



**FEDERAL RESERVE SYSTEM**

**12 CFR Part 217**

**Docket R-1703**

**RIN 7100-AF77**

**Regulatory Capital Rule: Eligible Retained Income; Correction**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is correcting changes to the definition of eligible retained income in the capital rule. This definition is used for calculating limitations on capital distributions and discretionary bonus payments and was adopted in an interim final rule published on March 18, 2020, and as a final rule published on October 8, 2020.

**DATES:** This correction is effective [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

**FOR FURTHER INFORMATION CONTACT:**

Benjamin McDonough, Associate General Counsel, (202) 452-2036; Mark Buresh, Senior Counsel, (202) 452-5270; or Andrew Hartlage, Counsel, (202) 452-6483, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Users of Telecommunications Device for the Deaf (TDD) only, call (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Board of Governors of the Federal Reserve System (Board) is issuing this correction to the definition of eligible retained income in the capital rule, 12 CFR part 217. This definition is used for calculating limitations on capital distributions and discretionary bonus payments and was adopted as an interim final rule

published on March 18, 2020 (ERI interim final rule),<sup>1</sup> and as a final rule published on October 8, 2020 (ERI final rule).<sup>2</sup> In the ERI interim final rule, the Board, together with the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC, and together with the Board and the OCC, the agencies), revised the definition of eligible retained income at section \_\_.11(a)(2)(i) of the capital rule on an interim basis and sought comment on the revisions. In the ERI final rule, the agencies adopted these changes to the definition of eligible retained income, introduced through the ERI interim final rule, without change.

On March 20, 2020, the Board published in the Federal Register a final rule, effective May 18, 2020, implementing the stress capital buffer requirement in the capital rule (SCB final rule), which revised section 217.11 of the Board's capital rule generally. The SCB final rule revised the definition of eligible retained income in section 217.11 of the Board's capital rule in a manner inconsistent with the the Board's intent in the ERI interim final rule and the ERI final rule. The Board is issuing this notice to correct the definition of eligible retained income so that it is consistent with the definition established by the ERI interim final rule and affirmed by the ERI final rule.

### **List of Subjects in 12 CFR Part 217**

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

### **12 CFR Chapter II**

#### **Authority and Issuance**

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

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<sup>1</sup> Regulatory Capital Rule: Eligible Retained Income, 85 FR 15909 (March 20, 2020).

<sup>2</sup> Regulatory Capital Rule and Total Loss-Absorbing Capacity Rule: Eligible Retained Income, 85 FR 63423 (October 8, 2020). The final rule is effective January 1, 2021.

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

**(REGULATION Q)**

1. The authority citation for part 217 continues to read as follows:

AUTHORITY: 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371, 5371 note; and Pub. L. 116-136, 134 Stat. 281.

2. Section 217.11 is amended by revising paragraph (a)(2)(i) 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 greater of:

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

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

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By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

**Ann Misback,**  
*Secretary of the Board.*

