3064-AE59

### **Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In March 2017, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) submitted a report to Congress pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, in which they committed to meaningfully reduce

regulatory burden, especially on community banking organizations. Consistent with that commitment, the agencies are inviting public comment on a notice of proposed rulemaking that would simplify compliance with certain aspects of the capital rule. A majority of the proposed simplifications would apply solely to banking organizations that are not subject to the advanced approaches capital rule (non-advanced approaches banking organizations). Specifically, the agencies are proposing that non-advanced approaches banking organizations apply a simpler regulatory capital treatment for: mortgage servicing assets; certain deferred tax assets arising from temporary differences; investments in the capital of unconsolidated financial institutions; and capital issued by a consolidated subsidiary of a banking organization and held by third parties (minority interest). More generally, the proposal also includes revisions to the treatment of certain acquisition, development, or construction exposures that are designed to address comments regarding the current definition of high volatility commercial real estate exposure under the capital rule's standardized approach. Under the standardized approach, the proposed revisions to the treatment of acquisition, development, or construction exposures would not apply to existing exposures that are outstanding or committed prior to any final rule's effective date.

In addition to the proposed simplifications, the agencies also are proposing various additional clarifications and technical amendments to the agencies' capital rule, which would apply to both non-advanced approaches banking organizations and advanced approaches banking organizations.

**DATES:** Comments must be received by [INSERT DATE [60] DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “**Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996**” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”**: Go to *www.regulations.gov*. Enter “Docket ID OCC-2017-0018” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail**: *regs.comments@occ.treas.gov*.
- **Mail**: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.
- **Hand Delivery/Courier**: 400 7th Street, SW., suite 3E-218, mail stop 9W-11, Washington, DC 20219.
- **Fax**: (571) 465-4326.

*Instructions*: You must include “OCC” as the agency name and “Docket ID OCC-2017-0018” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide 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:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2017-0018” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen and then “Comments.” Comments can be filtered by clicking on “View All” 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. Supporting materials may be viewed by clicking on “Open Docket Folder” and then clicking on “Supporting Documents.” The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, identified by Docket No. R-1576; RIN 7100 AE-74, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number 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 are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064-AE59 by any of the following methods:

- **Agency Web Site:** <http://www.FDIC.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency website.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand Delivered/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 7:00 a.m. and 5:00 p.m.

- **E-mail:** comments@FDIC.gov. Include the RIN 3064-AE59 on the subject line of the message.

- **Public Inspection:** All comments received must include the agency name and RIN 3064-AE66 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Mark Ginsberg, Senior Risk Expert (202) 649-6983; or Benjamin Pegg, Risk Expert (202) 649-7146, Capital and Regulatory Policy; or Carl Kaminski, Special Counsel, or Rima Kundnani, Attorney, Legislative and Regulatory Activities Division, (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: Constance M. Horsley, Deputy Associate Director, (202) 452-5239; Juan Climent, Manager, (202) 872-7526; Elizabeth MacDonald, Manager, (202) 475-6316; Andrew Willis, Supervisory Financial Analyst, (202) 912-4323; Sean Healey, Supervisory Financial Analyst, (202) 912-4611 or Matthew McQueeney, Senior Financial Analyst, (202) 452-2942, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel (202) 452-2036; David W. Alexander, Counsel (202) 452-2877, or Mark Buresh, Senior Attorney (202) 452-5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C

Streets, NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; bbosco@fdic.gov; David Riley, Senior Policy Analyst, Capital Policy Section; dariley@fdic.gov; Michael Maloney, Senior Policy Analyst, mmaloney@fdic.gov; Stephanie Efron, Senior Policy Analyst, sefron@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Catherine Wood, Counsel, cawood@fdic.gov; Rachel Ackmann, Counsel, rackmann@fdic.gov; Michael Phillips, Counsel, mphilips@fdic.gov; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

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**I. Introduction and Summary of the Proposed Simplifications of the Capital Rule**

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing this notice of proposed rulemaking (proposal or proposed rule) with the goal of reducing regulatory compliance burden, particularly on community banking organizations, by simplifying certain aspects of the agencies' rules revising their risk-based and leverage capital requirements (capital rule).<sup>1</sup>

In 2013, the agencies adopted the capital rule to address weaknesses that became apparent during the financial crisis of 2007-08. Principally, the capital rule strengthened the capital requirements applicable to banking organizations<sup>2</sup> supervised by the agencies by improving both the quality and quantity of banking organizations' regulatory capital, and increasing the risk-sensitivity of the capital rule.<sup>3</sup>

The capital rule provides two methodologies for determining risk-weighted assets: (i) the standardized approach and (ii) the advanced approaches, which include both the internal ratings-based approach and the advanced measurement approach (the advanced approaches).<sup>4</sup> The standardized approach applies to all banking organizations that are subject to the agencies' risk-

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<sup>1</sup> The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). In April 2014, the FDIC adopted the interim final rule as a final rule with no substantive changes. 79 FR 20754 (April 14, 2014).

<sup>2</sup> Banking organizations subject to the agencies' 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 excluding 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.

<sup>3</sup> 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

<sup>4</sup> 12 CFR part 217, Subparts D & E; 12 CFR part 3 (OCC), Subparts D & E; 12 CFR part 324, Subparts D & E (FDIC).

based capital regulations, whereas the advanced approaches apply only to certain large or internationally active banking organizations (advanced approaches banking organizations).<sup>5</sup>

The agencies have received numerous questions regarding various aspects of the capital rule since its adoption in 2013. In addition, in connection with the agencies' review under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>6</sup> for which the agencies sought comment through *Federal Register* notices published in 2014 and 2015, the agencies received over 230 comment letters from insured depository institutions, trade associations, consumer and community groups, and other interested parties.<sup>7</sup> The agencies also received numerous oral and written comments from panelists and the public at outreach meetings.<sup>8</sup> Some of these comments were similar to the comments that the agencies had already received regarding the capital rule, including, for example, that the capital rule is unduly burdensome and complex. The agencies thoroughly reviewed these comments and issued a Joint Report to Congress: Economic Growth and Regulatory Paperwork Reduction Act (the 2017 EGRPRA report) in March 2017.<sup>9</sup> In the 2017 EGRPRA report, the agencies highlighted their

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<sup>5</sup> 12 CFR 217.1(c), 12 CFR 217.100(b) (Board); 12 CFR 3.1(c), 12 CFR 3.100(b) (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b) (FDIC). Those smaller and less complex banking organizations that do not apply the advanced approaches are referred to as “non-advanced approaches banking organizations” in this proposal .

<sup>6</sup> EGRPRA requires that regulations prescribed by the agencies be reviewed at least once every 10 years. The purpose of this review is to identify, with input from the public, outdated or unnecessary regulations and consider how to reduce regulatory burden on insured depository institutions while, at the same time, ensuring their safety and soundness and the safety and soundness of the financial system. Public Law 104-208, 110 Stat. 3009 (1996).

<sup>7</sup> 79 FR 32172 (June 4, 2014); 80 FR 7980 (February 13, 2015); 80 FR 32046 (June 5, 2015); and 80 FR 79724 (December 23, 2015).

<sup>8</sup> Comments received during the EGRPRA review process and transcripts of outreach meetings can be found at <http://egrpra.ffiec.gov/>.

<sup>9</sup> 82 FR 15900 (March 30, 2017).

intent to meaningfully reduce regulatory burden, especially on community banking organizations, while at the same time maintaining safety and soundness and the quality and quantity of regulatory capital in the banking system.

In particular, the agencies indicated in the 2017 EGRPRA report that they would develop a proposed rule to simplify the capital rule by considering amendments to (i) replace the standardized approach's treatment of high volatility commercial real estate (HVCRE) exposures with a simpler treatment for most acquisition, development, or construction exposures; and, for non-advanced approaches banking organizations, to (ii) simplify the current regulatory capital treatment for mortgage servicing assets (MSAs), deferred tax assets (DTAs) arising from temporary differences that an institution could not realize through net operating loss carrybacks (temporary difference DTAs), and investments in the capital of unconsolidated financial institutions; and (iii) simplify the calculation for the amount of capital that can count toward regulatory requirements in cases in which a banking organization's consolidated subsidiary has issued capital that is held by third parties (minority interest).

Consistent with the 2017 EGRPRA report, the agencies are proposing a number of modifications to the capital rule that are aimed at reducing regulatory burden. First, the agencies are proposing to replace the existing HVCRE exposure category as applied in the standardized approach with a newly defined exposure category called high volatility acquisition, development, or construction (HVADC) exposure. The proposed HVADC exposure definition is intended to be substantially simpler to implement as it removes the most complex exclusion contained in the current HVCRE exposure definition. In addition, the proposed rule simplifies and clarifies certain exemptions, and clarifies the scope of exposures captured by the HVADC exposure definition. While some of the simplifications and clarifications may increase the scope and

others may decrease it, in the aggregate, it is likely that more acquisition, development, or construction loans would be captured under the proposed HVADC exposure definition than under the current HVCRE exposure definition. Accordingly, the agencies are proposing to apply a lower risk weight to the proposed HVADC exposure category. The proposed risk weight for HVADC exposures would be 130 percent, a reduction from the 150 percent risk weight that currently applies to HVCRE exposures under the capital rule's standardized approach. The new HVADC exposure definition would only apply to exposures originated on or after the final rule's effective date. As described further below, the proposed rule would not revise the treatment of HVCRE exposures for purposes of calculating the amount of capital required under the advanced approaches. However, for purposes of calculating their capital requirements going forward under the standardized approach, advanced approaches banking organizations would use the proposed HVADC exposure category.

Second, the agencies are proposing to simplify the current regulatory capital treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for non-advanced approaches banking organizations. As explained further below, for these banking organizations, the proposal would eliminate (i) the capital rule's 10 percent common equity tier 1 capital deduction threshold that applies individually to MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock; (ii) the aggregate 15 percent common equity tier 1 capital deduction threshold that subsequently applies on a collective basis across such items; (iii) the 10 percent common equity tier 1 capital deduction threshold for non-significant investments in the capital of unconsolidated financial institutions; and (iv) the deduction treatment for significant investments in the capital of unconsolidated financial institutions not in the form of

common stock.<sup>10</sup> Under the proposal, for non-advanced approaches banking organizations, the capital rule would no longer have distinct treatments for significant and non-significant investments in the capital of unconsolidated financial institutions.

Instead of imposing these complex treatments for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions, the proposal would require that non-advanced approaches banking organizations deduct from common equity tier 1 capital any amount of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that individually exceeds 25 percent of common equity tier 1 capital (the 25 percent common equity tier 1 capital deduction threshold). Consistent with the capital rule, under the proposal, a banking organization would continue to apply a 250 percent risk weight to any MSAs or temporary DTAs not deducted.<sup>11</sup> However, for investments in the capital of unconsolidated financial institutions that are not deducted, the proposal would require a banking organization to risk weight each non-deducted exposure according to the exposure category of the investment. Advanced approaches banking organizations, however, would be required to continue to apply the deduction and risk-weighting treatments in the capital rule for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.

Third, the agencies are proposing a significantly simpler methodology for non-advanced approaches banking organizations to calculate minority interest limitations.<sup>12</sup> The existing

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<sup>10</sup> 12 CFR 217.22(c) and (d) (Board); 12 CFR 3.22(c) and (d) (OCC); 12 CFR 324.22 (c) and (d) (FDIC).

<sup>11</sup> The agencies note that they are not proposing to change the current treatment of DTAs arising from timing differences that could be realized through net operating loss carrybacks. Such DTAs are not subject to deduction and are assigned a 100 percent risk weight.

<sup>12</sup> 12 CFR 217.21(Board); 12 CFR 3.21 (OCC); 12 CFR 324.21 (FDIC).

capital rule's limitations for common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest are based on the capital requirements and capital ratios of each of a banking organization's consolidated subsidiaries that has issued capital instruments that are held by third parties. The proposal would require that non-advanced approaches banking organizations limit minority interest based on the banking organization's capital levels rather than on its subsidiaries' capital ratios. Specifically, a non-advanced approaches banking organization would be allowed to include common equity tier 1, tier 1, and total capital minority interest up to and including 10 percent of the banking organization's common equity tier 1, tier 1, and total capital (before the inclusion of any minority interest), respectively. Advanced approaches banking organizations, however, would be required to continue to apply the treatment of minority interest provided in the existing capital rule.

The agencies anticipate that the simplifications described above would lead to a reduction of regulatory reporting burden for non-advanced approaches banking organizations. Following the publication of this proposed rule, the agencies would propose for public comment corresponding changes to regulatory reporting forms and instructions.

The proposed rule would also make certain technical changes to the capital rule, including some changes to the advanced approaches rule, such as clarifying revisions, updating cross-references, and correcting typographical errors.

In August 2017, in anticipation of this proposal, the agencies invited public comment on a proposed rule to extend the capital rule's transitional provisions for MSAs, temporary difference DTAs, and investments in the capital of consolidated financial institutions and certain minority interest requirements (transitions NPR).<sup>13</sup> If the transitions NPR is finalized

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<sup>13</sup> 82 FR 40495 (August 25, 2017).

substantially as proposed, the capital treatment proposed in the transitions NPR would remain effective until such time as the changes proposed in this proposal would be finalized and become effective or the finalized transitions NPR is otherwise superseded.

## **II. Proposed Simplifications of and Revisions to the Capital Rule**

### **A. HVADC Exposures**

#### *1. Background*

The capital rule currently defines an HVCRE exposure as any credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction of real property, unless the facility finances one- to four-family residential properties, certain agricultural or community development exposures, or commercial real estate projects where the borrower meets certain contributed capital requirements and other prudential criteria. In the preamble to the capital rule, the agencies noted that their supervisory experience had demonstrated that these exposures, compared to other commercial real estate exposures, presented heightened risks for which banking organizations should hold additional capital, and accordingly adopted a 150 percent risk weight for HVCRE exposures under the standardized approach.

Since the adoption of the capital rule, the agencies have received numerous questions regarding various aspects of the HVCRE exposure definition. Community banking organizations, in particular, have asserted that the definition is unclear, overly complex, burdensome to implement, and not applied consistently across banking organizations. For example, banking organizations submitted comments and questions to the agencies regarding the treatment of multi-purpose loan facilities under the HVCRE exposure definition, including loans used to finance both the purchase of equipment and the acquisition, development, or construction

of real property. Banking organizations also asked for clarification regarding the various exemptions from the HVCRE exposure definition, including the exemptions for (i) one- to four-family residential properties, (ii) community development exposures, and (iii) exposures where borrowers met the contributed capital requirements (as discussed in more detail in section II.A.3.a. below).

After evaluating the comments and questions from the industry following the publication of the capital rule, as well as the feedback from the public received during the review process leading to the 2017 EGRPRA report, the agencies are proposing to amend the treatment in the standardized approach for credit facilities that finance acquisition, development, or construction activities, with the goal of simplifying the treatment of these exposures. The agencies are proposing to replace the HVCRE exposure category as applied in the standardized approach with a newly defined exposure category termed HVADC exposure that would apply to credit facilities that finance acquisition, development, or construction activities. As compared to the HVCRE exposure definition, the proposed HVADC exposure definition would not include the contributed capital exemption. Additionally, the proposed definition of HVADC exposure provides greater clarity on which acquisition, development, or construction exposures have relatively more risk and merit a higher risk weight than the current definition of HVCRE exposure by including a “primarily finances” test. The HVADC exposure definition also includes a definition of “permanent loan” to clearly articulate when an exposure ceases being an HVADC exposure under the propose rule. Both the “primarily finances” test and the definition of “permanent loan” are explained in more detail below. With the introduction of a “primarily finances” test and “permanent loan” definition, the scope of included or excluded exposures under the proposed HVADC exposure definition will likely be different from those captured under the current

HVCRE exposure definition and will vary across individual banking organizations. In total, the agencies believe that the simpler HVADC exposure definition likely would capture more acquisition, development, or construction exposures than are currently captured by the definition of HVCRE exposure. In recognition of the potentially expanded scope, the agencies are proposing to reduce the standardized approach risk weight for HVADC exposures, relative to the current risk weight for HVCRE exposures.

Under the proposed rule, an HVADC exposure would receive a 130 percent risk weight as opposed to the 150 percent risk weight assigned to HVCRE exposures under the existing standardized approach. The proposed rule would require higher risk weights for certain acquisition, development, or construction exposures and lower risk weights for others. Additionally, to mitigate the potential burden on banking organizations of having to re-evaluate all of their acquisition, development, or construction exposures against the new HVADC exposure definition, the proposal, under the standardized approach, would contain a grandfathering provision to retain the capital rule's treatment for acquisition, development, or construction exposures outstanding or committed as of the effective date of any final rule (as discussed in more detail in section II(A)(5)). The proposed revisions to the standardized approach are intended to be responsive to concerns about the difficulties of implementing the HVCRE exposure definition, while maintaining capital requirements commensurate with the risk profiles of different credit facilities that finance acquisition, development, or construction activities.

## *2. Scope of the HVADC exposure definition*

Under the proposed rule, the capital rule would define an HVADC exposure as a credit facility that *primarily* finances or refinances: (i) the acquisition of vacant or developed land; (ii)

the development of land to prepare to erect new structures, including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or (iii) the construction of buildings or dwellings, or other improvements including additions or alterations to existing structures. Like the current HVCRE exposure definition, the proposed HVADC exposure definition is purpose-based. Therefore, an acquisition, development, or construction exposure that is not secured by real property could be considered an HVADC exposure if the purpose of the facility is primarily to finance any of the aforementioned activities. For purposes of the proposed HVADC exposure definition, an exposure would be classified as an HVADC exposure only if the lending facility “primarily finances” acquisition, development, or construction activities, meaning that more than 50 percent of the funds (e.g., loan proceeds) will be used for acquisition, development, or construction activities. In order to make this determination, a banking organization would review the proposed use of the funds, and if more than 50 percent of the funds is intended for acquisition, development, or construction activities, then the facility would meet the “primarily finances” requirement and would fall within the scope of the HVADC exposure definition, unless one or more of the exemption criteria are met.

For example, assume a borrower intends to use part of an \$8 million loan to acquire and develop a tract of land for a real estate project. Of the \$8 million total, \$4.5 million will be disbursed for acquisition, development, or construction purposes (e.g., buying and developing the land and building the structure) and \$3.5 million will be used to purchase equipment to be used in the completed structure. Because more than half of the funds are used for acquisition, development, or construction purposes, the loan would be considered an HVADC exposure. Any funds or land contributed by the borrower would not impact this determination, as the determination is based on the use of the loan proceeds. The agencies note that the inclusion of

the “primarily finances” test may also lead banking organizations to exclude certain multi-purpose credit facilities which finance construction and other activities, such as equipment financing, from the definition of an HVADC exposure. As a general matter, the agencies expect every acquisition, development, or construction transaction to be supported by the documentation of sources and uses of funds tailored to the specific project, and the agencies expect each banking organization to have a process in place to review the intended use of funds for an acquisition, development, or construction project, consistent with prudent underwriting practices.

*Question 1: The agencies seek comment on whether the scope of the HVADC exposure definition presents operational concerns and is clear. Specifically, what, if any, operational challenges would banking organizations expect when determining whether more than 50 percent of the loan proceeds will be used for acquisition, development, or construction purposes?*

*3. Exemptions from the HVADC exposure definition*

*a. Removal of the contributed capital exemption under HVADC exposure*

Banking organizations have expressed concern regarding the contributed capital exemption under which exposures are not considered HVCRE exposures if (i) at the origination of the loan, the loan-to-value (LTV) ratio is less than or equal to the relevant supervisory LTV ratio standard;<sup>14</sup> (ii) before the advancement of funds, the borrower has contributed capital to the project in the form of cash (including cash paid for land) or readily marketable securities of at least 15 percent of the real estate’s “as-completed” market value; and (iii) any internally generated capital must be contractually required to stay in the project for the life of the project.

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<sup>14</sup> 12 CFR part 208, Subpart J, Appendix C (Board); 12 CFR part 34, Subpart D, Appendix A (OCC); 12 CFR part 365, Subpart A, Appendix A (FDIC).

Banking organizations have asserted that the conditions for meeting this exemption are unclear, complex, and burdensome to implement. Further, the agencies have received numerous questions from banking organizations on the minimum 15 percent borrower capital contribution requirement, which is measured as a percentage of a project's "as completed" market value.

After considering comments from banking organizations regarding both the complexity of the contributed capital exemption, as well as the potential inconsistent application of the exemption that results, the agencies are proposing to not include a contributed capital exemption within the HVADC exposure definition. The agencies considered various means to clarify or modify the contributed capital exemption in a manner consistent with the goals of simplifying the capital rule. However, the agencies view the alternative approaches that retain the contributed capital exemption as comparably complex and inconsistent with the goal of simplifying the capital rule.

*Question 2: The agencies seek comment on the degree to which the proposed HVADC exposure definition would simplify and enhance consistency in the treatment for credit facilities financing real estate acquisition, development, or construction. What other simplifications should the agencies consider to improve the simplicity and consistent treatment of these credit facilities?*

*b. One- to four-family residential properties*

The proposed definition of an HVADC exposure would exempt credit facilities that finance the acquisition, development, or construction of one- to four-family residential properties, similar to the exemption in the HVCRE exposure definition. For purposes of both HVADC and HVCRE exposures, the financing of one- to four-family residential properties would include both loans to construct one- to four-family residential structures and loans that combine the land acquisition, development, or construction of one- to four-family structures,

either with or without a sales contract, including lot development loans. Therefore, credit facilities financing the construction of one- to four-family residential structures for which no buyer has been identified would be included in the exemption for one- to four-family residential properties.

In response to questions about whether the term “residential properties” for these purposes includes the acquisition, development, or construction of condominiums or cooperatives, the agencies are clarifying that, generally, a loan that finances the acquisition, development, or construction of condominiums and cooperatives would not qualify for the one- to four-family residential properties exemption, except in the instance where the project contains fewer than five individual dwelling units. Thus, condominiums, cooperatives, and apartment buildings would generally be treated as multifamily properties and would not qualify for the one- to four-family residential properties exemption. If each unit in a project is separated from other units by a dividing wall that extends from ground to roof (e.g., row houses or townhouses), then each unit would be considered a single family residential property and thus exempt from the HVADC exposure category. Further, the acquisition, development, or construction of multiple residential properties, each containing a one- to four-family dwelling unit (such as a loan to finance tract development), would qualify for the one- to four-family residential property exemption. Loans used solely to acquire undeveloped land would not, however, qualify for the one- to four-family residential property exemption.

*Question 3: The agencies request comment on whether the proposed exemption for one- to four-family residential properties in the HVADC exposure category is clear such that a banking organization could readily identify which residential loans would be exempt from the HVADC exposure category. What, if any, additional clarification would facilitate identifying one- to*

*four-family residential properties for this purpose? The agencies also solicit comment on all aspects of the HVADC exposure category, including the proposed scope and exemptions.*

*c. Community development projects*

The HVCRE exposure definition exempts community development projects.<sup>15</sup> The proposed HVADC exposure definition would continue to exempt community development projects. However, the agencies are proposing to simplify the definition by removing the reference to the broader statutory citations, 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a. Under the proposed rule, all credit facilities financing the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' Community Reinvestment Act rules, would be exempt from the HVADC exposure category. In addition, the agencies are proposing to remove the exception to the exemption for activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's (SBA) Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less, unless they meet another exemption in the rule. Such loans are required to have a community development purpose under interagency guidance. The proposed simplified exemption for community development projects is not intended to substantively alter the scope of the exemption for community development projects set forth in the current HVCRE exposure definition.

*Question 4: The agencies seek comment on whether the proposed community development exemption is clear. What, if any, additional clarification would help banking organizations*

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<sup>15</sup> 12 CFR part 25 (national banks) (OCC); 12 CFR part 195 (federal savings associations) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC).

*identify exposures that meet the community development exemption? Please describe any implementation challenges with the exemption.*

*d. Agricultural exposures*

The proposed HVADC exposure definition would exclude credit facilities that finance the purchase or development of agricultural land and would not substantively modify the current exemption for agricultural land development set forth in the current HVCRE exposure definition.<sup>16</sup> The agencies note that the term “agricultural” is broadly defined and would include, for example, timberland or fish farms. However, the term “agricultural,” as it is used here, would not include manufacturing or processing plants related to agricultural products, such as a dairy processing plant.

*4. Permanent loans*

The proposed HVADC exposure definition would exclude an exposure that is considered to be a permanent loan. In response to banking organizations’ requests for clarification of the term “permanent financing” as it is used in the current HVCRE exposure definition, the proposed HVADC exposure definition includes a definition of “permanent loan.” A permanent loan for purposes of the proposed HVADC exposure definition would mean a prudently underwritten loan<sup>17</sup> that has a clearly identified ongoing source of repayment sufficient to service amortizing

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<sup>16</sup> The proposed rule would make a minor clarification to the definition of HVCRE exposure by changing the term “non-agricultural” to “commercial or residential development.”

<sup>17</sup> The agencies are clarifying that a loan is expected to be prudently underwritten in order to meet the definition of a permanent loan. The Interagency Guidelines for Real Estate Lending Policies provide standards for banking organizations in developing such written policies, limits, and standards. 12 CFR part 208, Subpart J, Appendix C (Board); 12 CFR part 34, Subpart D, Appendix A (OCC); 12 CFR part 365, Subpart A, Appendix A (FDIC). Banking organizations are required to adopt and maintain written policies that establish appropriate limits and standards

principal and interest payments aside from the sale of the property. The proposed rule would not require that the current loan payments be amortizing in order for a loan to meet the definition of a permanent loan.

For many acquisition, development, or construction projects, the source of repayment will be derived from the property once the project is completed and tenants begin paying rent or the property otherwise begins to produce income. Additionally, the agencies recognize that for loans financing owner-occupied acquisition, development, or construction projects, the owner may have sufficient capacity at origination to repay the loan from ongoing operations, without relying on proceeds from the sale or lease of the property, in which case the loan would be considered a permanent loan and thus excluded from the HVADC exposure definition, assuming it was prudently underwritten. For example, a prudently underwritten loan to a company that obtains financing to construct an additional facility that does not rely on the lease income from the facility to repay the loan, and instead relies on cash flows from other sources to cover amortizing principal and interest payments, may be considered a permanent loan and excluded from HVADC.

The agencies are also clarifying that bridge loans generally would not qualify as permanent loans as the property is not generating sufficient revenue to make amortizing principal and interest payments. The agencies believe financing for bridge loans poses greater credit risk than permanent loans, and, therefore, should be subject to a higher risk weight.

Finally, even if a credit facility does not meet the definition of a permanent loan at origination, it could subsequently meet the definition as the property generates additional

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for extensions of credit related to real estate. 12 CFR 208.51 (Board); 12 CFR 34.62 (OCC); 12 CFR 365.2 (FDIC).

revenue sufficient to service amortizing principal and interest payments. In such a case, the facility may become exempt from the HVADC exposure category, provided the loan was prudently underwritten at origination.

*Question 5: The agencies seek comment on the clarity of the exemption for permanent loans in the proposed HVADC exposure definition and the ease with which banking organizations can determine whether an exposure qualifies for this exemption. What, if any, additional clarification would help banking organizations identify exposures that meet the permanent loan exemption?*

#### *5. Risk weight for HVADC exposures*

Currently, under the standardized approach, an HVCRE exposure receives a 150 percent risk weight. Under the proposed rule, an HVADC exposure would receive a 130 percent risk weight. The agencies believe the reduced risk weight for HVADC exposures is appropriate in recognition of the potentially broader scope of the definition, and that this change would not result in a significant change in the aggregate minimum capital required under the capital rule. Specifically, by including exposures regardless of the amount of the borrower's contributed equity, some exposures that would be included in the HVADC exposure category may, while remaining riskier than other commercial real estate loans, have risk-reducing qualities, such as lower LTV ratios and higher borrower-contributed capital relative to exposures currently in the HVCRE exposures category.

However, to mitigate the potential burden on banking organizations of having to re-evaluate all of their acquisition, development, or construction exposures against the new HVADC exposure definition, the proposal, under the standardized approach, would contain a grandfathering provision for outstanding acquisition, development, or construction exposures.

The proposal, under the standardized approach, would retain the capital rule's HVCRE exposure definition and exposure category treatment for all outstanding acquisition, development, or construction exposures as of the effective date of any final rule. Only new acquisition, development, or construction exposures originated on or after the effective date of a final rule would need to be evaluated against the new HVADC exposure definition. Therefore, a banking organization would maintain an exposure's risk weight as determined prior to the effective date of a final rule under the HVCRE exposure definition. For example, if an outstanding acquisition, development, or construction exposure is classified as an HVCRE exposure under the capital rule, then the exposure would continue to have a 150 percent risk weight until the exposure is converted to permanent financing or is sold or paid in full. For the purposes of this grandfathering provision, permanent financing refers to the existing HVCRE exposure definition, which relies on a banking organization's underwriting criteria for long-term mortgage loans. If an outstanding acquisition, development, or construction exposure is exempt from the HVCRE exposure category under the capital rule, then the exposure would continue to receive its applicable risk weight under the capital rule (e.g., 100 percent risk weight), assuming the exposure is not past due.

Based upon data reported on the Consolidated Financial Statements for Holding Companies (FR Y-9C) and on Call Reports for insured depository institutions as of June 30, 2017, approximately 80 percent of banking organizations report holdings of acquisition, development, or construction exposures, excluding one- to four-family residential properties, and approximately 40 percent of banking organizations report some holdings of HVCRE exposures risk weighted at 150 percent. As highlighted above, the proposed treatment may result in a 130 percent risk weight for certain future exposures that would have received either a 100 or a 150

percent risk weight under the capital rule's treatment. It may also result in certain loans that would have received a 150 percent risk weight under the current rule receiving a 100 percent risk weight under the proposed rule. At the individual banking organization level, a banking organization currently with a higher proportion of HVCRE exposures relative to its total acquisition, development, or construction exposures may see a decrease in its capital requirements on new acquisition, development, or construction loans going forward. Conversely, a banking organization that currently has a higher proportion of acquisition, development, or construction exposures deemed to be excluded from the HVCRE exposure definition may see an increase in its capital requirements on new acquisition, development, or construction loans to the extent those exposures do not otherwise qualify for the exemptions under the proposed HVADC exposure definition going forward. Because of the lack of granular data on acquisition, development, or construction loans in the regulatory reports and since agencies cannot predict how banking organizations may structure such exposures in the future, the agencies cannot estimate with precision the future impact of the proposed HVADC exposure definition at an individual banking organization level. The agencies further note that the proposed grandfathering provision, which may lessen regulatory compliance burden by preventing banking organizations from having to re-evaluate their existing acquisition, development, or construction exposures under the new HVADC exposure definition, also would limit the potential impact of the treatment of acquisition, development, or construction exposures under the proposed HVADC exposures definition on banking organizations' regulatory capital.

Although the agencies anticipate that the proposed rule may lead to the assignment of higher risk weights to certain acquisition, development, or construction exposures going forward, the agencies believe that the simplified definition for HVADC exposures may lead to a reduced

regulatory compliance burden in classifying acquisition, development, or construction exposures. The agencies also expect that the revised definition would result in increased consistency in the treatment of acquisition, development, or construction exposures. The agencies believe that the proposed definition strikes an appropriate balance between risk-sensitivity and complexity.

*Question 6: The agencies seek comment on the agencies' goal of achieving an appropriate balance between the proposed calibration and expanded scope of application for HVADC exposures. The agencies are interested in any additional data on the impact of the proposed rule's capital treatment of HVCRE exposures and the new capital treatment of HVADC exposures on bank holding companies, savings and loan holding companies, and insured depository institutions, both in the aggregate and on an individual banking organization level.*

*Question 7: What are the pros and cons of the grandfathering provision and does it sufficiently mitigate the compliance burden of having to re-evaluate all acquisition, development, or construction exposures against the new HVADC exposure definition? Are there alternatives to the proposed grandfathering provision that the agencies should consider?*

*6. Retaining the HVCRE exposure definition under the advanced approaches*

As noted above, the agencies are not proposing to make substantive revisions to the advanced approaches as part of this rulemaking. The proposed introduction of the HVADC exposure category would apply only to the calculation of risk-weighted assets under the standardized approach.

The HVCRE exposure category was introduced in the standardized approach as part of the revisions to the capital rule to address the agencies' concern that such exposures had been insufficiently capitalized prior to and during the financial crisis of 2007-2008. Banking

organizations have commented on and raised concerns about this exposure category and its corresponding 150 percent risk weight in the standardized approach since its introduction, and specifically during the 2017 EGRPRA process. Because concerns expressed by banking organizations regarding the HVCRE exposure definition emanated primarily from its implementation in the standardized approach, the agencies do not believe it is necessary to make corresponding changes to the definition in the advanced approaches. The advanced approaches do not rely on a single risk weight for HVCRE exposure, instead requiring banking organizations to categorize and assign risk parameters to these exposures, as well as subject them to higher capital requirements through an asset value correlation factor. Thus, treatment of this exposure category in the advanced approaches diverges substantially from its treatment in the standardized approach, and the agencies are not proposing to replace the existing HVCRE exposure definition under the advanced approaches. Accordingly, advanced approaches banking organizations would continue to use the HVCRE exposure definition to calculate their advanced approaches risk-weighted assets, while using the HVADC exposure definition for the purpose of calculating their risk-weighted assets under the standardized approach.

*Question 8: The agencies request comment on whether it would be appropriate to replace the HVCRE exposure definition, as it is used in the advanced approaches, with the proposed HVADC exposure definition. What, if any, challenges do advanced approaches banking organizations face as a result of the agencies maintaining the existing HVCRE exposure definition for purposes of the advanced approaches while also proposing to adopt the more expansive HVADC exposure definition for purposes of the standardized approach? What, if any, changes should the agencies consider to address these challenges?*

## 7. *Frequently asked questions (FAQs)*

The agencies have previously issued FAQs to provide clarity on the existing HVCRE exposure definition. If the agencies adopt the proposal as final, they will consider whether to revise or rescind some or all of the HVCRE exposure-related FAQs. As the agencies are considering comments received on this proposal, the agencies would consider whether to issue any updated guidance related to the HVCRE exposure definition as it pertains to its use in the advanced approaches.<sup>18</sup>

### **B. MSAs, Temporary Difference DTAs, and Investments in the Capital of Unconsolidated Financial Institutions**

#### *1. Background*

The capital rule currently requires that a banking organization deduct from common equity tier 1 capital the amounts of MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock that individually exceed 10 percent of the banking organization's common equity tier 1 capital.<sup>19</sup> In addition, any amount not deducted as a result of the individual 10 percent common equity tier 1 capital deduction threshold must be deducted from a banking organization's common equity

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<sup>18</sup> “Frequently Asked Questions on the Regulatory Capital Rule,” OCC Bulletin 2015-23 (April 6, 2016), *available at* <https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-23.html>. “SR 15-6: Interagency Frequently Asked Questions (FAQs) on the Regulatory Capital Rules” (April 5, 2015), *available at* <https://www.federalreserve.gov/supervisionreg/srletters/sr1506.htm>; FDIC FIL 16-2015, *available at* <https://www.fdic.gov/news/news/financial/2015/fil15016.html>.

<sup>19</sup> A significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the banking organization owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution (significant investment in the capital of an unconsolidated financial institution). 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

tier 1 capital if that amount exceeds 15 percent of the banking organization's common equity tier 1 capital. Beginning January 1, 2018, any amount of these three items that a banking organization does not deduct from common equity tier 1 capital will be risk weighted at 250 percent (until that time, such items are risk weighted at 100 percent).<sup>20,21</sup>

The capital rule further requires deductions from regulatory capital if a banking organization holds (i) non-significant investments in the capital of an unconsolidated financial institution above a certain threshold<sup>22</sup> or (ii) significant investments in the capital of an unconsolidated financial institution that are not in the form of common stock. Specifically, the capital rule requires that a banking organization deduct from its regulatory capital any amount of the organization's non-significant investments in the capital of unconsolidated financial institutions that exceeds 10 percent of the banking organization's common equity tier 1 capital (the 10 percent threshold for non-significant investments)<sup>23</sup> in accordance with the corresponding deduction approach of the capital rule.<sup>24</sup> In addition, significant investments in the capital of

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<sup>20</sup> Beginning on January 1, 2018, the calculation of the aggregate 15 percent common equity tier 1 capital deduction threshold for these items will become stricter as any amount above 15 percent of common equity tier 1, less the amount of those items already deducted as a result of the 10 percent common equity tier 1 capital deduction threshold, will be deducted from a banking organization's common equity tier 1. 12 CFR 217.22(d) (Board); 12 CFR 3.22(d) (OCC); 12 CFR 324.22(d) (FDIC).

<sup>21</sup> See the agencies' notice of proposed rulemaking that was issued on August 25, 2017 (82 FR 40495).

<sup>22</sup> A non-significant investment in the capital of an unconsolidated financial institution is defined as an investment in the capital of an unconsolidated financial institution where the institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution (non-significant investment in the capital of an unconsolidated financial institution). 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

<sup>23</sup> 12 CFR 217.22(c)(4) (Board); 12 CFR 3.22(c)(4) (OCC); 12 CFR 324.22(c)(4) (FDIC).

<sup>24</sup> 12 CFR 217.22(c)(2) (Board); 12 CFR 3.22(c)(2) (OCC); 12 CFR 324.22(c)(2) (FDIC).

unconsolidated financial institutions not in the form of common stock also must be deducted from regulatory capital in their entirety in accordance with the corresponding deduction approach.<sup>25</sup>

*2. Simplifying the capital treatment for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions*

As highlighted in numerous questions and comments received by the agencies through both the EGRPRA process and their respective supervisory processes, community banking organizations have indicated that they find the deduction approach for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions to be complex and burdensome. In addition, two banking organization commenters asserted in the public comment period for the EGRPRA process that the revisions to the treatment of MSAs in the capital rule were unduly restrictive for community banks.<sup>26</sup>

The agencies are proposing changes applicable to MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions to simplify their treatment while at the same time ensuring an appropriate regulatory capital treatment to address safety and soundness concerns. Specifically, and consistent with the agencies' statements in the 2017 EGRPRA report, the proposed rule would, for non-advanced approaches banking organizations, replace the capital rule's individual 10 percent common equity tier 1 capital deduction thresholds for MSAs, temporary difference DTAs, and significant investments in the capital of unconsolidated financial institutions in the form of common stock and eliminate the aggregate 15 percent common equity tier 1 capital deduction threshold for such items. The proposal would

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<sup>25</sup> 12 CFR 217.22(c)(5) (Board); 12 CFR 3.22(c)(5) (OCC); 12 CFR 324.22(c)(5) (FDIC).

<sup>26</sup> 82 FR 15908 (March 30, 2017).

require that a non-advanced approaches banking organization deduct from common equity tier 1 capital any amounts of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions that, individually, exceed 25 percent of the banking organization's common equity tier 1 capital (after certain deductions and adjustments) (the 25 percent common equity tier 1 capital deduction threshold). The agencies believe that this change would appropriately balance risk-sensitivity and complexity for non-advanced approaches banking organizations. The imposition of the 25 percent common equity tier 1 capital deduction threshold is expected to avoid, in a simple manner, unsafe and unsound concentration levels of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.

Although the agencies expect that the proposed simplifications for the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions would reduce regulatory compliance burden, the agencies do not expect a significant impact on the capital ratios for most non-advanced approaches banking organizations as a result of these simplifications. Those non-advanced approaches banking organizations with relatively substantial holdings of MSAs or temporary difference DTAs could, however, experience a regulatory capital benefit as a result of the proposed simplifications.

a. *MSAs and temporary difference DTAs*

In addition to the proposed 25 percent common equity tier 1 capital deduction threshold, any amounts of MSAs or temporary difference DTAs that are not deducted would be risk weighted at 250 percent, consistent with the capital rule. The agencies note that some banking organizations suggested in the public comments associated with the revisions to the capital rule that the deductions for MSAs and temporary difference DTAs were unnecessarily burdensome,

and urged the agencies to eliminate the requirements altogether and revert to the treatment for these items under the capital framework that was applicable before 2013. Additionally, through the EGRPRA comment process, two commenters suggested raising the deduction threshold for MSAs from 10 percent to 100 percent of common equity tier 1 capital.

The agencies have long limited the inclusion of intangible and higher-risk assets in regulatory capital due to the relatively high level of uncertainty regarding the ability of banking organizations to realize value from these assets, especially under adverse financial conditions. The agencies believe that it is therefore important to retain regulatory capital restrictions for MSAs and temporary difference DTAs. Temporary difference DTAs are assets from which banking organizations may not be able to realize value, especially under adverse financial conditions. A banking organization's ability to realize its temporary difference DTAs is dependent on future taxable income; thus, the proposed limitation would continue to protect against the possibility that the banking organization would need to establish or increase valuation allowances for DTAs during periods of financial stress. In the case of MSAs, the proposed treatment for MSAs would continue to protect banking organizations from sudden fluctuations in the value of MSAs and from the potential inability of such banking organizations to quickly divest of MSAs at their full estimated value during periods of financial stress.

Under section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828 note), the amount of readily marketable purchased mortgage servicing assets (PMSAs) that an insured depository institution may include in regulatory capital cannot be more than 90 percent of the PMSAs' fair value. Section 475 of FDICIA provides the agencies with the authority to remove the 90 percent limitation on PMSAs, subject to a joint determination by the agencies that its removal would not have an adverse effect on the deposit

insurance fund or the safety and soundness of insured depository institutions. The agencies determined that the treatment of MSAs (including PMSAs) under the capital rule was consistent with a determination that the 90 percent limitation could be removed because the treatment under the capital rule (that is, applying a 250 percent risk weight to any non-deducted MSAs) was more conservative than the FDICIA fair value limitation and a 100 percent risk weight, which was the risk weight applied to MSAs under the regulatory capital framework prior to 2013.<sup>27</sup> Because the proposed rule would require that MSAs above the 25 percent common equity tier 1 capital deduction threshold be deducted from common equity tier 1 capital and would maintain the 250 percent risk weight for non-deducted MSAs (including PMSAs), the agencies believe that the treatment of MSAs under the proposed rule would be consistent with a determination that the 90 percent fair value limitation is not necessary.

*b. Investments in the capital of unconsolidated financial institutions*

As mentioned above, the proposal would impose the 25 percent common equity tier 1 capital deduction threshold on investments in the capital of unconsolidated financial institutions. A banking organization would make any required deduction under the corresponding deduction approach. This proposed treatment removes, for non-advanced approaches banking organizations, the distinctions among different categories of investments in the capital of unconsolidated financial institutions in the capital rule (namely non-significant investments in the capital of unconsolidated financial institutions, significant investment in the capital of unconsolidated financial institutions that are in the form of common stock, and significant investments in the capital of unconsolidated financial institutions that are not in the form of

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<sup>27</sup> 78 FR 62018, 62069-70 (October 13, 2013) (FRB, OCC); 78 FR 55340, 55388-89 (September 10, 2013) (FDIC).

common stock). In order to avoid added complexity and regulatory burden, the agencies are not proposing a specific methodology dictating which specific investments a non-advanced approaches banking organization must deduct and which it must risk weight in cases where the firm is exceeding the 25 percent common equity tier 1 capital deduction threshold for investments in the capital of unconsolidated financial institutions. The agencies believe that they can address any safety and soundness concerns that arise from this flexible treatment through the supervisory process. The agencies believe the proposed treatment for investments in the capital of unconsolidated financial institutions would reduce complexity while maintaining appropriate incentives to reduce interconnectedness among banking organizations.

Under the proposed rule, non-advanced approaches banking organizations would be required to risk weight any investments in the capital of unconsolidated financial institutions that are not deducted according to the relevant treatment for the exposure category of the investment. For example, the appropriate risk weight for equity exposures would generally be either 300 or 400 percent, depending on whether the equity exposures are publicly traded, unless such exposures are assigned a preferential risk weight of 100 percent, as described below.<sup>28</sup>

The capital rule allows banking organizations to apply a preferential risk weight of 100 percent to the aggregated adjusted carrying value of equity exposures that do not exceed 10 percent of a banking organization's total capital (non-significant equity exposures). The application of this risk weight (i) requires a banking organization to follow an enumerated process for calculating adjusted carrying value and (ii) mandates the equity exposures that must be included first in determining whether the threshold has been reached. The capital rule currently excludes significant investments in the capital of unconsolidated financial institutions

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<sup>28</sup> 12 CFR 217.52 and 53 (Board); 12 CFR 3.52 and 53 (OCC); 12 CFR 324.52 and 53 (FDIC).

in the form of common stock from being eligible for a 100 percent risk weight. The proposal would eliminate this exclusion for non-advanced approaches banking organizations.<sup>29</sup> The agencies believe that this revised approach would appropriately balance simplicity and risk-sensitivity for non-advanced approaches banking organizations by applying a single definition of investments in the capital of unconsolidated financial institutions and consolidating the different deduction treatments for investments in the capital of unconsolidated financial institutions.

*c. Regulatory treatment for advanced approaches banking organizations*

Advanced approaches banking organizations would continue to apply the capital rule's current treatment for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions.<sup>30</sup> The agencies believe that the more complex capital deduction treatments in the capital rule are appropriate for advanced approaches banking organizations, because their size, complexity, and international exposure warrant a risk-sensitive treatment that more aggressively reduces potential interconnectedness among such firms. Accordingly, advanced approaches banking organizations would be required to continue applying the individual 10 percent common equity tier 1 capital deduction thresholds, as well as the aggregate 15 percent common equity tier 1 capital deduction threshold, for investments in MSAs, temporary difference DTAs, and significant investments in unconsolidated financial institutions in the form of common stock when calculating their capital requirements under the

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<sup>29</sup> Equity exposures that exceed, in the aggregate, 10 percent of a non-advanced approaches banking organization's total capital would then be assigned a risk weight based upon the approaches available in sections 52 and 53 of the capital rule. 12 CFR 217.52 and 53 (Board); 12 CFR 3.52 and 53 (OCC); 12 CFR 324.52 and 53 (FDIC).

<sup>30</sup> The agencies are making nonsubstantive changes to the definitions of *non-significant investment in the capital of an unconsolidated financial institution* and *significant investment in the capital of an unconsolidated financial institution* in section 2 of the capital rule in order to maintain the current treatment of these items for advanced approaches banking organizations.

capital rule. Advanced approaches banking organizations would also continue to apply the capital rule's treatment for non-significant investments in the capital of unconsolidated financial institutions and significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.

*Question 9: What impact would the agencies' proposed changes to the treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for non-advanced approaches banking organizations have on (i) risks to the safety and soundness of the banking system and (ii) regulatory burden on non-advanced approaches banking organizations? If possible, please provide relevant data to support comments.*

*Question 10: What are the benefits and drawbacks of (i) the proposed elimination of the 250 percent risk weight for significant investments in the capital of unconsolidated financial institutions in the form of common stock and (ii) the proposed risk-weighting methodology for investments in the capital of unconsolidated financial institutions when such investments are in the form of equity exposures?*

*Question 11: What, if any, operational challenges does the proposed treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions pose? What, if any, modifications should the agencies consider to address such challenges?*

## **C. Minority Interest**

### *1. Background*

The capital rule limits the amount of capital issued by consolidated subsidiaries and not owned by the parent banking organization (minority interest) that a banking organization may

include in regulatory capital. For example, tier 1 minority interest is created when a consolidated subsidiary of the banking organization issues tier 1 capital to third parties. Given that minority interest is generally not available to absorb losses at the banking organization's consolidated level, the agencies strongly believe that inclusion of minority interest in a banking organization's regulatory capital should be limited. The restrictions in the capital rule relating to minority interest are currently based on the amount of capital held by the consolidated subsidiary relative to the amount of capital the subsidiary would need to hold to avoid any restrictions on capital distributions and discretionary bonus payments under the capital rule's capital conservation buffer framework. Many community banking organizations have asserted that the capital rule's current calculation of the minority interest limitation is complex and results in burdensome and confusing regulatory capital reporting instructions.

## *2. Simplifying the regulatory capital limitations for minority interest*

Under the proposal, the agencies would replace for non-advanced approaches banking organizations the existing calculations limiting the inclusion of minority interest in regulatory capital with a simpler calculation. Specifically, the proposed rule would allow non-advanced approaches banking organizations to include: (i) common equity tier 1 minority interest up to 10 percent of the parent banking organization's common equity tier 1 capital; (ii) tier 1 minority interest up to 10 percent of the parent banking organization's tier 1 capital; and (iii) total capital minority interest up to 10 percent of the parent banking organization's total capital. In each case, the parent banking organization's regulatory capital for purposes of these limitations would be measured before the inclusion of any minority interest and after the deductions from and adjustments to the regulatory capital of the parent banking organization described in sections

22(a) and (b) of the capital rule.<sup>31</sup> The agencies believe that removing the current complex calculation for the amount of includable minority interest reduces regulatory burden without reducing the safety and soundness of non-advanced approaches banking organizations because the proposed minority interest limitations are simpler to calculate and still appropriately restrictive. The agencies do not expect a significant impact on the capital ratios for most non-advanced approaches banking organizations as a result of these simplifications.

The agencies remain focused on ensuring that the capital requirements applied to banking organizations are appropriately tailored to an organization's size, complexity, and risk profile. Accordingly, the largest and most internationally active banking organizations should be required to comply with stricter or more complex regulations, where appropriate, commensurate with their size, complexity, and risk profile. The agencies are therefore not proposing to change the more risk-sensitive minority interest calculation for advanced approaches banking organizations. Given the potential complexity in the capital structure of the largest and most systemically important institutions, the agencies believe that maintaining the more risk-sensitive approach for these firms better ensures they do not overstate capital ratios at the consolidated level as a result of overcapitalized subsidiaries, thereby protecting the safety and soundness of the banking sector.

*Question 12: What would be (i) the benefits and drawbacks and (ii) effects on regulatory burden of the agencies' proposed revisions to the quantitative limits for including minority interests in regulatory capital for non-advanced approaches banking organizations? The agencies solicit comment on all aspects of the proposed changes to the inclusion of minority interests in*

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<sup>31</sup> 12 CFR 217.22(a) and (b) (Board); 12 CFR 3.22(a) and (b) (OCC); 12 CFR 324.22 (a) and (b) (FDIC).

*regulatory capital for non-advanced approaches banking organizations. If possible, please provide relevant data to support comments.*

### **III. Technical Amendments to the Capital Rule**

The proposed rule would make certain technical corrections and clarifications to the capital rule. The agencies have identified typographical and technical errors in several provisions of the capital rule that warrant clarification or updating. The agencies are, therefore, proposing to revise the capital rule as described below. Most of the proposed corrections or technical changes are self-explanatory. In addition, there are several incorrect or imprecise cross-references that the agencies propose to change in an effort to better clarify the capital rule's requirements, as well as other changes to references necessary to implement the simplifications described previously in this preamble.

In section 1, the proposed rule would clarify that the capital adequacy standards do not apply to Federal branches and agencies of foreign banks that are regulated by the OCC. The OCC regulates Federal branches and agencies of foreign banks.<sup>32</sup>

In section 2, the proposed rule would correct an error in the definition of *investment in the capital of an unconsolidated financial institution* by changing the word “and” to “or.” This would clarify that an instrument qualifying for the definition can be either recognized as capital for regulatory purposes by a primary supervisor of an unconsolidated financial institution or can be part of the equity under U.S. generally accepted accounting principles (GAAP) of an unconsolidated unregulated financial institution.

The proposed rule would add “the European Stability Mechanism” and “the European Financial Stability Facility” to the capital rule with respect to (i) the definition of *eligible*

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<sup>32</sup> 12 U.S.C. 3101–3111.

*guarantor* in section 2, (ii) the list of entities eligible for a zero percent risk weight in section 32(b), (iii) the list of equity exposures eligible for a zero percent risk weight in section 52(b)(1), (iv) the list of entities eligible for assignment of a rating grade associated with a probability of default of less than 0.03 percent in section 131(d)(2), and (v) certain supranational entities and multilateral development bank debt positions eligible for assignment of a 0.0 percent specific risk weighting factor in section 210(b)(2)(ii). The proposed rule would also exclude such entities from the definition of (i) *corporate exposure* in section 2, (ii) *private sector credit exposure* in section 11, and (iii) *corporate debt position* in section 202. The agencies are making this change because the European Stability Mechanism and the European Financial Stability Facility were in early stages of operation and excluded from the capital rule when it was finalized in 2013. The proposal would update the list of entities included or excluded, as applicable, for these purposes in the standardized approach and advanced approaches of the capital rule and the market risk capital rule.

The agencies are making technical amendments to section 11(a) of the capital rule, on the capital conservation buffer, to clarify the calculation of a banking organization's maximum payout amount for a specific calendar quarter. First, the proposal would clarify that the eligible retained income during a specific current calendar quarter is the banking organization's net income, calculated in accordance with the instructions for the Call Report or the FR Y-9C, as appropriate, for the four calendar quarters preceding the current calendar quarter.<sup>33</sup> Second, the proposal would clarify that the key inputs for the calculation of a banking organization's capital

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<sup>33</sup> 12 CFR 217.11(a)(2)(i); 12 CFR 3.11(a)(2)(i); and 12 CFR 324.11(a)(2)(i).

conservation buffer during the current calendar quarter are the banking organization's regulatory capital ratios as of the last day of the previous calendar quarter.<sup>34</sup>

In section 20(d)(5) for the Board's and OCC's capital rule, the proposed rule would provide that the reference to AOCI opt-out election is section 22(b)(2) instead of section 20(b)(2).

In section 20(c) of the capital rule, the OCC's and FDIC's regulations mistakenly provide that cash dividend payments on additional tier 1 capital instruments may not be subject to a "limit" imposed by the contractual terms governing the instrument. This requirement was intended to apply only to common equity tier 1 capital instruments, and not to additional tier 1 capital instruments. The proposed rule would harmonize the language of the agencies' capital rule in section 20(c) by removing this requirement for additional tier 1 instruments.

In a new section 20(f) of the Board's capital rule, for purposes of clarity and enforceability, the proposed rule would create a stand-alone requirement that a Board-regulated banking organization may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of the Board. This requirement already exists in the capital rule as a requirement for each definition of common equity tier 1, additional tier 1, and tier 2 capital instruments in sections 20(b)(iii), 20(c)(iv), and 20(d)(x), respectively.

In section 22(g) of the capital rule, the proposed rule would remove specific references to assets to exclude from risk weighting if already deducted from regulatory capital. The effect of this proposed change would be to exclude from standardized total risk-weighted assets and, as

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<sup>34</sup> 12 CFR 217.11(a)(3)(i); 12 CFR 3.11(a)(3)(i); and 12 CFR 324.11(a)(3)(i).

applicable, advanced approaches total risk-weighted assets any items deducted from capital, not only the items specifically enumerated.

In section 22(h) of the capital rule, the proposed rule would replace inaccurate terminology with the properly defined terms “investment in the capital of an unconsolidated financial institution” and “investment in the [AGENCY]-regulated institution’s own capital instrument,” as described in section 2.

The proposed rule would revise, for purposes of clarity, the capital rule’s sections 32(d)(2)(iii) and (iv), and create a new section 32(d)(2)(v). The revised section 32(d)(2)(iii) would require banking organizations to “assign a 20 percent risk weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.” This requirement is currently embedded in section 32(d)(2)(iii) of the capital rule, together with rule text related to the risk weighting of exposures to a foreign bank whose home country is not a member of the OECD and does not have a CRC. This latter provision would become a stand-alone requirement in the revised section 32(d)(2)(iv) under the proposed rule. In addition, the proposed rule would reassign the current section 32(d)(2)(iv) text as a new section 32(d)(2)(v).

In sections 34(c)(1) and 34(c)(2)(i) of the capital rule, the proposed rule would provide that the counterparty credit risk capital requirement references subpart D of the capital rule in its entirety rather than just section 32 of subpart D.

In sections 35(b)(3)(ii), 35(b)(4)(ii), 35(c)(3)(ii), 35(c)(4)(ii), 36(c), 37(b)(2)(i), 38(e)(2), 42(j)(2)(ii)(A), 133(b)(3)(ii), and 133(c)(3)(ii) of the capital rule, the proposed rule would

provide that the risk weight substitution references subpart D in its entirety rather than just section 32 of subpart D.

In section 61 of the capital rule, the proposed rule would clarify the requirement that a non-advanced approaches banking organization with \$50 billion or more in total consolidated assets would need to complete the disclosure requirements described in sections 62 and 63, unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of section 62, or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

Table 8 of section 63 of the capital rule describes information related to securitization exposures that banking organizations are required to disclose. The capital rule revised the risk-based capital treatment of these items, including the regulatory capital treatment of after-tax gain-on-sale resulting from a securitization and credit-enhancing interest-only strips that do not constitute after-tax gain-on-sale. Because Table 8 does not properly reflect these revisions, the agencies propose to update line (i)(2) under quantitative disclosures to appropriately reflect these revisions.

In section 210(b)(2)(vii) of the Board's capital rule, the proposed rule would add references to U.S. intermediate holding companies to clarify for these firms how to calculate capital requirements related to securitization positions under the Board's market risk capital rule depending on whether they are using the advanced approaches to calculate risk-weighted assets.

In table 4 of section 300 of the capital rule, the proposed rule would revise the title "Transition adjustments" to reference section 22(b)(1)(iii) rather than section 22(b)(2).

In section 300(c)(2) of the Board's capital rule, the proposed rule would clarify that the mergers and acquisitions that can potentially affect the inclusion of certain non-qualifying capital instruments in a Board-regulated banking organization's regulatory capital would have occurred after December 31, 2013.

As discussed, the 2013 revisions to the capital rule required banking organizations to increase both the quality and quantity of regulatory capital. As a result, some items that previously were included in the calculation of regulatory capital became excluded, and the amounts of required regulatory capital relative to certain exposure types increased. As part of the capital rule rulemaking, the agencies established transition provisions to phase in many of these requirements over several years in order to give banking organizations sufficient time to adjust and adapt to the requirements of the rule. Many of the transition provisions continue to be in effect, and include ongoing phase-ins to the calculation of capital.

During the development of this proposal, the agencies recognized the capital rule would automatically enact stricter treatments for items potentially impacted by this proposal on January 1, 2018, while the agencies are simultaneously working through the rulemaking process to provide burden relief to non-advanced approaches banking organizations for the very same items. To address this concern, in August 2017, the agencies invited public comment on a proposed rule to extend the current treatment under the transition provisions of the capital rule for certain regulatory capital deductions and risk weights and certain minority interest requirements.<sup>35</sup> The comment period for the transitions NPR expired on September 25, 2017.

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<sup>35</sup> 82 FR 40495 (August 25, 2017). Items impacted by the transition NPR include, for non-advanced approaches banking institutions, (i) MSAs; (ii) temporary difference DTAs; (iii) significant investments in the capital of unconsolidated financial institutions in the form of common stock; (iv) non-significant investments in the capital of unconsolidated financial institutions; (v) significant investments in the capital of unconsolidated financial institutions that

In the transitions NPR, the agencies explained that the proposed extension was intended to limit burden on banking organizations by maintaining the transitions in effect for 2017 while the agencies developed potential simplifications to the treatment of affected items under the capital rule. The current proposal reflects the simplifications referenced by the agencies in the transitions NPR. If the transition extensions proposed in the transitions NPR are finalized, the scheduled recalibrations under the transition provisions of the capital rule would be halted for the affected items and the treatment in effect for 2017 would continue until further action by the agencies. As described in the transitions NPR, the agencies expect that the transition extensions would cease to be appropriate upon completion of the agencies' simplifications rulemaking process.

If the transition extensions are not finalized, all the transition provisions currently in the capital rule would remain in effect, including a final, stricter recalibration to the treatment of items discussed in the transitions NPR beginning January 1, 2018, for all banking organizations covered by the agencies' capital rule. Thus, whether or not the transition extensions in the transitions NPR are implemented, the agencies believe that the transitions would cease to be appropriate upon the agencies' adoption of a final rule in conjunction with the rulemaking process for the proposed simplifications. Accordingly, in connection with this simplification proposal, the agencies propose to remove the transition provisions applicable to MSAs, temporary difference DTAs, investments in the capital of unconsolidated financial institutions, and minority interest, all of which are currently scheduled to end in 2018.

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are not in the form of common stock; and (vi) common equity tier 1 minority interest, tier 1 minority interest, and total capital minority interest exceeding the limitations on minority interest in the capital rule.

*Question 13: The agencies solicit comments on the proposed technical amendments to the capital rule. What, if any, potentially unintended consequences do the proposed changes pose and how should the agencies consider addressing such consequences? What, if any, additional technical amendments not already identified by the agencies in this proposed rule would be appropriate for the agencies to consider and why?*

*Question 14: While the proposed rule addresses comments received during the EGRPRA review regarding the complexity of the risk based capital standards, the agencies seek comment on additional alternatives to simplify and streamline the regulatory capital rules. The agencies recognize the difficulties in achieving simplification of the risk based capital standards, particularly the burden related to their calculation and reporting, and the potential disparate impact to smaller and medium sized banks relative to their GSIB counterparts.*

*Therefore, the agencies seek comment on whether they should consider a fundamental change to the manner in which banking organizations calculate and comply with minimum capital standards such as through the use of a simple U.S. GAAP based equity to assets ratio (leverage ratio) for non-GSIB banks. If so, what would be the appropriate definition and level for the ratio? Also, what relief should be realized upon implementation of this capital standard relative to changes in the call report and other reporting standards?*

*Question 15: The agencies also seek comment on whether they should consider more comprehensive simplifications to the capital rule for small and medium-sized banking organizations by, for example, further simplifying risk-weighted assets and the definition of capital, or reducing the number of regulatory capital ratios, consistent with legal requirements. What specific simplifications should the agencies consider and why?*

#### **IV. Abbreviations**

ADC	Acquisition, Development, or Construction
BHC	Bank Holding Company
CFR	Code of Federal Regulations
CRC	Country Risk Classification
DTA	Deferred Tax Asset
EGRPRA	Economic Growth and Regulatory Paperwork Reduction Act of 1996
FAQ	Frequently Asked Question
FR	Federal Register
FDIC	Federal Deposit Insurance Corporation
FDICIA	Federal Deposit Insurance Corporation Improvement Act of 1991
GAAP	U.S. generally accepted accounting principles
GSIB	Global Systemically Important Bank Holding Company
HVADC	High Volatility Acquisition, Construction, or Development
HVCRE	High Volatility Commercial Real Estate
IHC	U.S. Intermediate Holding Company
LTV	Loan-to-Value
MDB	Multilateral Development Bank
MSA	Mortgage Servicing Asset
NPR	Notice of Proposed Rulemaking
OCC	Office of the Comptroller of the Currency
OECD	Organization for Economic Cooperation and Development
OMB	Office of Management and Budget
PD	Probability of Default
PMSA	Purchased Mortgage Servicing Asset
PRA	Paperwork Reduction Act
RCDRIA	Riegle Community Development and Regulatory Improvement Act of 1994
RFA	Regulatory Flexibility Act
RIN	Regulation Identifier Number
SBA	Small Business Administration
SLHC	Savings and Loan Holding Company
SMB	State Member Banks
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

#### **V. Regulatory Analyses**

##### **A. Paperwork Reduction Act**

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the

respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The revised disclosure requirements are found in section .63 of the proposed rule. The OMB control number for the OCC is 1557-0318, Board is 7100-0313, and FDIC is 3064-0153. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

- a. Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- b. The accuracy or the estimate 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 the 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of

Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395-6974; or e-mail to oira\_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

*Proposed Information Collection*

*Title of Information Collection:* Recordkeeping and Disclosure Requirements Associated with Capital Adequacy.

*Frequency:* Quarterly, annual.

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

*Respondents:*

OCC: National banks, state member banks, state nonmember banks, and state and Federal savings associations.

Board: 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).

FDIC: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

*Current Actions:* Section \_\_.63 of the proposed rule would (1) replace the standardized approach's treatment of high volatility commercial real estate (HVCRE) exposures with a simpler treatment for most high volatility acquisition, development, or construction (HVADC) exposures and (2) break out the disclosures in Table 8 to include (i) after-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital and (ii) credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight. There are no changes in burden associated with the proposed rulemaking. However, in order to be consistent across the

agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and not the result of the proposed rule changes.

*PRA Burden Estimates*

**OCC**

*OMB control number:* 1557-0318.

*Estimated number of respondents:* 1,365.

*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) – 280.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 35.

*Estimated annual burden hours:* 1,088 hours initial setup, 64,513 hours for ongoing.

## **Board**

*Agency form number:* FR Q.

*OMB control number:* 7100-0313.

*Estimated number of respondents:* 1,431.

*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) – 280.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 35.

Disclosure (Table 13 quarterly) – 5.

### ***Risk-based Capital Surcharge for GSIBs***

Recordkeeping (Ongoing) – 0.5.

*Estimated annual burden hours:* 1,088 hours initial setup, 78,183 hours for ongoing.

## **FDIC**

*OMB control number:* 3064-0153.

*Estimated annual burden hours:* 1,088 hours initial setup, 138,391 hours for ongoing.

Notably, the FDIC's estimated annual burden hours remain unchanged from its last OMB submission. A breakdown of the burden associated with the current information collection for 3064-0153 is contained in the FDIC's notice published on July 26, 2017 (82 FR 34668).

The proposed rule will also require changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 1557-0081, 7100-0036, and 3064-0052), Consolidated Financial Statements for Holding Companies (FR Y-9C; OMB No. 7100-0128), and Capital Assessments and Stress Testing (FR Y-14A and Q; OMB No. 7100-0341), which will be addressed in a separate *Federal Register* notice.

### **B. Regulatory Flexibility Act Analysis**

*OCC:* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of \$550 million or less and trust companies with total assets of \$38.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of June 30, 2017, the OCC supervises 907 small entities.<sup>36</sup>

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<sup>36</sup> The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR

The rule would apply to all OCC-supervised entities that are not subject to the advanced approaches risk-based capital rules, and thus potentially affects a substantial number of small entities. The OCC has determined that 153 such entities engage in affected activities to an extent that they would be impacted directly by the proposed rule. Although a substantial number of small entities would be impacted by the proposed rule, the OCC does not find that this impact is economically significant. To determine whether a proposed rule would have a significant effect, the OCC considers whether projected cost increases associated with the proposed rule are greater than or equal to either 5 percent of a small bank's total annual salaries and benefits or 2.5 percent of an OCC-supervised small entity's total non-interest expense. The value of the change in capital exceeded these thresholds for 1 of the 907 OCC-supervised small entities.

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

*Board:* The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed in the Supplemental Information, the proposal would revise the treatment of certain assets under the capital rule and would also make various corrections and clarifications to the capital rule to address issues that have been identified since the rule was issued. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company

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121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

with assets of \$550 million or less (small banking organization).<sup>37</sup> As of June 30, 2017, there were approximately 3,451 small bank holding companies, 224 small savings and loan holding companies, and 566 small state member banks.

Aspects of the proposed rule would apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's regulatory capital rule. Certain portions of the proposed rule would not apply to state member banks, bank holding companies, and savings and loan holding companies that are subject to the advanced approaches. In general, the Board's capital rule only apply to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than \$1 billion in total assets that also meet certain additional criteria.<sup>38</sup> Thus, most bank holding companies and savings and loan holding companies that would be subject to the proposed rule exceed the \$550 million asset threshold at which a banking organization would qualify as a small banking organization.

Given that the proposed rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report. The agencies anticipate updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule.

For purposes of the standardized approach, the proposal would replace the exposure category HVCRE with the exposure category HVADC. HVADC exposure is expected to

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<sup>37</sup> See 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to \$550 million in assets from \$500 million in assets. 79 FR 33647 (June 12, 2014).

<sup>38</sup> See 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

generally cover a broader range of exposures than HVCRE exposure. However, the proposal would assign a 130 percent risk weight to HVADC exposures, as opposed to the 150 percent risk weight currently assigned to HVCRE exposures. Based upon data reported on the FR Y-9C and on Call Report information, as of June 30, 2017, about 80 percent of small state member banks, small bank holding companies, and small savings and loan holding companies report holdings of acquisition, development, or construction exposures, excluding one- to four-family residential properties, and about 30 percent of state member banks, small bank holding companies, and small savings and loan holding companies report some holdings of HVCRE exposures risk weighted at 150 percent. The Board expects that the expanded scope and reduced risk-weight of HVADC exposure relative to HVCRE exposure would result in roughly equivalent capital requirements under the proposal as currently provided by the capital rule.

For non-advanced approaches banking organizations, the proposal would revise the capital deductions for MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions by raising the threshold at which such items must be deducted and simplifying the number and interaction of required deductions. The Board expects that the proposal would result in slightly lower capital requirements compared to the capital rule for a few small banking organizations that currently deduct MSAs, temporary difference DTAs, and/or investments in the capital of unconsolidated financial institutions. Because so few banking organizations are currently subject to these deductions, the number of affected banking organizations appears to be minimal.

Also for non-advanced approaches banking organizations, the proposal would simplify the requirements related to the inclusion of minority interest of subsidiaries in capital. The Board expects that the proposal would generally result in more minority interest being includable

in capital than is permitted under the current rule. However, only a few small banking organizations currently include minority interest in capital and minority interest represents a significant portion of capital for very few banking organizations. As a result, the impact of this portion of the proposal is not expected to be significant.

The remaining proposed revisions to the capital rule consist of technical corrections and clarifications that have been identified since the rule was issued. None of these revisions constitutes a significant change to the capital rule and the impact of these revisions on banking organizations is expected to be immaterial.

The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there are no significant alternatives to the proposed rule other than retention of the current rule. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

*FDIC:* The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small

entities.<sup>39</sup> The Small Business Administration has defined “small entities” to include banking organizations with total assets of less than or equal to \$550 million.<sup>40</sup> The FDIC is providing an initial regulatory flexibility analysis with respect to this proposed rule.

The FDIC supervises 3,717 depository institutions,<sup>41</sup> of which, 2,990 are defined as small banking entities by the terms of the RFA.<sup>42</sup> This proposed rule would replace the existing HVCRE exposure category with a new HVADC exposure category that would receive a 130 percent risk weight. The proposed rule also would remove the individual and aggregate deduction thresholds and replace them with individual, higher deduction thresholds for: (i) MSAs; (ii) temporary differences DTAs; and (iii) investments in the capital of unconsolidated financial institutions. Finally, the proposed rule would amend the methodology that determines the amount of minority interest that is includable in regulatory capital. According to Call Report data as of June 30, 2017, 2,589 FDIC-supervised small banking entities reported some amount of acquisition, development or construction loans, MSAs, DTAs, deductions related to investments in unconsolidated financial institutions, or minority interests that could be affected by this rule making.

#### HVADC

According to Call Report data as of June 30, 2017, there were 2,338 FDIC-supervised small banking entities that reported approximately \$14.4 billion of acquisition, development or construction loans excluding one- to four-family residential projects (non-residential ADC loans). Of these entities, 817 FDIC-supervised small banking entities reported that

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<sup>39</sup> 5 U.S.C. 601 et seq.

<sup>40</sup> 13 CFR 121.201 (as amended, effective December 2, 2014).

<sup>41</sup> FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

<sup>42</sup> FDIC Call Report, June 30, 2017.

approximately \$3.6 billion of these non-residential ADC loans would meet the current definition of an HVCRE exposure and would qualify for the 150 percent risk weight. We assume that the remainder of the non-residential ADC loans received a 100 percent risk weight as a result of meeting one or more of the currently available exemptions from the current definition of HVCRE. These exemptions relate to either the amount of contributed capital or because the exposure is an agricultural or farm loan, community development loan, or permanent financing. The FDIC is unable to determine the mix of exemptions from the HVCRE definition that FDIC-supervised small banking entities rely upon when assigning the 100 percent risk weight because of limitations in the Call Report data.

Under the proposed rule some future non-residential ADC loans made by a small banking entity that are currently reported as an HVCRE exposure may receive a 100 percent risk weight or a 130 percent risk-weight treatment instead of the 150 percent risk-weight treatment under the current rule. Concurrently, some future non-residential ADC loans made by a small banking entity may receive a 130 percent risk-weight treatment instead of the 100 percent risk-weight treatment under the contributed capital exemption. These loans also may continue to receive a 100 percent risk weight if they qualify under other exemptions of the proposed rule as an agricultural or farm loan, community development loan, a permanent loan as that term is clarified in the proposal, or a loan that is not “primarily” to finance non-residential ADC as defined in the proposal. As with the current rule, all acquisition, development, or construction loans related to one- to four-family residential properties would continue to receive a 100 percent risk weight.

In the absence of Call Report information about the eligibility of current non-residential ADC loans for the various proposed exemptions or how the structure of future non-residential

ADC loans will compare to current non-residential ADC loans, the FDIC estimates the maximum amount of capital that could be required under the proposed rule if it were applied to FDIC-supervised small banking entities' current portfolio of non-residential ADC loans (that is, ignoring the grandfathering provision and assuming FDIC-supervised small banking entities make no adjustments to their loan structures in response to the rule) and assuming that no non-residential ADC loans qualify for the exemptions as agricultural or farm loans, community development loans, or permanent loans, or are excluded due to the "primarily finances" test. Assuming that all currently held acquisition, development, or construction exposures excluding one- to four-family exposures, currently risk weighted at 100 percent will be risk-weighted at 130 percent (rather than remaining at 100 percent under potentially available exemptions), and that all HVCRE exposures risk weighted at 150 percent will be risk weighted at 130 percent (rather than 100 percent under potentially available exemptions), the FDIC estimates that there could be a maximum increase in risk weighted assets of approximately \$2.6 billion, or less than one percent of the aggregate risk weighted assets for the 2,338 FDIC-supervised small banking entities. The FDIC believes that even this relatively small change to aggregate risk weighted assets is overstated because it is likely that a significant amount of small bank lending would meet one or more of the qualifying exemptions.<sup>43</sup> As such, the FDIC believes that any change in

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<sup>43</sup> For example, for as of June 30, 2017 Call Report data, for the 2,338 FDIC-supervised small banking entities included in this analysis, approximately 24% of all non-ADC commercial real estate loans were secured by Farmland and approximately 36% were secured by Owner Occupied Nonfarm, Nonresidential properties (a proxy in this analysis for permanent loans as defined in the HVADC definition). If the proportion of non-ADC lending related to these exposure categories were to be assumed consistent with the amount of non-residential ADC lending to these exposure categories, then as much as 60% of all non-residential ADC loans would be excluded from the definition of HVADC solely based upon the agricultural and permanent loan exemptions alone.

capital requirements under the proposed HVADC treatment compared to the current HVCRE treatment would be modest.

#### Threshold Deductions

The proposed rule would change the regulatory capital treatment of MSAs, temporary difference DTAs, and investments in the capital of unconsolidated financial institutions for FDIC-supervised small banking entities. It does so by removing the individual and aggregate deduction thresholds for these assets and by adopting a single 25 percent common equity tier 1 capital deduction threshold for each type of asset. According to June 30, 2017 Call Report data, at least 1,618 FDIC-supervised small banking entities reported holding some MSAs, DTAs, and deductions due to investments in the capital of unconsolidated financial institutions. Only 45 small institutions reported deductions for holdings across these different assets. The FDIC estimates that the proposed rule would pose an immediate aggregated net benefit of \$45.5 million in the form of an increase in tier 1 capital to those institutions that currently have to calculate a deduction. The FDIC expects that the proposed rule would yield future benefits to affected FDIC-supervised small banking entities by reducing the likelihood of a regulatory capital deduction due to holding these asset types. In particular, the proposal would remove a significant capital constraint on FDIC-supervised small banking entities that specialize in mortgage servicing. The proposed increase in threshold deduction makes it less likely that a small banking entity would exit or reduce its activity in the mortgage servicing market.

#### Minority Interest

The proposed rule would remove the capital rule's limitation on the inclusion of minority interest in regulatory capital. It does so by allowing FDIC-supervised small banking entities to include minority interest up to 10 percent of the parent banking organization's common equity

tier 1, tier 1, or total capital, not including the minority interest. The FDIC estimates that 16 FDIC-supervised small banking entities would be affected by the proposed inclusion of minority interest in regulatory capital calculations. The FDIC estimates that these FDIC-supervised small banking entities will likely experience a net aggregated benefit of \$2.5 million in the form of an increase in tier 1 capital due to the inclusion of minority interest. The FDIC expects that the proposed rule would yield future benefits for affected FDIC-supervised small banking entities by reducing the likelihood that minority interest would not be included in a small banking entity's regulatory capital.

#### Compliance Costs

Finally, FDIC-supervised small banking entities are likely to incur some implementation costs in order to comply with the proposed rule. These costs would encompass changes to their systems designed to calculate, manage, and report risk-weighted assets and regulatory capital. Given the limited nature of the changes necessary to comply with the proposed rule, the implementation costs are expected to be minimal. Additionally, the FDIC believes that the proposed changes would help reduce some of the compliance costs associated with these regulations in the long-term by making them easier to apply.

The proposed rule does not impact the recordkeeping and reporting requirements that affect FDIC-supervised small banking entities and there would be no change to the information that FDIC-supervised small banking entities must track and report. The FDIC anticipates updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule.

Question 1. For FDIC-supervised small banking entities, would the proposed rule reduce the compliance costs associated with the capital rules? If so, how?

## Conclusion

The threshold-deduction and minority-interest provisions of the proposed rule would increase the amount of eligible regulatory capital for a limited number of FDIC-supervised small banking entities currently subject to deductions or limitations on these items, as described above. The HVADC provisions of the proposed rules would affect far more FDIC-supervised small banking entities, with effects that will vary across institutions and are difficult to estimate. Risk weights for some new ADC exposures will be reduced from 150 percent under the current HVCRE treatment, to 130 percent or 100 percent under the proposed rule if certain exemptions apply. Risk weights for other new ADC exposures will either remain at the currently required 100 percent (if available exemptions apply) or increase to 130 percent. However, the Call Reports do not provide data about the volumes of ADC loans currently eligible for HVCRE exemptions for agriculture, community development or permanent financing, or that would be eligible going forward under the proposed clarification of the permanent financing exemption or the proposed “primarily finances” test. As a result, the net effect on regulatory capital requirements of the proposed HVADC treatment is difficult to estimate with any precision. As noted earlier, however, the FDIC’s upper bound estimate (that ignores the grandfathering provision and gives no credit for all the HVADC exemptions previously described) is that risk-weighted assets of the FDIC-supervised small banking entities affected by the rule would increase less than one percent. This upper bound estimate gives some comfort that the actual regulatory capital effects of the proposed HVADC treatment are likely to be modest. The FDIC welcomes comments or data from the institutions it supervises that would enhance our ability to more precisely estimate the net effects of the proposed rule on regulatory capital ratios.

The FDIC does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there does not appear to be any significant alternatives to the proposed rule other than retention of the current rule. In light of the foregoing discussion, the FDIC does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the FDIC seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

### **C. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act 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 proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical 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 would achieve that?

- Would more, but shorter, sections be better? If so, which sections should be changed?”
- What other changes can the agencies incorporate to make the regulation easier to understand?

#### **D. OCC Unfunded Mandates Reform Act of 1995 Determination**

The OCC analyzed the proposed 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 proposed 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 proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year.<sup>44</sup> Accordingly, the OCC has not prepared a written statement to accompany this proposal.

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

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such

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<sup>44</sup> The OCC estimates that proposed rule would lead to an aggregate increase in reported regulatory capital of \$4.7 billion for national banks and Federal savings associations compared to the amount they would report if they were required to continue to apply the capital requirements. The OCC estimates that this increase in reported regulatory capital – which could allow banking organizations to increase their leverage and thus increase their tax deductions for interest paid on debt – would have a total aggregate value of approximately \$112.8 million per year across all directly impacted OCC-supervised entities (that is, national banks and federal savings associations not subject to the advanced approaches risk-based capital rule).

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, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must 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.<sup>45</sup>

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

### **List of Subjects**

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

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

#### **12 CFR Part 217**

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

#### **12 CFR Part 324**

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

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<sup>45</sup> 12 U.S.C. 4802

## Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 as follows.

### **PART 3 – CAPITAL ADEQUACY STANDARDS**

#### **Subpart A—General Provisions**

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 3.1 is amended by revising paragraph (a) to read as follows:

#### **§3.1 Purpose, applicability, reservation of authority, and timing.**

(a) *Purpose.* This part establishes minimum capital requirements and overall capital adequacy standards for national banks and Federal savings associations. This part does not apply to Federal branches and agencies of foreign banks. This part includes methodologies for calculating minimum capital requirements, public disclosure requirements related to the capital requirements, and transition provisions for the application of this part.

\* \* \* \* \*

3. Section 3.2 is amended by revising the definitions of “corporate exposure,” “eligible guarantor,” “high volatility commercial real estate (HVCRE) exposure,” and “International Lending Supervision Act,” “Investment in the capital of an unconsolidated financial institution,” and “Significant investment in the capital of an unconsolidated financial institution”; and adding in alphabetical order the definitions of “high volatility acquisition, development, or construction (HVADC) exposure.” and “Nonsignificant investment in the capital of an unconsolidated financial institution,” to read as follows:

### §3.2 Definitions.

\* \* \* \* \*

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

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure*;
- (7) A cleared transaction;
- (8) A default fund contribution;
- (9) A securitization exposure;
- (10) An equity exposure; or
- (11) An unsettled transaction.
- (12) A policy loan; or
- (13) A separate account.

\* \* \* \* \*

*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*High volatility acquisition, development, or construction (HVADC) exposure* means a credit facility that is originated on or after [effective date] and that:

(1) Primarily finances or refinances the:

(i) Acquisition of vacant or developed land;

(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or

(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and

(2) Is not a credit facility that finances or refinances:

(i) One- to four-family residential properties;

(ii) Real property projects that would have the primary purpose of “community development” as defined under 12 CFR part 25 (national banks) and 12 CFR part 195 (Federal savings associations); or

(iii) The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and

(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) and

(ii) Is not an ADC loan to any entity described in 12 CFR 25.12(g)(3) (national banks) and 12 CFR 195.12(g)(3) (Federal savings associations), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 34, subpart D (national banks) and 12 CFR part 160, subparts A and B (Federal savings associations);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised "as completed" value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full.

Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

*International Lending Supervision Act* means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.).

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §3.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the national bank or Federal savings association for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches national bank or Federal savings association in the capital of an unconsolidated financial institution where the advanced approaches national bank or Federal savings association owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

4. Section 3.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§3.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the national bank or Federal savings association, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §3.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

5. Section 3.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

**§3.11 Capital conservation buffer and countercyclical capital buffer amount.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) *Eligible retained income.* The eligible retained income of a national bank or Federal savings association is the national bank's or Federal savings association'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.

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) A national bank's or Federal savings association's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The national bank or Federal savings association's common equity tier 1 capital ratio minus the national bank or Federal savings association's minimum common equity tier 1 capital ratio requirement under § 3.10;

(B) The national bank or Federal savings association's tier 1 capital ratio minus the national bank or Federal savings association's minimum tier 1 capital ratio requirement under § 3.10; and

(C) The national bank or Federal savings association's total capital ratio minus the national bank or Federal savings association's minimum total capital ratio requirement under § 3.10; or

\* \* \* \* \*

**TABLE 1 TO §3.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.875 percent plus 75 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.25 percent plus 50 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount, <i>and</i> greater than 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the national bank's or Federal savings association's applicable countercyclical capital buffer amount.	0 percent.

\* \* \* \* \*

6. Section 3.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), (d)(2), and (5) as follows:

**§3.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §3.21.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) Any cash dividend payments on the instrument are paid out of the national bank's or Federal savings association's net income or retained earnings.

\* \* \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §3.21, that is not included in the national bank's or Federal savings association's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §3.21, that is not included in the national bank's or Federal savings association's tier 1 capital.

\* \* \* \* \*

(5) For a national bank or Federal savings association that makes an AOCI opt-out election (as defined in paragraph (b)(2) of §3.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

\* \* \* \* \*

7. Section 3.21 is revised to read as follows:

**§3.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §3.20, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* The amount of common equity tier 1 minority interest that a national bank or Federal savings association may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the national bank or Federal savings association (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the national bank or Federal savings association.* The amount of tier 1 minority interest that a national bank or Federal savings association may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the national bank or Federal savings association (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* The amount of total capital minority interest that a national bank or Federal savings association may include in total capital must be no greater than 10 percent of the

sum of all total capital elements of the national bank or Federal savings association (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §3.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §3.20, an advanced approaches national bank or Federal savings association is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches national bank or Federal savings association has issued regulatory capital that is not owned by the national bank or Federal savings association; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches national bank or Federal savings association, the advanced approaches national bank or Federal savings association must assume that the capital adequacy standards of the advanced approaches national bank or Federal savings association apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the national bank or Federal savings association.* For each consolidated subsidiary of an advanced approaches national bank or Federal savings association, the amount of common equity tier 1 minority interest the advanced approaches national bank or Federal savings association may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches national bank or Federal savings association.* For each consolidated subsidiary of the advanced approaches national bank or Federal savings association, the amount of tier 1 minority interest the advanced approaches national bank or Federal savings association may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary

bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the national bank or Federal savings association.* For each consolidated subsidiary of the advanced approaches national bank or Federal savings association, the amount of total capital minority interest the advanced approaches national bank or Federal savings association may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches national bank or Federal savings association multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches national bank or Federal savings association that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §3.11 or equivalent standards established by the subsidiary's home country supervisor.

8. Section 3.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

**§3.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches national bank or Federal savings association, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches national bank or Federal savings association), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

(1) *Investment in the national bank's or Federal savings association's own capital instruments.* A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own capital instruments as follows:

(i) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own common stock instruments from its common equity

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<sup>23</sup> The national bank or Federal savings association must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under §3.20(d)(3).

tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §3.20(b)(1);

(ii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A national bank or Federal savings association must deduct an investment in the national bank's or Federal savings association's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches national bank or Federal savings association (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a national bank or Federal savings association must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the national bank or Federal savings association itself, as described in paragraphs (c)(2)(i)-(iii) of this section. If the national bank or Federal savings association does not have a sufficient amount of a specific component of capital

to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under §3.20, the national bank or Federal savings association must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §3.300(c)), the national bank or Federal savings association must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A national bank or Federal savings association must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must deduct its investments in the capital of unconsolidated financial institutions (as defined in §3.2) that exceed 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to

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<sup>24</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) An advanced approaches national bank or Federal savings association must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §3.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting, with the prior written approval of the OCC, for the period of time stipulated by the OCC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

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<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

<sup>26</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the OCC.

<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches national bank's or Federal savings association's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches national bank's or Federal savings association's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches national bank's or Federal savings association's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches national bank or Federal savings association must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

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<sup>28</sup> With prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

(1) A national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

(ii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. A national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §3.22(e)) arising from timing differences that the national bank or Federal savings association could realize through net operating loss carrybacks. The national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed

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<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the national bank or Federal savings association and assigned a 250 percent risk weight.

the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(iii) The national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

(2) An advanced approaches national bank or Federal savings association must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches national bank or Federal savings association could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section.

An advanced approaches national bank or Federal savings association is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §3.22(e)) arising from timing differences that the advanced approaches national bank or Federal savings association could realize through net operating loss carrybacks. The advanced approaches national bank or Federal savings association must risk weight these assets at 100 percent. For a national bank or Federal savings association that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the national bank or Federal savings association could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup> Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches national bank or Federal savings association pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association that underwrites a failed underwriting is not required to deduct a significant investment in the capital

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<sup>30</sup> With the prior written approval of the OCC, for the period of time stipulated by the OCC, an advanced approaches national bank or Federal savings association is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the OCC.

of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches national bank or Federal savings association must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches national bank's or Federal savings association's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches national bank or Federal savings association may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches national bank or Federal savings association that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches national bank or Federal savings association may change its exclusion preference only after obtaining the prior approval of the OCC.

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches national bank or Federal savings association and assigned a 250 percent risk weight.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* A national bank or Federal savings association must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the national bank's or Federal savings association's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §3.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §3.2;

(iii) For an indirect exposure, the national bank's or Federal savings association's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A national bank or Federal savings association may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the national bank's or Federal savings association's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A national bank or Federal savings association may calculate the gross long position for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the national bank's or Federal savings association's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(2) The investment fund's actual holdings of investments in the national bank's or Federal savings association's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the national bank's or Federal savings association's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the national bank's or Federal savings association's Call Report, if the national bank or Federal savings association has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the national bank or Federal savings association exercises its right

to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A national bank or Federal savings association may only net a short position against a long position in an investment in the national bank's or Federal savings association's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the national bank's or Federal savings association's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the national bank's or Federal savings association's Call Report, and the hedge is deemed effective by the national bank's or Federal

savings association 's internal control processes, which have not been found to be inadequate by the OCC.

9. Section 3.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), (l) to read as follows:

**§3.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs).* A national bank or Federal savings association must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a national bank or Federal savings association must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §3.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

**TABLE 2 TO §3.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
CRC:	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A national bank or Federal savings association must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A national bank or Federal savings association must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A national bank or Federal savings association must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A national bank or Federal savings association must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §3.22(d)(2)(1)(c);

\* \* \* \* \*

(j)(1) *High volatility acquisition, development, or construction (HVADC) exposures.* A national bank or Federal savings association must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A national bank or Federal savings association must assign a 150 percent risk weight to an HVCRE exposure.

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A national bank or Federal savings association must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A national bank or Federal savings association may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §3.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A national bank or Federal savings association may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §3.37 if the collateral meets the requirements of that section.

(1) *Other assets.* (1)(i) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A national bank or Federal savings association must assign a zero percent risk weight to cash owned and held in all offices of the national bank or Federal savings association or in transit; to gold bullion held in the national bank's or Federal savings association's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A national bank or Federal savings association must assign a 20 percent risk weight to cash items in the process of collection.

(3) A national bank or Federal savings association must assign a 100 percent risk weight to DTAs arising from temporary differences that the national bank or Federal savings association could realize through net operating loss carrybacks.

(4) A national bank or Federal savings association must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §3.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the national bank or Federal savings association could not realize through net operating loss carrybacks.

(5) A national bank or Federal savings association must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §3.22.

(6) Notwithstanding the requirements of this section, a national bank or Federal savings association may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies at 12 CFR part 217, provided that all of the following conditions apply:

(i) The national bank or Federal savings association is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

10. Section 3.34 is amended by revising paragraph (c) to read as follows:

**§3.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives. (1) Protection purchasers.* A national bank or Federal savings association that purchases an OTC credit derivative that is recognized under §3.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the national bank or Federal savings association does so consistently for all such credit derivatives. The national bank or Federal savings association must

either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A national bank or Federal savings association that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The national bank or Federal savings association is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The national bank or Federal savings association must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the national bank or Federal savings association is treating the OTC credit derivative as a covered position under subpart F, in which case the national bank or Federal savings association must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

11. Section 3.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§3.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member client national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member national bank or Federal savings association must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*

12. Section 3.36 is amend by revising paragraph (c) to read as follows:

**§3.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a national bank or Federal savings association may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the national bank or Federal savings association must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The national bank or Federal savings association may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The national bank or Federal savings association must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

13. Section 3.37 is amended by revising paragraph (b)(2)(i) and the paragraph headings for paragraphs (b) and (b)(2) are being reprinted for reader reference to read as follows:

**§3.37 Collateralized transactions.**

\* \* \* \* \*

(b) *The simple approach.* \* \* \*

(2) *Risk weight substitution.* (i) A national bank or Federal savings association may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the national bank or Federal savings association has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

14. Section 3.38 is amended by revising paragraph (e)(2) to read as follows:

**§3.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the national bank or Federal savings association has made its delivery until five business days after the counterparty delivery is due, the national bank or

Federal savings association must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the national bank or Federal savings association as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*

15. Section 3.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§3.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) If the national bank or Federal savings association purchases credit protection from a counterparty that is not a securitization SPE, the national bank or Federal savings association must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

16. Section 3.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§3.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial

Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §3.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §3.22(d)(2) are assigned a 250 percent risk weight.

\* \* \* \* \*

17. Section 3.61 is amended to read as follows:

**§3.61 Purpose and scope.**

Sections 3.61 through 3.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a national bank or Federal savings association with total consolidated assets of \$50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures pursuant to §3.172. An advanced approaches national bank or Federal savings association that has not received approval from the OCC to exit parallel run pursuant to §3.121(d) is subject to the disclosure requirements described in §§3.62 and 3.63. A national bank or Federal savings association with total consolidated assets of \$50 billion or more as reported on the national bank's or Federal savings association's most recent year-end Call Report that is not an advanced approaches national bank or Federal savings association making public disclosures subject to §3.172 must comply with §3.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §3.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section,

total consolidated assets are determined based on the average of the national bank's or Federal savings association's total consolidated assets in the four most recent quarters as reported on the Call Report or the average of the national bank or Federal savings association's total consolidated assets in the most recent consecutive quarters as reported quarterly on the national bank's or Federal savings association's Call Report if the national bank or Federal savings association has not filed such a report for each of the most recent four quarters.

18. Section 3.63 is amended by revising Table 3 and Table 8 to read as follows:

**§3.63 Disclosures by national bank or Federal savings associations described in §3.61.**

\* \* \* \* \*

**TABLE 3 TO §3.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a)	A summary discussion of the national bank's or Federal savings association's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for:
		(1) Exposures to sovereign entities;
		(2) Exposures to certain supranational entities and MDBs;
		(3) Exposures to depository institutions, foreign banks, and credit unions;
		(4) Exposures to PSEs;
		(5) Corporate exposures;
		(6) Residential mortgage exposures;
		(7) Statutory multifamily mortgages and pre-sold construction loans;
		(8) HVADC exposures and HVCRE exposures;
		(9) Past due loans;

	(10) Other assets;
	(11) Cleared transactions;
	(12) Default fund contributions;
	(13) Unsettled transactions;
	(14) Securitization exposures; and
	(15) Equity exposures.
	(c) Standardized market risk-weighted assets as calculated under subpart F of this part.
	(d) Common equity tier 1, tier 1 and total risk-based capital ratios:
	(1) For the top consolidated group; and
	(2) For each depository institution subsidiary.
	(e) Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §3.63—SECURITIZATION**

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
	(1) The national bank's or Federal savings association's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the national bank or Federal savings association to other entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
	(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
	(3) The roles played by the national bank or Federal savings association in the securitization process <sup>2</sup> and an indication of the extent of the national bank's or

	Federal savings association 's involvement in each of them;
	(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;
	(5) The national bank's or Federal savings association's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and
	(6) The risk-based capital approaches that the national bank or Federal savings association follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b) A list of:
	(1) The type of securitization SPEs that the national bank or Federal savings association, as sponsor, uses to securitize third-party exposures. The national bank or Federal savings association must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the national bank or Federal savings association manages or advises; and
	(ii) That invest either in the securitization exposures that the national bank or Federal savings association has securitized or in securitization SPEs that the national bank or Federal savings association sponsors. <sup>3</sup>
	(c) Summary of the national bank's or Federal savings association's accounting policies for securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased

		interests;
		(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
		(5) Treatment of synthetic securitizations;
		(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and
		(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the national bank or Federal savings association to provide financial support for securitized assets.
	(d)	An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e)	The total outstanding exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria provided in §3.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f)	For exposures securitized by the national bank or Federal savings association in securitizations that meet the operational criteria in §3.41:
		(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
		(2) Losses recognized by the national bank or Federal savings association during the current period categorized by exposure type. <sup>6</sup>
	(g)	The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h)	Aggregate amount of:
		(1) On-balance sheet securitization exposures retained or purchased

		categorized by exposure type; and
		(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and
		(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:
		(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
		(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
	(j)	Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k)	Aggregate amount of resecuritization exposures retained or purchased categorized according to:
		(1) Exposures to which credit risk mitigation is applied and those not applied; and
		(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The national bank or Federal savings association should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the national bank or Federal savings association is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the national bank or Federal savings association, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the national bank’s or Federal savings association's balance sheet and underlying exposures acquired by the national bank or Federal savings association from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. National banks and Federal savings associations are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the national bank’s or Federal savings association's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the national bank or Federal savings association with respect to securitized assets.

\* \* \* \* \*

19. Section 3.101 is amended by adding to paragraph (b) in alphabetical order the definition of “High volatility commercial real estate (*HVCRE*) *exposure*” to read as follows:

**§3.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

- (1) One- to four-family residential properties;
- (2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 25 (national banks) and 195 (Federal savings associations), and

(ii) Is not an ADC loan to any entity described in 12 CFR 25.12(g)(3) (national banks) and 12 CFR 195.12(g)(3) (Federal savings associations), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the OCC's real estate lending standards at 12 CFR part 34, subpart D (national banks) and 12 CFR part 160 (Federal savings associations);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised “as completed” value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the national bank or Federal savings association advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or

paid in full. Permanent financing may be provided by the national bank or Federal savings association that provided the ADC facility as long as the permanent financing is subject to the national bank's or Federal savings association's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

20. Section 3.131 is amended by revising paragraph (d)(2) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the national bank or Federal savings association assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

21. Section 3.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§3.133 Cleared transactions.**

\* \* \* \* \*

(b) *Clearing member client national banks or Federal savings associations—* \*

\* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client national bank or Federal savings association must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member national bank or Federal savings association must apply the risk weight applicable to the CCP according to subpart D of this part.

\* \* \* \* \*

22. Section 3.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

**§3.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

23. Section 3.202 is amended by revising the definition of “Corporate debt position” in paragraph (b) to read as follows:

**§3.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

24. Section 3.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§3.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* A national bank or Federal savings association may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

25. Section 3.300 is amended by revising paragraphs (b) and (d) to read as follows:

**§3.300 Transitions.**

\* \* \* \* \*

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must make the capital adjustments and deductions in §3.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, a national bank or Federal savings association must make all regulatory capital adjustments and deductions in accordance with §3.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must make the deductions required under §3.22(a)(1)-(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to §3.300.

(i) A national bank or Federal savings association must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to §3.300: goodwill (§3.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§3.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§3.22(a)(4)), defined benefit pension fund assets (§3.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches national banks and Federal savings associations that have completed the parallel run process and that have received notifications from the OCC

pursuant to §3.121(d) of subpart E) and financial subsidiaries (§3.22(a)(7)), and nonincludable subsidiaries of a Federal savings association (§3.22(a)(8)).

**Table 2 to §3.300**

<b>Transition period</b>	<b>Transition deductions under §3.22(a)(1) and (7)</b>	<b>Transition deductions under §3.22(a)(3)-(6)</b>	
	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from tier 1 capital</b>
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) A national bank or Federal savings association must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to §3.300.

(iii) A national bank or Federal savings association must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

**Table 3 to §3.300**

<b>Transition period</b>	<b>Transition deductions under §3.22(a)(2)—percentage of the deductions from common equity tier 1 capital</b>
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60
Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or Federal savings association must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the national bank's or Federal savings association's own credit risk (§3.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to §3.300.

(i) If the aggregate amount of the adjustment is positive, the national bank or Federal savings association must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to §3.300.

(ii) If the aggregate amount of the adjustment is negative, the national bank or Federal savings association must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to §3.300.

**Table 4 to §3.300**

<b>Transition period</b>	<b>Transition adjustments under §3.22(b)(1)(iii)</b>	
	<b>Percentage of the adjustment applied to common equity tier 1 capital</b>	<b>Percentage of the adjustment applied to tier 1 capital</b>
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40
Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches national bank or Federal savings association and a national bank or Federal savings association that has not made an AOCI opt-out election under §3.22(b)(2).* Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association that has not made an AOCI opt-out election under §3.22(b)(2), and in each case through December 31, 2017, a national bank or Federal savings association must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of a national bank's or Federal savings association's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the national bank's or Federal savings association's option, the portion relating to pension assets deducted under section 22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) A national bank or Federal savings association must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to §3.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to §3.300.

**Table 5 to §3.300**

<b>Transition period</b>	<b>Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) A national bank or Federal savings association may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to §3.300.

**Table 6 to §3.300**

<b>Transition period</b>	<b>Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital</b>
Calendar year 2014	36
Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

\* \* \* \* \*

(d) *Minority interest*—(1) [Reserved]

(2) *Non-qualifying minority interest*. Beginning January 1, 2014 for an advanced approaches national bank or Federal savings association, and beginning January 1, 2015 for a national bank or Federal savings association that is not an advanced approaches national bank or Federal savings association, and in each case through December 31, 2017, a national bank or federal savings association may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in §3.20 (non-qualifying minority interest), as set forth in Table 10 to §3.300.

**Table 10 to §3.300**

<b>Transition period</b>	<b>Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

\* \* \* \* \*

**Board of Governors of the Federal Reserve System**

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

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

**Subpart A—General Provisions**

26. 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.

27. Section 217.2 is amended by (1) Removing the definitions of “corporate exposure,” “eligible guarantor,” “high volatility commercial real estate (HVCRE),” “investment in the

capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution,” and (2) Adding the definitions of “corporate exposure,” “eligible guarantor,” “high volatility acquisition, development, or construction (HVADC),” “high volatility commercial real estate (HVCRE),” “International Lending Supervision Act, “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution” as follows:

## **§217.2 Definitions.**

\* \* \* \* \*

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

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;
- (5) A statutory multifamily mortgage;
- (6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure*;
- (7) A cleared transaction;
- (8) A default fund contribution;

(9) A securitization exposure;

(10) An equity exposure; or

(11) An unsettled transaction.

(12) A policy loan; or

(13) A separate account.

\* \* \* \* \*

*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*High volatility acquisition, development, or construction (HVADC) exposure* means a credit facility that is originated on or after [effective date] and that:

(1) Primarily finances or refinances the:

(i) Acquisition of vacant or developed land;

(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or

(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and

(2) Is not a credit facility that finances or refinances:

(i) One- to four-family residential properties;

(ii) Real property projects that would have the primary purpose of “community development” as defined under [12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC)]; or

(iii) The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and

(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior

to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 228, and

(ii) Is not an ADC loan to any entity described in 12 CFR 208.22(a)(3) or 228.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 208, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised “as completed” value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes

only when the credit facility is converted to permanent financing or is sold or paid in full.

Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

*International Lending Supervision Act* means the International Lending Supervision Act of 1983 (12 U.S.C. 3901 et seq.).

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §217.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the Board-regulated institution for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches Board-regulated institution in the capital of an unconsolidated financial institution where the advanced approaches Board-regulated institution owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches Board-regulated institution in the capital of an

unconsolidated financial institution where the advanced approaches Board-regulated institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

28. Section 217.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§217.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the Board-regulated institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

29. Section 217.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and revise Table 1 to read 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 Board-regulated institution's net income, calculated in accordance with the instructions to the Call Report or the FR Y-9C, 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.

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, a MDB, a PSE, or a GSE.

(3) \* \* \*. (i) A Board-regulated institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The Board-regulated institution's common equity tier 1 capital ratio minus the Board-regulated institution's minimum common equity tier 1 capital ratio requirement under § 217.10;

(B) The Board-regulated institution's tier 1 capital ratio minus the Board-regulated institution's minimum tier 1 capital ratio requirement under § 217.10; and

(C) The Board-regulated institution's total capital ratio minus the Board-regulated institution's minimum total capital ratio requirement under § 217.10; or

\* \* \* \* \*

**TABLE 1 TO §217.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 100 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 75 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 50 percent of the Board-regulated institution's applicable GSIB surcharge, <i>and</i> greater than 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the Board-regulated institution's applicable countercyclical capital buffer amount and 25 percent of the Board-regulated institution's applicable GSIB surcharge	0 percent.

\* \* \* \* \*

30. Section 217.20 is amended by revising paragraphs (b)(4), (c)(2), (d)(2), (5) and adding a new paragraph (f) to read as follows:

**§217.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §217.21.

\* \* \* \* \*

(c) \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §217.21, that is not included in the Board-regulated institution's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §217.21, that is not included in the Board-regulated institution's tier 1 capital.

\* \* \* \* \*

(5) For a Board-regulated institution that makes an AOCI opt-out election (as defined in paragraph (b)(2) of §217.22), 45 percent of pretax net unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures.

\* \* \* \* \*

(f) A Board-regulated institution may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of the Board.

31. Section 217.21 is revised to reads as follows:

**§217.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §217.20, a Board-regulated institution that is not an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (a) if a consolidated subsidiary of the Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* The amount of common equity tier 1 minority interest that a Board-regulated institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the Board-regulated institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the Board-regulated institution.* The amount of tier 1 minority interest that a Board-regulated institution may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the Board-regulated institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the Board-regulated institution.* The amount of total capital minority interest that a Board-regulated institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements

of the Board-regulated institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §217.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §217.20, an advanced approaches Board-regulated institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches Board-regulated institution has issued regulatory capital that is not owned by the Board-regulated institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches Board-regulated institution, the advanced approaches Board-regulated institution must assume that the capital adequacy standards of the advanced approaches Board-regulated institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the Board-regulated institution.* For each consolidated subsidiary of an advanced approaches Board-regulated institution, the amount of common equity tier 1 minority interest the advanced approaches Board-regulated institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches Board-regulated institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(1) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of tier 1 minority interest the advanced approaches Board-regulated institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches Board-regulated institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the Board-regulated institution.* For each consolidated subsidiary of the advanced approaches Board-regulated institution, the amount of total capital minority interest the advanced approaches Board-regulated institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches Board-regulated institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches Board-regulated institution that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §217.11 or equivalent standards established by the subsidiary's home country supervisor.

32. Section 217.22 is amended by revising paragraphs (a)(1)(i), paragraphs (c), (d), (g), and (h) to read as follows:

**§217.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1)\*\*\*

(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches Board-regulated institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the advanced approaches Board-regulated institution), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

(1) *Investment in the Board-regulated institution's own capital instruments.* A Board-regulated institution must deduct an investment in the Board-regulated institution's own capital instruments as follows:

(i) A Board-regulated institution must deduct an investment in the Board-regulated institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §217.20(b)(1);

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<sup>23</sup> The Board-regulated institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under §217.20(d)(3).

(ii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for a Board-regulated institution that is not an advanced approaches Board-regulated institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches Board-regulated institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution itself, as described in paragraphs (c)(2)(i)-(iii) of this section. If the Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under §217.20, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §217.300(c)), the Board-regulated institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A Board-regulated institution must deduct investments in the capital of other financial institutions it holds

reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* A Board-regulated institution that is not an advanced approaches Board-regulated institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 217.2) that exceed 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, a Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i)

An advanced approaches Board-regulated institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §217.2) that, in the aggregate,

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<sup>24</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution that is not an advanced approaches Board-regulated institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

exceed 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches Board-regulated institution that underwrites a failed underwriting, with the prior written approval of the Board, for the period of time stipulated by the Board, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches Board-regulated institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches Board-regulated institution's total non-significant investments in unconsolidated financial institutions.

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<sup>26</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches Board-regulated institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

(d) *MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) A Board-regulated institution that is not an advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs

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<sup>28</sup> With prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

(a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

(ii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. A Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §217.22(e)) arising from timing differences that the Board-regulated institution could realize through net operating loss carrybacks. The Board-regulated institution must risk weight these assets at 100 percent. For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(iii) The Board-regulated institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, a Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. A Board-regulated institution that elects to exclude DTAs relating to adjustments under

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<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the Board-regulated institution and assigned a 250 percent risk weight.

paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. A Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

(2) An advanced approaches Board-regulated institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches Board-regulated institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches Board-regulated institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §217.22(e)) arising from timing differences that the advanced approaches Board-regulated institution could realize through net operating loss carrybacks. The advanced approaches Board-regulated institution must risk weight these assets at 100 percent. For a state member bank that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the state member bank could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup> Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches Board-regulated institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches Board-regulated institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches Board-regulated institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph

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<sup>30</sup> With the prior written approval of the Board, for the period of time stipulated by the Board, an advanced approaches Board-regulated institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

(a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches Board-regulated institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches Board-regulated institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches Board-regulated institution may change its exclusion preference only after obtaining the prior approval of the Board.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* A Board-regulated institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the Board-regulated institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches Board-regulated institution and assigned a 250 percent risk weight.

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §217.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §217.2;

(iii) For an indirect exposure, the Board-regulated institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) A Board-regulated institution may, with the prior approval of the Board, use a conservative estimate of the amount of its investment in the Board-regulated institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) A Board-regulated institution may calculate the gross long position for investments in the Board-regulated institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the Board-regulated institution's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(2) The investment fund's actual holdings of investments in the Board-regulated institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the Board-regulated institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, if the Board-regulated institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the Board-regulated institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the Board-regulated institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) A Board-regulated institution may only net a short position against a long position in an investment in the Board-regulated institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and

short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the Board-regulated institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, and the hedge is deemed effective by the Board-regulated institution's internal control processes, which have not been found to be inadequate by the Board.

33. Section 217.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), (l) to read as follows:

**§217.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs).* A Board-regulated institution must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, a Board-regulated institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §217.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

**TABLE 2 TO §217.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
<b>CRC:</b>	
0-1	20
2	50
3	100
4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) A Board-regulated institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) A Board-regulated institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) A Board-regulated institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with

the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) A Board-regulated institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §217.22(d)(2)(1)(c);

(iii) and (iv) \* \* \*

\* \* \* \* \*

(j)(1) *High volatility acquisition, development, or construction (HVADC) exposures.* A Board-regulated institution must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A Board-regulated institution must assign a 150 percent risk weight to an HVCRE exposure.

(k) Past due exposures. Except for an exposure to a sovereign entity or a residential mortgage exposure or a policy loan, if an exposure is 90 days or more past due or on nonaccrual:

(1) A Board-regulated institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) A Board-regulated institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §217.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) A Board-regulated institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §217.37 if the collateral meets the requirements of that section.

(1) Other assets. (1)(i) A bank holding company or savings and loan holding company must assign a zero percent risk weight to cash owned and held in all offices of subsidiary depository institutions or in transit, and to gold bullion held in a subsidiary depository institution's own vaults, or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities.

(ii) A state member bank must assign a zero percent risk weight to cash owned and held in all offices of the state member bank or in transit; to gold bullion held in the state member bank's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) A Board-regulated institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) A Board-regulated institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the Board-regulated institution could realize through net operating loss carrybacks.

(4) A Board-regulated institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §217.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Board-regulated institution could not realize through net operating loss carrybacks.

(5) A Board-regulated institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §217.22.

(6) Notwithstanding the requirements of this section, a state member bank may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under this part, provided that all of the following conditions apply:

(i) The Board-regulated institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

34. Section 217.34 is amended by revising paragraph (c) to read as follows:

**§217.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* A Board-regulated institution that purchases an OTC credit derivative that is recognized under §217.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the Board-regulated institution does so consistently for all such credit derivatives. The Board-regulated institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) A Board-regulated institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The Board-regulated institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The Board-regulated institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the Board-regulated institution is treating the OTC credit derivative as a covered position under subpart F, in which case the Board-regulated institution must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

35. Section 217.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§217.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) \* \* \*

(ii) A clearing member client Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight appropriate for the CCP according to this subpart D.

(4) \* \* \*

(ii) A clearing member Board-regulated institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*

36. Section 217.36 is amend by revising paragraph (c) to read as follows:

**§217.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, a Board-regulated institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the Board-regulated institution must treat the hedged exposure as two separate exposures (protected and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The Board-regulated institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The Board-regulated institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

37. Section 217.37 is amended by revising paragraph (b)(2)(i) to read as follows:

**§217.37 Collateralized transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \* (i) A Board-regulated institution may apply a risk weight to the portion

of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the Board-regulated institution has borrowed, purchased subject to resale, or taken as collateral from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

38. Section 217.38 is amended by revising paragraph (e)(2) to read as follows:

**§217.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the Board-regulated institution has made its delivery until five business days after the counterparty delivery is due, the Board-regulated institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the Board-regulated institution as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*

39. Section 217.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§217.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) If the Board-regulated institution purchases credit protection from a counterparty that is not a securitization SPE, the Board-regulated institution must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

40. Section 217.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§217.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §217.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §217.22(d)(2) are assigned a 250 percent risk weight.

(5) through (7) (ii) \* \* \*

\* \* \* \* \*

41. Section 217.61 is revised to read as follows:

**§217.61 Purpose and scope.**

Sections 217.61 through 217.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for a Board-regulated institution with total consolidated assets of \$50 billion or more as reported on the Board-regulated institution's most recent year-end Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable that is not an advanced approaches Board-regulated institution making public disclosures pursuant to §217.172. An advanced approaches Board-regulated institution that has not received approval from the Board to exit parallel run pursuant to §217.121(d) is subject to the disclosure requirements described in §§217.62 and 217.63. A Board-regulated institution with total

consolidated assets of \$50 billion or more as reported on the Board-regulated institution’s most recent year-end Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable, that is not an advanced approaches Board-regulated institution making public disclosures subject to §217.172 must comply with §217.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §217.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the Board-regulated institution's total consolidated assets in the four most recent quarters as reported on the Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable; or the average of the Board-regulated institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the Board-regulated institution's Call Report, for a state member bank, or FR Y-9C, for a bank holding company or savings and loan holding company, as applicable if the Board-regulated institution has not filed such a report for each of the most recent four quarters.

\* \* \* \* \*

42. Section 217.63 is amended by revising Tables 3 and 8 to read as follows:

**§217.63 Disclosures by Board-regulated institutions described in §217.61.**

\* \* \* \* \*

**TABLE 3 TO §217.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a) A summary discussion of the Board-regulated institution's approach to assessing the adequacy of its capital to support current and future activities.
-------------------------	---

Quantitative disclosures	(b) Risk-weighted assets for:
	(1) Exposures to sovereign entities;
	(2) Exposures to certain supranational entities and MDBs;
	(3) Exposures to depository institutions, foreign banks, and credit unions;
	(4) Exposures to PSEs;
	(5) Corporate exposures;
	(6) Residential mortgage exposures;
	(7) Statutory multifamily mortgages and pre-sold construction loans;
	(8) HVADC exposures and HVCRE exposures;
	(9) Past due loans;
	(10) Other assets;
	(11) Cleared transactions;
	(12) Default fund contributions;
	(13) Unsettled transactions;
	(14) Securitization exposures; and
	(15) Equity exposures.
	(c) Standardized market risk-weighted assets as calculated under subpart F of this part.
	(d) Common equity tier 1, tier 1 and total risk-based capital ratios:
	(1) For the top consolidated group; and
	(2) For each depository institution subsidiary.
	(e) Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §217.63—SECURITIZATION**

Qualitative Disclosures	(a) The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
	(1) The Board-regulated institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the Board-regulated institution to other

	entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
	(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
	(3) The roles played by the Board-regulated institution in the securitization process <sup>2</sup> and an indication of the extent of the Board-regulated institution's involvement in each of them;
	(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;
	(5) The Board-regulated institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and
	(6) The risk-based capital approaches that the Board-regulated institution follows for its securitization exposures including the type of securitization exposure to which each approach applies.
	(b) A list of:
	(1) The type of securitization SPEs that the Board-regulated institution, as sponsor, uses to securitize third-party exposures. The Board-regulated institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the Board-regulated institution manages or advises; and
	(ii) That invest either in the securitization exposures that the Board-regulated institution has securitized or in securitization SPEs that the Board-regulated institution sponsors. <sup>3</sup>
	(c) Summary of the Board-regulated institution's accounting policies for securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased interests;

	(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
	(5) Treatment of synthetic securitizations;
	(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and
	(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the Board-regulated institution to provide financial support for securitized assets.
	(d) An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e) The total outstanding exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria provided in §217.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f) For exposures securitized by the Board-regulated institution in securitizations that meet the operational criteria in §217.41:
	(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
	(2) Losses recognized by the Board-regulated institution during the current period categorized by exposure type. <sup>6</sup>
	(g) The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h) Aggregate amount of:
	(1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and
	(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i) (1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and

	(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:
	(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
	(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
	(j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k) Aggregate amount of resecuritization exposures retained or purchased categorized according to:
	(1) Exposures to which credit risk mitigation is applied and those not applied; and
	(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The Board-regulated institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the Board-regulated institution is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the bank, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions. Securitization transactions (including underlying exposures originally on the bank's balance sheet and underlying exposures acquired by the bank from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. Banks are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the bank's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the bank with respect to securitized assets.

\* \* \* \* \*

43. Section 217.101 paragraph (b) is amended by adding a definition for “*high volatility commercial real estate (HVCRE) exposure*” to read as follows:

**§217.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 228, and

(ii) Is not an ADC loan to any entity described in 12 CFR 208.22(a)(3) or 228.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the

valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the Board's real estate lending standards at 12 CFR part 208, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised "as completed" value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the Board-regulated institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the Board-regulated institution that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

44. Section 217.131 is amended by revising paragraph (d)(2) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the Board-regulated institution assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

45. Section 217.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§217.133 Cleared transactions.**

\* \* \* \* \*

(b)\* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client Board-regulated institution must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member Board-regulated institution must apply the risk weight applicable to the CCP according to subpart D of this part .

\* \* \* \* \*

46. Section 217.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

**§217.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

47. Section 217.202, paragraph (b) is amended by revising the definition of “Corporate debt position” to read as follows:

**§217.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

48. Section 217.210 is amended by revising paragraphs (b)(2)(ii) and (b)(2)(vii)(A) to read as follows:

**§217.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* A Board-regulated institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(vii) \* \* \* (A) General requirements. (1) A Board-regulated institution that is not an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is not calculating

risk-weighted assets according to Subpart E must assign a specific risk-weighting factor to a securitization position using either the simplified supervisory formula approach (SSFA) in paragraph (b)(2)(vii)(C) of this section (and §217.211) or assign a specific risk-weighting factor of 100 percent to the position.

(2) A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E must calculate a specific risk add-on for a securitization position in accordance with paragraph (b)(2)(vii)(B) of this section if the Board-regulated institution and the securitization position each qualifies to use the SFA in §217.143. A Board-regulated institution that is an advanced approaches Board-regulated institution or is a U.S. intermediate holding company that is required to be established or designated pursuant to 12 CFR 252.153 and that is calculating risk-weighted assets according to Subpart E with a securitization position that does not qualify for the SFA under paragraph (b)(2)(vii)(B) of this section may assign a specific risk-weighting factor to the securitization position using the SSFA in accordance with paragraph (b)(2)(vii)(C) of this section or assign a specific risk-weighting factor of 100 percent to the position.

(3) A Board-regulated institution must treat a short securitization position as if it is a long securitization position solely for calculation purposes when using the SFA in paragraph (b)(2)(vii)(B) of this section or the SSFA in paragraph (b)(2)(vii)(C) of this section.

\* \* \* \* \*

49. Section 217.300 is amended by revising paragraphs (b), (c)(2), (3), and (d) to read as follows:

### **§217.300 Transitions.**

\* \* \* \* \*

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution must make the capital adjustments and deductions in §217.22 in accordance with the transition requirements in this paragraph (b). Beginning January 1, 2018, a Board-regulated institution must make all regulatory capital adjustments and deductions in accordance with §217.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution, must make the deductions required under §217.22(a)(1)-(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to §217.300.

(i) A Board-regulated institution must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to §217.300: goodwill (§217.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§217.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§217.22(a)(4)), defined benefit pension fund assets (§217.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches Board-regulated institutions that have completed the parallel run process and that have received notifications from the Board pursuant to §217.121(d) of subpart E) (§217.22(a)(6)), and financial subsidiaries (§217.22(a)(7)).

**Table 2 to §217.300**

<b>Transition period</b>	<b>Transition deductions under §217.22(a)(1) and (7)</b>	<b>Transition deductions under §217.22(a)(3)-(6)</b>	
	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from tier 1 capital</b>
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) A Board-regulated institution must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to §217.300.

(iii) A Board-regulated institution must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

**Table 3 to §217.300**

<b>Transition period</b>	<b>Transition deductions under §217.22(a)(2)—percentage of the deductions from common equity tier 1 capital</b>
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60

Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution, must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the Board-regulated institution's own credit risk (§217.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to §217.300.

(i) If the aggregate amount of the adjustment is positive, the Board-regulated institution must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to §217.300.

(ii) If the aggregate amount of the adjustment is negative, the Board-regulated institution must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to §217.300.

**Table 4 to §217.300**

<b>Transition period</b>	<b>Transition adjustments under §217.22(b)(1)(iii)</b>	
	<b>Percentage of the adjustment applied to common equity tier 1 capital</b>	<b>Percentage of the adjustment applied to tier 1 capital</b>
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40

Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches Board-regulated institution and a Board-regulated institution that has not made an AOCI opt-out election under §217.22(b)(2).* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution that has not made an AOCI opt-out election under §217.22(b)(2), and in each case through December 31, 2017, a Board-regulated institution must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of a Board-regulated institution's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the Board-regulated institution's option, the portion relating to pension assets deducted under section 22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) A Board-regulated institution must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to §217.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to §217.300.

**Table 5 to §217.300**

<b>Transition period</b>	<b>Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) A Board-regulated institution may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to §217.300.

**Table 6 to §217.300**

<b>Transition period</b>	<b>Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital</b>
Calendar year 2014	36

Calendar year 2015	27
Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

\* \* \* \* \*

(c) \* \* \*

(2) *Mergers and acquisitions.* (i) A depository institution holding company of \$15 billion or more that acquires after December 31, 2013 either a depository institution holding company with total consolidated assets of less than \$15 billion as of December 31, 2009 (depository institution holding company under \$15 billion) or a depository institution holding company that is a 2010 MHC, may include in regulatory capital the non-qualifying capital instruments issued by the acquired organization up to the applicable percentages set forth in Table 8 to §217.300.

(ii) If a depository institution holding company under \$15 billion acquires after December 31, 2013 a depository institution holding company under \$15 billion or a 2010 MHC, and the resulting organization has total consolidated assets of \$15 billion or more as reported on the resulting organization's FR Y-9C for the period in which the transaction occurred, the resulting organization may include in regulatory capital non-qualifying instruments of the resulting organization up to the applicable percentages set forth in Table 8 to §217.300.

**Table 8 to §217.300**

<b>Transition period (calendar year)</b>	<b>Percentage of non-qualifying capital instruments includable in additional tier 1 or tier 2 capital for a depository institution holding company of \$15 billion or more</b>
--	--

Calendar year 2014	50
Calendar year 2015	25
Calendar year 2016 and thereafter	0

(3) *Depository institution holding companies under \$15 billion and 2010 MHCs.* (i)

Non-qualifying capital instruments issued by depository institution holding companies under \$15 billion and 2010 MHCs prior to May 19, 2010, may be included in additional tier 1 or tier 2 capital if the instrument was included in tier 1 or tier 2 capital, respectively, as of January 1, 2014.

(ii) Non-qualifying capital instruments includable in tier 1 capital are subject to a limit of 25 percent of tier 1 capital elements, excluding any non-qualifying capital instruments and after applying all regulatory capital deductions and adjustments to tier 1 capital.

(iii) Non-qualifying capital instruments that are not included in tier 1 as a result of the limitation in paragraph (c)(3)(ii) of this section are includable in tier 2 capital.

\* \* \* \* \*

(d) \* \* \*

(1) [Reserved]

(2) *Non-qualifying minority interest.* Beginning January 1, 2014 for an advanced approaches Board-regulated institution, and beginning January 1, 2015 for a Board-regulated institution that is not an advanced approaches Board-regulated institution, and in each case through December 31, 2017, a Board-regulated institution may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in §217.20 (non-qualifying minority interest), as set forth in Table 10 to §217.300.

**Table 10 to §217.300**

<b>Transition period</b>	<b>Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

\* \* \* \* \*

## **12 CFR Part 324**

### **Federal Deposit Insurance Corporation**

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

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

### **Subpart A—General Provisions**

50. 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).

51. Section 324.2 is amended by removing the definitions of “corporate exposure,” “eligible guarantor,” “high volatility commercial real estate (HVCRE) exposure,” “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution,” and adding the definitions of “corporate exposure,” “eligible guarantor,” “high volatility acquisition, development, or construction (HVADC) exposure,” “high volatility commercial real estate (HVCRE) exposure,” “investment in the capital of an unconsolidated financial institution,” “non-significant investment in the capital of an unconsolidated financial institution,” and “significant investment in the capital of an unconsolidated financial institution” as follows:

**§324.2 Definitions.**

\* \* \* \* \*

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

- (1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);
- (2) An exposure to a GSE;
- (3) A residential mortgage exposure;
- (4) A pre-sold construction loan;

- (5) A statutory multifamily mortgage;
- (6) A high volatility acquisition, development, or construction (HVADC) exposure or a *high volatility commercial real estate (HVCRE) exposure*;
- (7) A cleared transaction;
- (8) A default fund contribution;
- (9) A securitization exposure;
- (10) An equity exposure; or
- (11) An unsettled transaction.

\* \* \* \* \*

*Eligible guarantor* means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

\* \* \* \* \*

*High-volatility acquisition, development, or construction (HVADC) exposure* means a credit facility that is originated on or after [effective date] and that:

(1) Primarily finances or refinances the:

(i) Acquisition of vacant or developed land;

(ii) Development of land to prepare to erect new structures including, but not limited to, the laying of sewers or water pipes and demolishing existing structures; or

(iii) Construction of buildings, dwellings, or other improvements including additions or alterations to existing structures; and

(2) Is not a credit facility that finances or refinances:

(i) One- to four-family residential properties;

(ii) Real property projects that would have the primary purpose of “community development” as defined under 12 CFR part 25 (national bank), 12 CFR part 195 (Federal savings association) (OCC); 12 CFR part 228 (Board); 12 CFR part 345 (FDIC); or

(iii) The purchase or development of agricultural land, including, but not limited to, all land used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for commercial or residential development; and

(3) Is not a permanent loan. A permanent loan for purposes of this definition means a prudently underwritten loan that has a clearly identified ongoing source of repayment sufficient to service amortizing principal and interest payments aside from the sale of the property. For

purposes of this section, a permanent loan does not include a loan that finances or refinances a stabilization period or unsold lots or units of for-sale projects.

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart D, means a credit facility that is either outstanding or committed prior to [effective date] and, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

(1) One- to four-family residential properties;

(2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 345, and

(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the FDIC's real estate lending standards at 12 CFR part 365, subpart A (state non-member banks), 12 CFR 390.264 and 390.265 (state savings associations);

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised "as completed" value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the FDIC-supervised institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full. Permanent financing may be provided by the FDIC-supervised institution that provided the ADC facility as long as the permanent financing is subject to the FDIC-supervised institution's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

*Investment in the capital of an unconsolidated financial institution* means a net long position calculated in accordance with §324.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or is an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to capital instruments, excluding underwriting positions held by the FDIC-supervised institution for five or fewer business days.

\* \* \* \* \*

*Non-significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution

owns 10 percent or less of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

*Significant investment in the capital of an unconsolidated financial institution* means an investment by an advanced approaches FDIC-supervised institution in the capital of an unconsolidated financial institution where the advanced approaches FDIC-supervised institution owns more than 10 percent of the issued and outstanding common stock of the unconsolidated financial institution.

\* \* \* \* \*

52. Section 324.10 is amended by revising paragraph (c)(4)(ii)(H) to read as follows:

**§324.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(H) The credit equivalent amount of all off-balance sheet exposures of the FDIC-supervised institution, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under U.S. GAAP, and derivative transactions, determined using the applicable credit conversion factor under §324.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

\* \* \* \* \*

53. Section 324.11 is amended by revising paragraphs (a)(2)(i), (a)(2)(iv), (a)(3)(i), and Table 1 to read as follows:

**§324.11 Capital conservation buffer and countercyclical capital buffer amount.**

(a) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(iv) *Private sector credit exposure.* Private sector credit exposure means an exposure to a company or an individual that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the European Stability Mechanism, the European Financial Stability Facility, the International Monetary Fund, an MDB, a PSE, or a GSE.

(3) *Calculation of capital conservation buffer.* (i) An FDIC-supervised institution's capital conservation buffer is equal to the lowest of the following ratios, calculated as of the last day of the previous calendar quarter:

(A) The FDIC-supervised institution's common equity tier 1 capital ratio minus the FDIC-supervised institution's minimum common equity tier 1 capital ratio requirement under § 324.10;

(B) The FDIC-supervised institution's tier 1 capital ratio minus the FDIC-supervised institution's minimum tier 1 capital ratio requirement under § 324.10; and

(C) The FDIC-supervised institution's total capital ratio minus the FDIC-supervised institution's minimum total capital ratio requirement under § 324.10; or

\* \* \* \* \*

**TABLE 1 TO §324.11—CALCULATION OF MAXIMUM PAYOUT AMOUNT**

<b>Capital conservation buffer</b>	<b>Maximum payout ratio</b>
Greater than 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	No payout ratio limitation applies.
Less than or equal to 2.5 percent plus 100 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	60 percent.
Less than or equal to 1.875 percent plus 75 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	40 percent.
Less than or equal to 1.25 percent plus 50 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount, <i>and</i> greater than 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	20 percent.
Less than or equal to 0.625 percent plus 25 percent of the FDIC-supervised institution's applicable countercyclical capital buffer amount	0 percent.

\* \* \* \* \*

54. Section 324.20 is amended by revising paragraphs (b)(4), (c)(1)(viii), (c)(2), and (d)(2) to read as follows:

**§324.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(b) \* \* \*

(4) Any common equity tier 1 minority interest, subject to the limitations in §324.21.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) Any cash dividend payments on the instrument are paid out of the FDIC-supervised institution's net income or retained earnings. An FDIC-supervised institution must obtain prior FDIC approval for any dividend payment involving a reduction or retirement of capital stock in accordance with 12 CFR 303.241.

\* \* \* \* \*

(2) Tier 1 minority interest, subject to the limitations in §324.21, that is not included in the FDIC-supervised institution's common equity tier 1 capital.

\* \* \* \* \*

(d) \* \* \*

(2) Total capital minority interest, subject to the limitations set forth in §324.21, that is not included in the FDIC-supervised institution's tier 1 capital.

\* \* \* \* \*

55. Section 324.21 is revised to reads as follows:

**§324.21 Minority interest.**

(a) (1) *Applicability.* For purposes of §324.20, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in

this paragraph (a) if a consolidated subsidiary of the FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution.

(2) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* The amount of common equity tier 1 minority interest that an FDIC-supervised institution may include in common equity tier 1 capital must be no greater than 10 percent of the sum of all common equity tier 1 capital elements of the FDIC-supervised institution (not including the common equity tier 1 minority interest itself), less any common equity tier 1 capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(3) *Tier 1 minority interest includable in the tier 1 capital of the FDIC-supervised institution.* The amount of tier 1 minority interest that an FDIC-supervised may include in tier 1 capital must be no greater than 10 percent of the sum of all tier 1 capital elements of the FDIC-supervised institution (not including the tier 1 minority interest itself), less any tier 1 capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(4) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* The amount of total capital minority interest that an FDIC-supervised institution may include in total capital must be no greater than 10 percent of the sum of all total capital elements of the FDIC-supervised institution (not including the total capital minority interest itself), less any total capital regulatory adjustments and deductions in accordance with §324.22 (a) and (b).

(b) (1) *Applicability.* For purposes of §324.20, an advanced approaches FDIC-supervised institution is subject to the minority interest limitations in this paragraph (b) if:

(i) A consolidated subsidiary of the advanced approaches FDIC-supervised institution has issued regulatory capital that is not owned by the FDIC-supervised institution; and

(ii) For each relevant regulatory capital ratio of the consolidated subsidiary, the ratio exceeds the sum of the subsidiary's minimum regulatory capital requirements plus its capital conservation buffer.

(2) *Difference in capital adequacy standards at the subsidiary level.* For purposes of the minority interest calculations in this section, if the consolidated subsidiary issuing the capital is not subject to capital adequacy standards similar to those of the advanced approaches FDIC-supervised institution, the advanced approaches FDIC-supervised institution must assume that the capital adequacy standards of the advanced approaches FDIC-supervised institution apply to the subsidiary.

(3) *Common equity tier 1 minority interest includable in the common equity tier 1 capital of the FDIC-supervised institution.* For each consolidated subsidiary of an advanced approaches FDIC-supervised institution, the amount of common equity tier 1 minority interest the advanced approaches FDIC-supervised institution may include in common equity tier 1 capital is equal to:

(i) The common equity tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's common equity tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution, multiplied by the difference between the common equity tier 1 capital of the subsidiary and the lower of:

(A) The amount of common equity tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor; or

(B)(1) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The common equity tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

(4) *Tier 1 minority interest includable in the tier 1 capital of the advanced approaches FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised institution, the amount of tier 1 minority interest the advanced approaches FDIC-supervised institution may include in tier 1 capital is equal to:

(i) The tier 1 minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's tier 1 capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the tier 1 capital of the subsidiary and the lower of:

(A) The amount of tier 1 capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(I) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The tier 1 capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

(5) *Total capital minority interest includable in the total capital of the FDIC-supervised institution.* For each consolidated subsidiary of the advanced approaches FDIC-supervised

institution, the amount of total capital minority interest the advanced approaches FDIC-supervised institution may include in total capital is equal to:

(i) The total capital minority interest of the subsidiary; minus

(ii) The percentage of the subsidiary's total capital that is not owned by the advanced approaches FDIC-supervised institution multiplied by the difference between the total capital of the subsidiary and the lower of:

(A) The amount of total capital the subsidiary must hold, or would be required to hold pursuant to paragraph (b) of this section, to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor, or

(B)(1) The standardized total risk-weighted assets of the advanced approaches FDIC-supervised institution that relate to the subsidiary multiplied by

(2) The total capital ratio the subsidiary must maintain to avoid restrictions on distributions and discretionary bonus payments under §324.11 or equivalent standards established by the subsidiary's home country supervisor.

56. Section 324.22 is amended by revising paragraphs (a)(1), (c), (d), (g), and (h) to read as follows:

**§324.22 Regulatory capital adjustments and deductions.**

(a) \* \* \*

(1)(i) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section; and

(ii) For an advanced approaches FDIC-supervised institution, goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the

advanced approaches FDIC-supervised institution), in accordance with paragraph (d) of this section;

\* \* \* \* \*

(c) *Deductions from regulatory capital related to investments in capital instruments*<sup>23</sup>—

(1) *Investment in the FDIC-supervised institution's own capital instruments.* An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own capital instruments as follows:

(i) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under §324.20(b)(1);

(ii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(iii) An FDIC-supervised institution must deduct an investment in the FDIC-supervised institution's own tier 2 capital instruments from its tier 2 capital elements.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), investments in the capital of unconsolidated financial institutions for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution (as described in paragraph (c)(4) of this section), non-significant investments in the capital of unconsolidated

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<sup>23</sup> The FDIC-supervised institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under §324.20(d)(3).

financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(5) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions for an advanced approaches FDIC-supervised institution (as described in paragraph (c)(6) of this section). Under the corresponding deduction approach, an FDIC-supervised institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the FDIC-supervised institution itself, as described in paragraphs (c)(2)(i)-(iii) of this section. If the FDIC-supervised institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the shortfall must be deducted according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common equity tier 1, additional tier 1 or tier 2 capital instruments under §324.20, the FDIC-supervised institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §324.300(c)), the FDIC-supervised institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* An FDIC-supervised institution must deduct investments in the capital of other financial institutions it holds reciprocally, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach.

(4) *Investments in the capital of unconsolidated financial institutions.* An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must deduct its investments in the capital of unconsolidated financial institutions (as defined in § 324.2) that exceed 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section by applying the corresponding

deduction approach.<sup>24</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an FDIC-supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>25</sup>

(5) *Non-significant investments in the capital of unconsolidated financial institutions.* (i)

An advanced approaches FDIC-supervised institution must deduct its non-significant investments in the capital of unconsolidated financial institutions (as defined in §324.2) that, in the aggregate, exceed 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach.<sup>26</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, an advanced approaches FDIC-

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<sup>24</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution is not required to deduct an investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

<sup>25</sup> Any investments in the capital of unconsolidated financial institutions that do not exceed the 25 percent threshold for investments in the capital of unconsolidated financial institutions under this section must be assigned the appropriate risk weight under subparts D or F of this part, as applicable.

<sup>26</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the FDIC.

supervised institution that underwrites a failed underwriting, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, is not required to deduct a non-significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) to the extent the investment is related to the failed underwriting.<sup>27</sup>

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the advanced approaches FDIC-supervised institution's non-significant investments in the capital of unconsolidated financial institutions in the form of such capital component to the advanced approaches FDIC-supervised institution's total non-significant investments in unconsolidated financial institutions.

(6) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* An advanced approaches FDIC-supervised institution must deduct its significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock by applying the corresponding deduction approach.<sup>28</sup> The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this

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<sup>27</sup> Any non-significant investments in the capital of unconsolidated financial institutions that do not exceed the 10 percent threshold for non-significant investments under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

<sup>28</sup> With prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress which is not in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution pursuant to this paragraph (c) if such investment is related to such failed underwriting.

*(d) MSAs and certain DTAs subject to common equity tier 1 capital deduction thresholds.*

(1) An FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(1).

(i) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(1) that, individually, exceeds 25 percent of the sum of the FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c)(3) of this section (the 25 percent common equity tier 1 capital deduction threshold).<sup>29</sup>

(ii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements, as set forth in (d)(1), the amount of DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §324.22(e)) arising from timing differences that the FDIC-supervised institution could

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<sup>29</sup> The amount of the items in paragraph (d)(1) of this section that is not deducted from common equity tier 1 capital must be included in the risk-weighted assets of the FDIC-supervised institution and assigned a 250 percent risk weight.

realize through net operating loss carrybacks. The FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(iii) The FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(iv) For purposes of calculating the amount of DTAs subject to deduction pursuant to paragraph (d)(1) of this section, an FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

(2) An advanced approaches FDIC-supervised institution must make deductions from regulatory capital as described in this paragraph (d)(2).

(i) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d)(2) that, individually, exceeds 10 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(A) DTAs arising from temporary differences that the advanced approaches FDIC-supervised institution could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An advanced approaches FDIC-supervised institution is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with §324.22(e)) arising from timing differences that the advanced approaches FDIC-supervised institution could realize through net operating loss carrybacks. The advanced approaches FDIC-supervised institution must risk weight these assets at 100 percent. For an FDIC-supervised institution that is a member of a consolidated group for tax purposes, the amount of DTAs that could be realized through net operating loss carrybacks may not exceed the amount that the FDIC-supervised institution could reasonably expect to have refunded by its parent holding company.

(B) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(C) Significant investments in the capital of unconsolidated financial institutions in the form of common stock, net of associated DTLs in accordance with paragraph (e) of this section.<sup>30</sup> Significant investments in the capital of unconsolidated financial institutions in the form of common stock subject to the 10 percent common equity tier 1 capital deduction threshold may be reduced by any goodwill embedded in the valuation of such investments deducted by the advanced approaches FDIC-supervised institution pursuant to paragraph (a)(1) of this section. In addition, with the prior written approval of the FDIC, for the period of time stipulated by the

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<sup>30</sup> With the prior written approval of the FDIC, for the period of time stipulated by the FDIC, an advanced approaches FDIC-supervised institution is not required to deduct a significant investment in the capital instrument of an unconsolidated financial institution in distress in the form of common stock pursuant to this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the FDIC.

FDIC, an advanced approaches FDIC-supervised institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to this paragraph (d)(2) if such investment is related to such failed underwriting.

(ii) An advanced approaches FDIC-supervised institution must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(2)(i) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the advanced approaches FDIC-supervised institution's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(2)(i) of this section (the 15 percent common equity tier 1 capital deduction threshold). Any goodwill that has been deducted under paragraph (a)(1) of this section can be excluded from the significant investments in the capital of unconsolidated financial institutions in the form of common stock.<sup>31</sup>

(iii) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an advanced approaches FDIC-supervised institution may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An advanced approaches FDIC-supervised institution that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An advanced approaches

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<sup>31</sup> The amount of the items in paragraph (d)(2) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the advanced approaches FDIC-supervised institution and assigned a 250 percent risk weight.

FDIC-supervised institution may change its exclusion preference only after obtaining the prior approval of the FDIC.

\* \* \* \* \*

(g) *Treatment of assets that are deducted.* An FDIC-supervised institution must exclude from standardized total risk-weighted assets and, as applicable, advanced approaches total risk-weighted assets any item that is required to be deducted from regulatory capital.

(h) *Net long position.* (1) For purposes of calculating an investment in the FDIC-supervised institution's own capital instrument and an investment in the capital of an unconsolidated financial institution under this section, the net long position is the gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as adjusted to recognize a short position in the same instrument calculated in accordance with paragraph (h)(3) of this section.

(2) *Gross long position.* The gross long position is determined as follows:

(i) For an equity exposure that is held directly, the adjusted carrying value as that term is defined in §324.51(b);

(ii) For an exposure that is held directly and is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §324.2;

(iii) For an indirect exposure, the FDIC-supervised institution's carrying value of the investment in the investment fund, provided that, alternatively:

(A) An FDIC-supervised institution may, with the prior approval of the FDIC, use a conservative estimate of the amount of its investment in the FDIC-supervised institution's own capital instruments or its investment in the capital of an unconsolidated financial institution held through a position in an index; or

(B) An FDIC-supervised institution may calculate the gross long position for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of an unconsolidated financial institution by multiplying the FDIC-supervised institution's carrying value of its investment in the investment fund by either:

(1) The highest stated investment limit (in percent) for investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(2) The investment fund's actual holdings of investments in the FDIC-supervised institution's own capital instruments or investments in the capital of unconsolidated financial institutions.

(iv) For a synthetic exposure, the amount of the FDIC-supervised institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position has a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the FDIC-supervised institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to

match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in the FDIC-supervised institution's own capital instrument under paragraph (c)(1) of this section or an investment in the capital of an unconsolidated financial institution under paragraphs (c) and (d):

(A) An FDIC-supervised institution may only net a short position against a long position in an investment in the FDIC-supervised institution's own capital instrument under paragraph (c) of this section if the short position involves no counterparty credit risk.

(B) A gross long position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution resulting from a position in an index may be netted against a short position in the same index. Long and short positions in the same index without maturity dates are considered to have matching maturities.

(C) A short position in an index that is hedging a long cash or synthetic position in an investment in the FDIC-supervised institution's own capital instrument or an investment in the capital of an unconsolidated financial institution can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the FDIC-supervised institution's Call Report and the hedge is deemed effective by the FDIC-supervised institution's internal control processes, which have not been found to be inadequate by the FDIC.

\* \* \* \* \*

58. Section 324.32 is amended by revising paragraphs (b), (d)(2), (d)(3)(ii), (j), (k), and (l) to read as follows:

**§324.32 General risk weights.**

\* \* \* \* \*

(b) *Certain supranational entities and multilateral development banks (MDBs).* An FDIC-supervised institution must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(d) \* \* \*

(2) *Exposures to foreign banks.* (i) Except as otherwise provided under paragraphs (d)(2)(iii), (d)(2)(v) and (d)(3) of this section, an FDIC-supervised institution must assign a risk weight to an exposure to a foreign bank, in accordance with Table 2 to §324.32, based on the CRC that corresponds to the foreign bank's home country or the OECD membership status of the foreign bank's home country if there is no CRC applicable to the foreign bank's home country.

**TABLE 2 TO §324.32—RISK WEIGHTS FOR EXPOSURES TO FOREIGN BANKS**

	<b>Risk weight (in percent)</b>
CRC:	
0-1	20
2	50
3	100

4-7	150
OECD Member with No CRC	20
Non-OECD Member with No CRC	100
Sovereign Default	150

(ii) An FDIC-supervised institution must assign a 20 percent risk weight to an exposure to a foreign bank whose home country is a member of the OECD and does not have a CRC.

(iii) An FDIC-supervised institution must assign a 20 percent risk-weight to an exposure that is a self-liquidating, trade-related contingent item that arises from the movement of goods and that has a maturity of three months or less to a foreign bank whose home country has a CRC of 0, 1, 2, or 3, or is an OECD member with no CRC.

(iv) An FDIC-supervised institution must assign a 100 percent risk weight to an exposure to a foreign bank whose home country is not a member of the OECD and does not have a CRC, with the exception of self-liquidating, trade-related contingent items that arise from the movement of goods, and that have a maturity of three months or less, which may be assigned a 20 percent risk weight.

(v) An FDIC-supervised institution must assign a 150 percent risk weight to an exposure to a foreign bank immediately upon determining that an event of sovereign default has occurred in the bank's home country, or if an event of sovereign default has occurred in the foreign bank's home country during the previous five years.

(3) \* \* \*

(ii) A significant investment in the capital of an unconsolidated financial institution in the form of common stock pursuant to §324.22(d)(2)(i)(c);

\* \* \* \* \*

(j)(1) *High-volatility acquisition, development, or construction (HVADC) exposures.* An FDIC-supervised institution must assign a 130 percent risk weight to an HVADC exposure.

(2) *High-volatility commercial real estate (HVCRE) exposures.* A FDIC-supervised institution must assign a 150 percent risk weight to an HVCRE exposure

(k) *Past due exposures.* Except for an exposure to a sovereign entity or a residential mortgage exposure, if an exposure is 90 days or more past due or on nonaccrual:

(1) An FDIC-supervised institution must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An FDIC-supervised institution may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under §324.36 if the guarantee or credit derivative meets the requirements of that section; and

(3) An FDIC-supervised institution may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under §324.37 if the collateral meets the requirements of that section.

(l) *Other assets.* (1) An FDIC-supervised institution must assign a zero percent risk weight to cash owned and held in all offices of the FDIC-supervised institution or in transit; to gold bullion held in the FDIC-supervised institution's own vaults or held in another depository institution's vaults on an allocated basis, to the extent the gold bullion assets are offset by gold bullion liabilities; and to exposures that arise from the settlement of cash transactions (such as equities, fixed income, spot foreign exchange and spot commodities) with a central counterparty where there is no assumption of ongoing counterparty credit risk by the central counterparty after settlement of the trade and associated default fund contributions.

(2) An FDIC-supervised institution must assign a 20 percent risk weight to cash items in the process of collection.

(3) An FDIC-supervised institution must assign a 100 percent risk weight to DTAs arising from temporary differences that the FDIC-supervised institution could realize through net operating loss carrybacks.

(4) An FDIC-supervised institution must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to §324.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the FDIC-supervised institution could not realize through net operating loss carrybacks.

(5) An FDIC-supervised institution must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to §324.22.

(6) Notwithstanding the requirements of this section, an FDIC-supervised institution may assign an asset that is not included in one of the categories provided in this section to the risk weight category applicable under the capital rules applicable to bank holding companies and savings and loan holding companies under 12 CFR part 217, provided that all of the following conditions apply:

(i) The FDIC-supervised institution is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(ii) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this subpart.

\* \* \* \* \*

59. Section 324.34 is amended by revising paragraph (c) to read as follows:

**§324.34 OTC derivative contracts.**

\* \* \* \* \*

(c) *Counterparty credit risk for OTC credit derivatives.* (1) *Protection purchasers.* An FDIC-supervised institution that purchases an OTC credit derivative that is recognized under §324.36 as a credit risk mitigant for an exposure that is not a covered position under subpart F is not required to compute a separate counterparty credit risk capital requirement under this subpart D provided that the FDIC-supervised institution does so consistently for all such credit derivatives. The FDIC-supervised institution must either include all or exclude all such credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure to all relevant counterparties for risk-based capital purposes.

(2) *Protection providers.* (i) An FDIC-supervised institution that is the protection provider under an OTC credit derivative must treat the OTC credit derivative as an exposure to the underlying reference asset. The FDIC-supervised institution is not required to compute a counterparty credit risk capital requirement for the OTC credit derivative under this subpart D, provided that this treatment is applied consistently for all such OTC credit derivatives. The FDIC-supervised institution must either include all or exclude all such OTC credit derivatives that are subject to a qualifying master netting agreement from any measure used to determine counterparty credit risk exposure.

(ii) The provisions of this paragraph (c)(2) apply to all relevant counterparties for risk-based capital purposes unless the FDIC-supervised institution is treating the OTC credit derivative as a covered position under subpart F, in which case the FDIC-supervised institution must compute a supplemental counterparty credit risk capital requirement under this section.

\* \* \* \* \*

60. Section 324.35 is amended by revising paragraph (b)(3)(ii), (b)(4)(ii), (c)(3)(ii), and (c)(4)(ii) to read as follows:

**§324.35 Cleared transactions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member client FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or custodian in connection with a cleared transaction in accordance with the requirements under this subpart D.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight appropriate for the CCP according to this subpart D.

\* \* \* \* \*

(4) \* \* \*

(ii) A clearing member FDIC-supervised institution must calculate a risk-weighted asset amount for any collateral provided to a CCP, clearing member, or a custodian in connection with a cleared transaction in accordance with requirements under this subpart D.

\* \* \* \* \*

61. Section 324.36 is amended by revising paragraph (c) to read as follows:

**§324.36 Guarantees and credit derivatives: substitution treatment.**

\* \* \* \* \*

(c) *Substitution approach*—(1) *Full coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is greater than or equal to the exposure amount of the hedged exposure, an FDIC-supervised institution may recognize the guarantee or credit derivative in determining the risk-weighted asset amount for the hedged exposure by substituting the risk weight applicable to the guarantor or credit derivative protection provider under this subpart D for the risk weight assigned to the exposure.

(2) *Partial coverage*. If an eligible guarantee or eligible credit derivative meets the conditions in paragraphs (a) and (b) of this section and the protection amount (P) of the guarantee or credit derivative is less than the exposure amount of the hedged exposure, the FDIC-supervised institution must treat the hedged exposure as two separate exposures (protected

and unprotected) in order to recognize the credit risk mitigation benefit of the guarantee or credit derivative.

(i) The FDIC-supervised institution may calculate the risk-weighted asset amount for the protected exposure under this subpart D, where the applicable risk weight is the risk weight applicable to the guarantor or credit derivative protection provider.

(ii) The FDIC-supervised institution must calculate the risk-weighted asset amount for the unprotected exposure under this subpart D, where the applicable risk weight is that of the unprotected portion of the hedged exposure.

(iii) The treatment provided in this section is applicable when the credit risk of an exposure is covered on a partial pro rata basis and may be applicable when an adjustment is made to the effective notional amount of the guarantee or credit derivative under paragraphs (d), (e), or (f) of this section.

\* \* \* \* \*

62. Section 324.37 is amended by revising paragraph (b)(2)(i) to read as follows:

**§324.37 Collateralized transactions.**

\* \* \* \* \*

(b) \* \* \*

(2) *Risk weight substitution.* (i) An FDIC-supervised institution may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements of paragraph (b)(1) of this section) based on the risk weight assigned to the collateral under this subpart D. For repurchase agreements, reverse repurchase agreements, and securities lending and borrowing transactions, the collateral is the instruments, gold, and cash the FDIC-supervised institution has borrowed, purchased subject to resale, or taken as collateral

from the counterparty under the transaction. Except as provided in paragraph (b)(3) of this section, the risk weight assigned to the collateralized portion of the exposure may not be less than 20 percent.

\* \* \* \* \*

63. Section 324.38 is amended by revising paragraph (e)(2) to read as follows:

**§324.38 Unsettled transactions.**

\* \* \* \* \*

(e) \* \* \*

(2) From the business day after the FDIC-supervised institution has made its delivery until five business days after the counterparty delivery is due, the FDIC-supervised institution must calculate the risk-weighted asset amount for the transaction by treating the current fair value of the deliverables owed to the FDIC-supervised institution as an exposure to the counterparty and using the applicable counterparty risk weight under this subpart D.

\* \* \* \* \*

64. Section 324.42 is amended by revising paragraph (j)(2)(ii)(A) to read as follows:

**§324.42 Risk-weighted assets for securitization exposures.**

\* \* \* \* \*

(j) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) If the FDIC-supervised institution purchases credit protection from a counterparty that is not a securitization SPE, the FDIC-supervised institution must determine the risk weight for the exposure according to this subpart D.

\* \* \* \* \*

65. Section 324.52 is amended by revising paragraphs (b)(1) and (4) to read as follows:

**§324.52 Simple risk-weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(1) *Zero percent risk weight equity exposures.* An equity exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, an MDB, and any other entity whose credit exposures receive a zero percent risk weight under §324.32 may be assigned a zero percent risk weight.

\* \* \* \* \*

(4) *250 percent risk weight equity exposures.* Significant investments in the capital of unconsolidated financial institutions in the form of common stock that are not deducted from capital pursuant to §324.22(d)(2) are assigned a 250 percent risk weight.

\* \* \* \* \*

66. Section 324.61 is revised to read as follows:

**§324.61 Purpose and scope.**

Sections 324.61 through 324.63 of this subpart establish public disclosure requirements related to the capital requirements described in subpart B of this part for an FDIC-supervised institution with total consolidated assets of \$50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures pursuant to §324.172. An advanced approaches FDIC-supervised institution that has not received approval from the FDIC to exit parallel run pursuant to §324.121(d) is subject to the disclosure requirements described in §§324.62 and 324.63. An FDIC-supervised institution with total consolidated assets of \$50 billion or more as reported on the FDIC-supervised institution's most recent year-end Call Report that is not an advanced approaches FDIC-supervised institution making public disclosures subject to §324.172 must comply with §324.62 unless it is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to the disclosure requirements of §324.62 or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. For purposes of this section, total consolidated assets are determined based on the average of the FDIC-supervised institution's total consolidated assets in the four most recent quarters as reported on the Call Report; or the average of the FDIC-supervised institution's total consolidated assets in the most recent consecutive quarters as reported quarterly on the FDIC-supervised institution's Call Report if the FDIC-supervised institution has not filed such a report for each of the most recent four quarters.

\* \* \* \* \*

67. Section 324.63 is amended by revising Table 3 and Table 8 to read as follows:

**§324.63 Disclosures by FDIC-supervised institutions described in §324.61.**

\* \* \* \* \*

**TABLE 3 TO §324.63—CAPITAL ADEQUACY**

Qualitative disclosures	(a)	A summary discussion of the FDIC-supervised institution's approach to assessing the adequacy of its capital to support current and future activities.
Quantitative disclosures	(b)	Risk-weighted assets for:
		(1) Exposures to sovereign entities;
		(2) Exposures to certain supranational entities and MDBs;
		(3) Exposures to depository institutions, foreign banks, and credit unions;
		(4) Exposures to PSEs;
		(5) Corporate exposures;
		(6) Residential mortgage exposures;
		(7) Statutory multifamily mortgages and pre-sold construction loans;
		(8) HVADC loans;
		(9) Past due loans;
		(10) Other assets;
		(11) Cleared transactions;
		(12) Default fund contributions;
		(13) Unsettled transactions;
		(14) Securitization exposures; and
		(15) Equity exposures.
	(c)	Standardized market risk-weighted assets as calculated under subpart F of

		this part.
	(d)	Common equity tier 1, tier 1 and total risk-based capital ratios:
		(1) For the top consolidated group; and
		(2) For each depository institution subsidiary.
	(e)	Total standardized risk-weighted assets.

\* \* \* \* \*

**TABLE 8 TO §324.63—SECURITIZATION**

Qualitative Disclosures	(a)	The general qualitative disclosure requirement with respect to a securitization (including synthetic securitizations), including a discussion of:
		(1) The FDIC-supervised institution's objectives for securitizing assets, including the extent to which these activities transfer credit risk of the underlying exposures away from the FDIC-supervised institution to other entities and including the type of risks assumed and retained with resecuritization activity; <sup>1</sup>
		(2) The nature of the risks (e.g. liquidity risk) inherent in the securitized assets;
		(3) The roles played by the FDIC-supervised institution in the securitization process <sup>2</sup> and an indication of the extent of the FDIC-supervised institution's involvement in each of them;
		(4) The processes in place to monitor changes in the credit and market risk of securitization exposures including how those processes differ for resecuritization exposures;
		(5) The FDIC-supervised institution's policy for mitigating the credit risk retained through securitization and resecuritization exposures; and
		(6) The risk-based capital approaches that the FDIC-supervised institution follows for its securitization exposures including the type of securitization

	exposure to which each approach applies.
(b)	A list of:
	(1) The type of securitization SPEs that the FDIC-supervised institution, as sponsor, uses to securitize third-party exposures. The FDIC-supervised institution must indicate whether it has exposure to these SPEs, either on- or off-balance sheet; and
	(2) Affiliated entities:
	(i) That the FDIC-supervised institution manages or advises; and
	(ii) That invest either in the securitization exposures that the FDIC-supervised institution has securitized or in securitization SPEs that the FDIC-supervised institution sponsors. <sup>3</sup>
(c)	Summary of the FDIC-supervised institution's accounting policies for securitization activities, including:
	(1) Whether the transactions are treated as sales or financings;
	(2) Recognition of gain-on-sale;
	(3) Methods and key assumptions applied in valuing retained or purchased interests;
	(4) Changes in methods and key assumptions from the previous period for valuing retained interests and impact of the changes;
	(5) Treatment of synthetic securitizations;
	(6) How exposures intended to be securitized are valued and whether they are recorded under subpart D of this part; and
	(7) Policies for recognizing liabilities on the balance sheet for arrangements that could require the FDIC-supervised institution to provide financial support for securitized assets.

	(d)	An explanation of significant changes to any quantitative information since the last reporting period.
Quantitative Disclosures	(e)	The total outstanding exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria provided in §324.41 (categorized into traditional and synthetic securitizations), by exposure type, separately for securitizations of third-party exposures for which the bank acts only as sponsor. <sup>4</sup>
	(f)	For exposures securitized by the FDIC-supervised institution in securitizations that meet the operational criteria in §324.41:
		(1) Amount of securitized assets that are impaired/past due categorized by exposure type; <sup>5</sup> and
		(2) Losses recognized by the FDIC-supervised institution during the current period categorized by exposure type. <sup>6</sup>
	(g)	The total amount of outstanding exposures intended to be securitized categorized by exposure type.
	(h)	Aggregate amount of:
		(1) On-balance sheet securitization exposures retained or purchased categorized by exposure type; and
		(2) Off-balance sheet securitization exposures categorized by exposure type.
	(i)	(1) Aggregate amount of securitization exposures retained or purchased and the associated capital requirements for these exposures, categorized between securitization and resecuritization exposures, further categorized into a meaningful number of risk weight bands and by risk-based capital approach (e.g., SSFA); and
		(2) Aggregate amount disclosed separately by type of underlying exposure in the pool of any:

	(i) After-tax gain-on-sale on a securitization that has been deducted from common equity tier 1 capital; and
	(ii) Credit-enhancing interest-only strip that is assigned a 1,250 percent risk weight.
	(j) Summary of current year's securitization activity, including the amount of exposures securitized (by exposure type), and recognized gain or loss on sale by exposure type.
	(k) Aggregate amount of resecuritization exposures retained or purchased categorized according to:
	(1) Exposures to which credit risk mitigation is applied and those not applied; and
	(2) Exposures to guarantors categorized according to guarantor creditworthiness categories or guarantor name.

<sup>1</sup>The FDIC-supervised institution should describe the structure of resecuritizations in which it participates; this description should be provided for the main categories of resecuritization products in which the FDIC-supervised institution is active.

<sup>2</sup>For example, these roles may include originator, investor, servicer, provider of credit enhancement, sponsor, liquidity provider, or swap provider.

<sup>3</sup>Such affiliated entities may include, for example, money market funds, to be listed individually, and personal and private trusts, to be noted collectively.

<sup>4</sup>“Exposures securitized” include underlying exposures originated by the FDIC-supervised institution, whether generated by them or purchased, and recognized in the balance sheet, from third parties, and third-party exposures included in sponsored transactions.

Securitization transactions (including underlying exposures originally on the FDIC-supervised

institution's balance sheet and underlying exposures acquired by the FDIC-supervised institution from third-party entities) in which the originating bank does not retain any securitization exposure should be shown separately but need only be reported for the year of inception. FDIC-supervised institutions are required to disclose exposures regardless of whether there is a capital charge under this part.

<sup>5</sup>Include credit-related other than temporary impairment (OTTI).

<sup>6</sup>For example, charge-offs/allowances (if the assets remain on the FDIC-supervised institution's balance sheet) or credit-related OTTI of interest-only strips and other retained residual interests, as well as recognition of liabilities for probable future financial support required of the FDIC-supervised institution with respect to securitized assets.

\* \* \* \* \*

68. Section 324.101 is amended by revising paragraph (b) adding a definition for “*high volatility commercial real estate (HVCRE) exposure*” to read as follows:

**§324.101 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*High volatility commercial real estate (HVCRE) exposure*, for purposes of Subpart E, means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances:

- (1) One- to four-family residential properties;
- (2) Real property that:

(i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a “qualified investment” under 12 CFR part 345, and

(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition;

(3) The purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that the valuation of the agricultural land is based on its value for agricultural purposes and the valuation does not take into consideration any potential use of the land for non-agricultural commercial development or residential development; or

(4) Commercial real estate projects in which:

(i) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio in the FDIC’s real estate lending standards at 12 CFR part 365, appendix C;

(ii) The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised “as completed” value; and

(iii) The borrower contributed the amount of capital required by paragraph (4)(ii) of this definition before the FDIC-supervised institution advances funds under the credit facility, and the capital contributed by the borrower, or internally generated by the project, is contractually required to remain in the project throughout the life of the project. The life of a project concludes only when the credit facility is converted to permanent financing or is sold or paid in full.

Permanent financing may be provided by the FDIC-supervised institution that provided the ADC facility as long as the permanent financing is subject to the FDIC-supervised institution's underwriting criteria for long-term mortgage loans.

\* \* \* \* \*

69. Section 324.131 is amended by revising paragraph (d)(2) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) *Floor on PD assignment.* The PD for each wholesale obligor or retail segment may not be less than 0.03 percent, except for exposures to or directly and unconditionally guaranteed by a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Commission, the European Central Bank, the European Stability Mechanism, the European Financial Stability Facility, or a multilateral development bank, to which the FDIC-supervised institution assigns a rating grade associated with a PD of less than 0.03 percent.

\* \* \* \* \*

70. Section 324.133 is amended by revising paragraphs (b)(3)(ii) and (c)(3)(ii) to read as follows:

**§324.133 Cleared transactions.**

\* \* \* \* \*

(b)\* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member client FDIC-supervised institution must apply the risk weight applicable to the CCP under subpart D of this part.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) For a cleared transaction with a CCP that is not a QCCP, a clearing member FDIC-supervised institution must apply the risk weight applicable to the CCP according to subpart D of this part.

\* \* \* \* \*

71. Section 324.152 is amended by revising paragraph (b)(5) and (6) to read as follows:

**§324.152 Simple risk weight approach (SRWA).**

\* \* \* \* \*

(b) \* \* \*

(5) *300 percent risk weight equity exposures.* A publicly traded equity exposure (other than an equity exposure described in paragraph (b)(7) of this section and including the ineffective portion of a hedge pair) is assigned a 300 percent risk weight.

(6) *400 percent risk weight equity exposures.* An equity exposure (other than an equity exposure described in paragraph (b)(7) of this section) that is not publicly traded is assigned a 400 percent risk weight.

\* \* \* \* \*

72. Section 324.202 is amended by revising paragraph (b) the definition of “Corporate debt position” to read as follows:

**§324.202 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Corporate debt position* means a debt position that is an exposure to a company that is not a sovereign entity, the Bank for International Settlements, the European Central Bank, the

European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank, a depository institution, a foreign bank, a credit union, a public sector entity, a GSE, or a securitization.

\* \* \* \* \*

73. Section 324.210 is amended by revising paragraph (b)(2)(ii) to read as follows:

**§324.210 Standardized measurement method for specific risk.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Certain supranational entity and multilateral development bank debt positions.* An FDIC-supervised institution may assign a 0.0 percent specific risk-weighting factor to a debt position that is an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

74. Section 324.300 is amended by revising paragraphs (b) and (d) to read as follows:

**§324.300 Transitions.**

\* \* \* \* \*

(b) *Regulatory capital adjustments and deductions.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution must make the capital adjustments and deductions in §324.22 in accordance with the transition requirements in this

paragraph (b). Beginning January 1, 2018, an FDIC-supervised institution must make all regulatory capital adjustments and deductions in accordance with §324.22.

(1) *Transition deductions from common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must make the deductions required under §324.22(a)(1)-(7) from common equity tier 1 or tier 1 capital elements in accordance with the percentages set forth in Table 2 and Table 3 to §324.300.

(i) An FDIC-supervised institution must deduct the following items from common equity tier 1 and additional tier 1 capital in accordance with the percentages set forth in Table 2 to §324.300: goodwill (§324.22(a)(1)), DTAs that arise from net operating loss and tax credit carryforwards (§324.22(a)(3)), a gain-on-sale in connection with a securitization exposure (§324.22(a)(4)), defined benefit pension fund assets (§324.22(a)(5)), expected credit loss that exceeds eligible credit reserves (for advanced approaches FDIC-supervised institutions that have completed the parallel run process and that have received notifications from the FDIC pursuant to §324.121(d) of subpart E) (§324.22(a)(6)), and financial subsidiaries (§324.22(a)(7)).

**Table 2 to §324.300**

<b>Transition period</b>	<b>Transition deductions under §324.22(a)(1), (a)(7), (a)(8), and (a)(9)</b>	<b>Transition deductions under §324.22(a)(3)-(6)</b>	
	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from common equity tier 1 capital</b>	<b>Percentage of the deductions from tier 1 capital</b>
Calendar year 2014	100	20	80
Calendar year 2015	100	40	60
Calendar year 2016	100	60	40
Calendar year 2017	100	80	20
Calendar year 2018, and thereafter	100	100	0

(ii) An FDIC-supervised institution must deduct from common equity tier 1 capital any intangible assets other than goodwill and MSAs in accordance with the percentages set forth in Table 3 to §324.300.

(iii) An FDIC-supervised institution must apply a 100 percent risk-weight to the aggregate amount of intangible assets other than goodwill and MSAs that are not required to be deducted from common equity tier 1 capital under this section.

**Table 3 to §324.300**

<b>Transition period</b>	<b>Transition deductions under §324.22(a)(2)—percentage of the deductions from common equity tier 1 capital</b>
Calendar year 2014	20
Calendar year 2015	40
Calendar year 2016	60

Calendar year 2017	80
Calendar year 2018, and thereafter	100

(2) *Transition adjustments to common equity tier 1 capital.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution, must allocate the regulatory adjustments related to changes in the fair value of liabilities due to changes in the FDIC-supervised institution's own credit risk (§324.22(b)(1)(iii)) between common equity tier 1 capital and tier 1 capital in accordance with the percentages set forth in Table 4 to §324.300.

(i) If the aggregate amount of the adjustment is positive, the FDIC-supervised institution must allocate the deduction between common equity tier 1 and tier 1 capital in accordance with Table 4 to §324.300.

(ii) If the aggregate amount of the adjustment is negative, the FDIC-supervised institution must add back the adjustment to common equity tier 1 capital or to tier 1 capital, in accordance with Table 4 to §324.300.

**Table 4 to §324.300**

<b>Transition period</b>	<b>Transition adjustments under §324.22(b)(1)(iii)</b>	
	<b>Percentage of the adjustment applied to common equity tier 1 capital</b>	<b>Percentage of the adjustment applied to tier 1 capital</b>
Calendar year 2014	20	80
Calendar year 2015	40	60
Calendar year 2016	60	40

Calendar year 2017	80	20
Calendar year 2018, and thereafter	100	0

(3) *Transition adjustments to AOCI for an advanced approaches FDIC-supervised institution and an FDIC-supervised institution that has not made an AOCI opt-out election under §324.22(b)(2).* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution and that has not made an AOCI opt-out election under §324.22(b)(2), and in each case through December 31, 2017, an FDIC-supervised institution must adjust common equity tier 1 capital with respect to the transition AOCI adjustment amount (transition AOCI adjustment amount):

(i) The transition AOCI adjustment amount is the aggregate amount of an FDIC-supervised institution's:

(A) Unrealized gains on available-for-sale securities that are preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(B) Net unrealized gains or losses on available-for-sale securities that are not preferred stock classified as an equity security under GAAP or available-for-sale equity exposures, plus

(C) Any amounts recorded in AOCI attributed to defined benefit postretirement plans resulting from the initial and subsequent application of the relevant GAAP standards that pertain to such plans (excluding, at the FDIC-supervised institution's option, the portion relating to pension assets deducted under §324.22(a)(5)), plus

(D) Accumulated net gains or losses on cash flow hedges related to items that are reported on the balance sheet at fair value included in AOCI, plus

(E) Net unrealized gains or losses on held-to-maturity securities that are included in AOCI.

(ii) An FDIC-supervised institution must make the following adjustment to its common equity tier 1 capital:

(A) If the transition AOCI adjustment amount is positive, the appropriate amount must be deducted from common equity tier 1 capital in accordance with Table 5 to §324.300.

(B) If the transition AOCI adjustment amount is negative, the appropriate amount must be added back to common equity tier 1 capital in accordance with Table 5 to §324.300.

**Table 5 to §324.300**

<b>Transition period</b>	<b>Percentage of the transition AOCI adjustment amount to be applied to common equity tier 1 capital</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

(iii) An FDIC-supervised institution may include in tier 2 capital the percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures as set forth in Table 6 to §324.300.

**Table 6 to §324.300**

<b>Transition period</b>	<b>Percentage of unrealized gains on available-for-sale preferred stock classified as an equity security under GAAP and available-for-sale equity exposures that may be included in tier 2 capital</b>
Calendar year 2014	36
Calendar year 2015	27

Calendar year 2016	18
Calendar year 2017	9
Calendar year 2018 and thereafter	0

\* \* \* \* \*

(d) *Minority interest*—

(1) [Reserved]

(2) *Non-qualifying minority interest.* Beginning January 1, 2014 for an advanced approaches FDIC-supervised institution, and beginning January 1, 2015 for an FDIC-supervised institution that is not an advanced approaches FDIC-supervised institution, and in each case through December 31, 2017, an FDIC-supervised institution may include in tier 1 capital or total capital the percentage of the tier 1 minority interest and total capital minority interest outstanding as of January 1, 2014 that does not meet the criteria for additional tier 1 or tier 2 capital instruments in §324.20 (non-qualifying minority interest), as set forth in Table 9 to §324.300.

**Table 9 to §324.300**

<b>Transition period</b>	<b>Percentage of the amount of surplus or non-qualifying minority interest that can be included in regulatory capital during the transition period</b>
Calendar year 2014	80
Calendar year 2015	60
Calendar year 2016	40
Calendar year 2017	20
Calendar year 2018 and thereafter	0

Dated: September 26, 2017

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**Keith A. Noreika**

*Acting Comptroller of the Currency*

By order of the Board of Governors of the Federal Reserve System, September 27, 2017.

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**Ann E. Misback,**  
*Secretary of the Board.*

Dated at Washington, D.C. this 27th day of September, 2017.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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**Robert E. Feldman,**

*Executive Secretary.*

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