DEPARTMENT OF TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
[Docket ID OCC-2020-0017]
RIN 1557-AE89

FEDERAL RESERVE SYSTEM
12 CFR Part 217
[Regulation Q; Docket No. R-1711]
RIN 7100-AF85

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 324
RIN 3064-AF47

Regulatory Capital Rule: Temporary Changes to and Transition for the Community Bank Leverage Ratio Framework

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are adopting as final the revisions to the community bank leverage ratio framework made under two interim final rules issued in the Federal Register on April 23, 2020. The final rule adopts these interim final rules with no changes. Under the final rule, the community bank leverage ratio will remain 8 percent through calendar year 2020, will be 8.5 percent through calendar year 2021, and will be 9 percent thereafter. The final rule also maintains a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percentage point below the applicable community bank leverage ratio requirement.

DATES: The final rule is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Benjamin Pegg, Risk Expert, or Jung Sup Kim, Risk Specialist, Capital and Regulatory Policy, (202) 649–6370; Carl Kaminski, Special Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452-5239; Elizabeth MacDonald, Manager, (202) 872-7526; Christopher Appel, Senior Financial Institution Policy Analyst II, (202) 973-6862; or Brendan Rowan, Senior Financial Institution Policy Analyst I, (202) 475-6685, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452-2036; Mark Buresh, Senior Counsel, (202) 452-2877; Andrew Hartlage, Counsel, (202) 452-6483; or Jonah Kind, Senior Attorney, (202) 452-2045, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Users of Telecommunication Device for the Deaf (TDD) only, call (202) 263-4869.

FDIC: Bobby R. Bean, Associate Director, bbean@fdic.gov; Benedetto Bosco, Chief, Capital Policy Section, bbosco@fdic.gov; Noah Cuttler, Senior Policy Analyst, ncuttler@fdic.gov; regulatorycapital@fdic.gov; Capital Markets Branch, Division of Risk Management Supervision, (202) 898-6888; or Michael Phillips, Counsel, mphillips@fdic.gov; Catherine Wood, Counsel, cawood@fdic.gov; Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925-4618.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Community Bank Leverage Ratio Framework

The community bank leverage ratio framework provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria. The community bank leverage ratio framework implements section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires 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) to establish a community bank leverage ratio of not less than 8 percent and not more than 10 percent for a qualifying community banking organization.[1] Under section 201(c) of

[1] Pub. L. 115-174, 132 Stat. 1296, 1306–07 (2018) (codified at 12 U.S.C. 5371 note). The authorizing statutes use the term "qualifying community bank," whereas the regulation

EGRRCPA, a qualifying community banking organization whose leverage ratio exceeds the community bank leverage ratio, as established by the agencies, shall be considered to have met the generally applicable risk-based and leverage capital requirements in the capital rule (generally applicable rule), any other applicable capital or leverage requirements, and, if applicable, the "well capitalized" capital ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act. Section 201(b) of EGRRCPA also requires the agencies to establish procedures for the treatment of a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

In November 2019, the agencies issued a final rule establishing the community bank leverage ratio framework, which became effective January 1, 2020 (2019 final rule).[2] Under the 2019 final rule, the agencies established a community bank leverage ratio of 9 percent using the existing leverage ratio calculation. A qualifying community banking organization that maintained a leverage ratio of greater than 9 percent and elected to use the community bank leverage ratio framework would have been considered to have satisfied the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the capital ratio

implementing the statutes uses the term "qualifying community banking organization." The terms generally have the same meaning. Section 201(a)(3) of EGRRCPA provides that a qualifying community bank is a depository institution or depository institution holding company with total consolidated assets of less than $10 billion that satisfies such other factors, based on the banking organization's risk profile, that the agencies determine are appropriate. This determination shall be based on consideration of off-balance sheet exposures, trading assets and liabilities, total notional derivatives exposures, and any such factors that the agencies determine appropriate.

[2] 84 FR 61776 (November 13, 2019).

requirements to be considered well capitalized.[3]

Under the 2019 final rule, a qualifying community banking organization is any depository institution or depository institution holding company that has less than $10 billion in total consolidated assets, off-balance sheet exposures (excluding derivatives other than sold credit derivatives and unconditionally cancelable commitments) of 25 percent or less of total consolidated assets, and trading assets and liabilities of 5 percent or less of total consolidated assets. The banking organization also cannot be an advanced approaches banking organization.[4]

In addition, the 2019 final rule established a two-quarter grace period during which a qualifying community banking organization that temporarily failed to meet any of the qualifying criteria, including the leverage ratio requirement, generally would still have been considered well capitalized so long as the banking organization maintained a leverage ratio of greater than 8 percent during that grace period. A banking organization that either failed to meet all the qualifying criteria within the grace period or failed to maintain a leverage ratio of greater than 8 percent would have been required to comply with the generally applicable rule and file the appropriate regulatory reports.

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[3] Under existing prompt corrective action requirements applicable to insured depository institutions, to be considered "well capitalized" a banking organization must demonstrate that it is not subject to any written agreement, order, capital directive, or as applicable, prompt corrective action directive, to meet and maintain a specific capital level for any capital measure. See 12 CFR 6.4(b)(1)(iv) (OCC); 12 CFR 208.43(b)(1)(v) (Board); 12 CFR 324.403(b)(1)(v) (FDIC). The same legal requirements continue to apply under the community bank leverage ratio framework.

[4] A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approaches banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. See 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

II. Interim Final Rules

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law.[5] Section 4012 of the CARES Act directs the agencies to issue an interim final rule providing that, for purposes of section 201 of EGRRCPA, the community bank leverage ratio shall be 8 percent, and a qualifying community banking organization whose leverage ratio falls below the community bank leverage ratio requirement established under the CARES Act shall have a reasonable grace period to satisfy that requirement. Section 4012 of the CARES Act specifies that the interim final rule is effective during the period beginning on the date on which the agencies issue the interim final rule and ending on the sooner of the termination date of the national emergency concerning the coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act, or December 31, 2020 (termination date).

Accordingly, the agencies issued an interim final rule that implements a temporary 8-percent community bank leverage ratio requirement, as mandated under section 4012 of the CARES Act (statutory interim final rule).[6] In addition, under the statutory interim final rule, a community banking organization that temporarily fails to meet any of the qualifying criteria, including the 8-percent community bank leverage ratio requirement, generally will still be considered well capitalized provided that the banking organization maintains a leverage ratio equal to 7 percent or greater. A banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

[5] Pub. L. 116-136, 134 Stat. 281.

[6] 85 FR 22924 (April 23, 2020).

Since the statutory interim final rule could cease to be effective at any time before December 31, 2020, the agencies issued a separate interim final rule pursuant to section 201(b) of EGRRCPA that provides a graduated transition from the temporary 8-percent community bank leverage ratio requirement to the 9-percent community bank leverage ratio requirement as established under the 2019 final rule (transition interim final rule).[7] Specifically, the transition interim final rule provides that, once the statutory interim final rule ceases to apply, the community bank leverage ratio will be 8 percent in the second quarter through fourth quarter of calendar year 2020, 8.5 percent in calendar year 2021, and 9 percent thereafter. The transition interim final rule also modifies the two-quarter grace period for a qualifying community banking organization to account for the graduated increase in the community bank leverage ratio requirement. The interim final rules do not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

The transition interim final rule extends the 8-percent community bank leverage ratio through December 31, 2020, in the event the statutory interim final rule terminates before December 31, 2020. Thus, even if the statutory interim final rule were to terminate prior to December 31, 2020, the community bank leverage ratio would continue to be set at 8 percent for the remainder of 2020. Section 201 of EGRRCPA requires a qualifying community banking organization to exceed the community bank leverage ratio established by the agencies in order to be considered to have met the generally applicable rule, any other applicable capital or leverage requirements, and, if applicable, the "well capitalized" capital ratio requirements, whereas section 4012 of the CARES Act requires that a qualifying community banking organization meet or exceed an 8 percent community bank leverage ratio to be considered the same.

[7] 85 FR 22930 (April 23, 2020).

In the 2019 final rule, the agencies adopted a 9-percent community bank leverage ratio requirement on the basis that this threshold, with complementary qualifying criteria, generally maintains the current level of regulatory capital held by qualifying banking organizations and supports the agencies' goals of reducing regulatory burden while maintaining safety and soundness. The agencies intend for the graduated approach under the transition interim final rule to provide community banking organizations with sufficient time to meet a 9-percent community bank leverage ratio requirement while they also focus on supporting lending to creditworthy households and businesses. This latter goal is particularly critical given the recent strain on the U.S. economy caused by COVID–19.

Consistent with section 201(c) of EGRRCPA, under the transition interim final rule, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized during a two-quarter grace period so long as the banking organization maintains a leverage ratio of the following: greater than 7 percent in the second quarter through fourth quarter of calendar year 2020, greater than 7.5 percent in calendar year 2021, and greater than 8 percent thereafter.[8] A banking organization that fails to meet the qualifying criteria by the end of the grace period or reports a leverage ratio of equal to or less than 7 percent in the second through fourth quarters of calendar year 2020, equal to or less than

[8] While the statutory interim final rule is in effect, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized so long as the banking organization maintains a leverage ratio of 7 percent or greater during a two-quarter grace period. Similarly, while the statutory interim final rule is in effect, a banking organization that fails to meet the qualifying criteria by the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

7.5 percent in calendar year 2021, or equal to or less than 8 percent thereafter, would be required to comply immediately with the generally applicable rule and file the appropriate regulatory reports.

The agencies adopted in the 2019 final rule a two-quarter grace period with a leverage ratio requirement that is 1 percentage point below the community bank leverage ratio on the basis that this grace period would appropriately mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a banking organization's risk profile from quarter to quarter, while capturing more permanent changes in a banking organization's risk profile. The agencies maintained this approach in the interim final rules because they believed that this approach is appropriate and provides a qualifying community banking organization whose leverage ratio falls below the applicable community bank leverage ratio requirement a reasonable amount of time to once again satisfy that requirement. This approach is consistent with section 201(b)(2) of EGRRCPA, which directs the agencies to establish procedures for the treatment of a qualifying community bank whose leverage ratio falls below the community bank leverage ratio requirement as established by the agencies.

The agencies received one public comment that addressed the substance of the interim final rules. The commenter urged the agencies to revert to a 9 percent community bank leverage ratio by January 1, 2022, which is consistent with the transition interim final rule. The agencies are adopting as final the interim final rules with no changes.

III. Final Rule

Under the final rule, a qualifying community banking organization must have a leverage ratio equal to or greater than 8 percent beginning in the second quarter of calendar year 2020. If the national emergency is terminated during 2020, under the final rule, a qualifying community banking organization must have a leverage ratio greater than 8 percent for the remainder of calendar year 2020. Subsequently, a qualifying community banking organization must have a leverage ratio greater than 8.5 percent through calendar year 2021 and greater than 9 percent thereafter.[9]

The final rule also includes the modified two-quarter grace period for a qualifying community banking organization to take into account the graduated increase in the community bank leverage ratio requirement.[10] Specifically, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, will generally still be deemed well capitalized during a two-quarter grace period so long as the banking organization maintains a leverage ratio of the following: greater than 7 percent in the second quarter through fourth quarter of calendar year 2020, greater than 7.5 percent in calendar year 2021, and greater than 8 percent thereafter.[11]

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[9] The provisions under the final rule are effective October 1, 2020. Banking organizations will continue to be subject to the requirements under the statutory interim final rule or transition interim final rule for purposes of filing their Consolidated Report of Condition and Income (Call Report) or Form FR Y–9C, as applicable. A banking organization's compliance with capital requirements for a quarter prior to the final rule's effective date shall be determined according to the generally applicable rule unless the banking organization has filed its Call Report or FR Y–9C report, as applicable, for the prior quarter and has indicated that it has elected to use the community bank leverage ratio framework.

[10] Consistent with the 2019 final rule, a banking organization that ceases to satisfy the qualifying criteria as a result of a business combination also will receive no grace period and will be required to comply with the generally applicable rule.

[11] Prior to the termination date, a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the applicable community bank leverage ratio requirement, generally would still be deemed well capitalized so long as the banking organization maintains a leverage ratio of 7 percent or greater during a two-quarter grace period. Similarly, prior to the termination date, a banking organization that fails to meet the qualifying criteria after the end of the grace period or reports a leverage ratio of less than 7 percent must comply with the generally applicable rule and file the appropriate regulatory reports.

The final rule does not make any changes to the other qualifying criteria in the community bank leverage ratio framework.

Table 1: Schedule of Community Bank Leverage Ratio Requirements

Calendar Year	Community Bank Leverage Ratio Requirement	Leverage Ratio Requirement under the Applicable Grace Period
2020	8 percent	7 percent
2021	8.5 percent	7.5 percent
2022 and thereafter	9 percent	8 percent

The agencies are maintaining the 2019 final rule's requirement that the grace period will begin as of the end of the calendar quarter in which the electing banking organization ceases to satisfy any of the qualifying criteria (so long as the banking organization maintains a leverage ratio of greater than the requirement for the applicable grace period) and will end after two consecutive calendar quarters. For example, if an electing banking organization, which had met all qualifying criteria as of March 31, 2020, no longer met one of the qualifying criteria as of May 15, 2020, and still had not met the criteria as of the end of that quarter, the grace period for the banking organization would have begun as of the end of the quarter ending June 30, 2020. The banking organization may continue to use the community bank leverage ratio framework as of September 30, 2020 (so long as the banking organization maintains a leverage ratio of greater than the requirement for the applicable grace period), but would need to comply fully with the generally applicable rule and associated reporting requirements as of December 31, 2020, unless the banking organization once again meets all qualifying criteria by that date.

If an electing banking organization is in the grace period when the community bank leverage ratio increases, the banking organization would be subject, as of the date of the change, to both the higher community bank leverage ratio requirement and higher grace period leverage ratio requirement. For example, if the electing banking organization that were to meet all qualifying criteria as of September 30, 2020, but reports a 7.2 percent leverage ratio as of December 31, 2020, and meets all the other qualifying criteria, the grace period for such a banking organization would begin as of the end of the fourth quarter 2020. The banking organization may continue to use the community bank leverage ratio framework as of March 31, 2021, if the banking organization reports a leverage ratio of greater than 7.5 percent, and would need to comply fully with the generally applicable rule and associated reporting requirements as of June 30, 2021, unless the banking organization reports a leverage ratio of greater than 8.5 percent (and meets all the other qualifying criteria) by that date. In this example, if the banking organization has a leverage ratio equal to or less than 7.5 percent as of March 31, 2021, it would not be eligible to use the community bank leverage ratio framework and would be subject to the requirements of the generally applicable rule and associated reporting requirements as of March 31, 2021.

As mentioned above, the grace period for an electing community banking organization is limited to two consecutive calendar quarters. For example, if an electing banking organization were to meet all qualifying criteria as of June 30, 2021, but reports a 8.3 percent leverage ratio (while meeting all the other qualifying criteria) as of the end of September 30, 2021, the grace period for such a banking organization would begin as of the end of the third quarter 2021. The banking organization may continue to use the community bank leverage ratio framework as of December 31, 2021, if the banking organization reports a leverage ratio of greater than 7.5 percent, and would need to comply fully with the generally applicable rule and associated reporting requirements as of March 31, 2022, unless the banking organization reports a leverage ratio of greater than 9.0 percent (and meets all the other qualifying criteria) by that date.

IV. Impact Analysis

The final rule will affect all banking organizations (*i.e.*, depository institutions and depository institution holding companies) that qualify for the community bank leverage ratio framework and elect to adopt it. Based on data as of March 31, 2020, there are 5,189 banking organizations with less than $10 billion in total consolidated assets.[12] The agencies estimate that approximately 96 percent of these banking organizations qualify to use the community bank leverage ratio framework under the 8 percent requirement in effect for the remainder of calendar year 2020. As of March 31, 2020, the temporary reduction in the community bank leverage ratio requirement during the remainder of calendar year 2020 from 9 percent to 8 percent will increase the scope of qualifying community banks by approximately 480 depository institutions and approximately 20 depository institution holding companies (holding companies).

As of March 31, 2020, approximately 39 percent of qualifying banking organizations have elected to use the community bank leverage ratio framework. Approximately 92 percent of these banking organizations have total assets of less than $1 billion. As of March 31, 2020, 1,709 depository institutions have elected to use the community bank leverage ratio framework. As of the same period, 29 holding companies have elected to use the community bank leverage ratio framework. The agencies anticipate that banking organizations that have elected to use the community bank leverage ratio framework should be able to manage the transition in the

[12] Based on data reported on Form FR Y-9C and the Reports of Condition and Income (Call Reports).

leverage ratio requirement under the final rule in a prudent manner, given that the final rule provides a graduated transition back to a 9 percent leverage ratio requirement by 2022.

V. Administrative Law Matters

A. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.[13] If a rule is deemed a "major rule" by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[14]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[15]

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act. As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

B. Paperwork Reduction Act

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[13] 5 U.S.C. 801 et seq.
[14] 5 U.S.C. 801(a)(3).
[15] 5 U.S.C. 804(2).

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule does not contain any information collection requirements. However, in connection with the transition interim final rule, the Board temporarily revised the Financial Statements for Holding Companies (FR Y–9 reports; OMB No. 7100-0128) and invited comment on a proposal to extend that collection of information for three years, with revision. No comments were received regarding this proposal under the PRA. The Board has now extended, with revision, the FR Y-9 reports, as proposed, to align the reporting instructions with this final rule. The Board will submit information collection burden estimates to OMB to finalize the revisions. All of the updates to the FR Y-9C noted in the transition interim final rule should be minimal and result in zero net change in hourly burden.

Additionally, in connection with the transition interim final rule, the agencies made revisions to the Call Reports (OCC OMB Control No. 1557-0081; Board OMB Control No. 7100-0036; and FDIC OMB Control No. 3064-0052) and the FFIEC 101 (OCC OMB Control No. 1557-0239; Board OMB Control No. 7100-0319; FDIC OMB Control No. 3064-0159). The final changes to the Call Reports, the FFIEC 101, and their related instructions are addressed in a separate Federal Register notice.[16]

Revision, With Extension, of the Following Information Collections

(1) *Report Title:* Financial Statements for Holding Companies.

Agency form number: FR Y-9C, FR Y-9LP, FR Y-9SP, FR Y-9ES, and FR Y-9CS.

OMB control number: 7100-0128.

[16] See 85 FR 44361 (May 22, 2020).

Effective Date: Currently effective.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,[17] securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y-9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 71; FR Y-9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35; FR Y-9C (non-advanced approaches, non CBLR, HCs with less than $5 billion in total assets): 84; FR Y-9C (non-advanced approaches, non CBLR HCs, with $5 billion or more in total assets): 154; FR Y-9C (advanced approaches HCs): 19; FR Y-9LP: 434; FR Y-9SP: 3,960; FR Y-9ES: 83; FR Y-9CS: 236.

Estimated average hours per response:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 29.17 hours; FR Y-9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35.14; FR Y-9C (non-advanced approaches, non CBLR HCs, with less than $5 billion in total assets): 41.01; FR Y-9C (non-advanced approaches, non CBLR, HCs with $5 billion or more in total assets): 46.98 hours; FR Y-9C (advanced approaches HCs): 48.80 hours; FR Y-9LP: 5.27 hours; FR Y-9SP: 5.40 hours; FR Y-9ES: 0.50 hours; FR Y-9CS: 0.50 hours.

Recordkeeping

[17] A savings and loan holding company (SLHC) must file one or more of the FR Y-9 series of reports unless it is: (1) a grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

FR Y-9C (non-advanced approaches HCs with less than $5 billion in total assets), FR Y-9C (non-advanced approaches HCs with $5 billion or more in total assets), FR Y-9C (advanced approaches HCs), and FR Y-9LP: 1.00 hour; FR Y-9SP, FR Y-9ES, and FR Y-9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y-9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 8,284 hours; FR Y-9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 4,920; FR Y-9C (non-advanced approaches non CBLR HCs with less than $5 billion in total assets): 13,779; FR Y-9C (non-advanced approaches non CBLR HCs with $5 billion or more in total assets): 28,940 hours; FR Y-9C (advanced approaches HCs): 3,709 hours; FR Y-9LP: 9,149 hours; FR Y-9SP: 42,768 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

Recordkeeping

FR Y-9C: 1,452 hours; FR Y-9LP: 1,736 hours; FR Y-9SP: 3,960 hours; FR Y-9ES: 42 hours; FR Y-9CS: 472 hours.

General description of report:

The FR Y-9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.[18] The FR Y-9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.[19]

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[18] The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

[19] Under certain circumstances described in the FR Y-9C's General Instructions, HCs with assets under $3 billion may be required to file the FR Y-9C.

The FR Y-9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y-9C, as well as by each of its subsidiary HCs.[20] The report consists of standardized financial statements.

The FR Y-9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y-9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y-9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y--9ES consists of four schedules: a Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y-9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y-9 reports. The data items included on the FR Y-9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y 9 family of reports on bank holding companies pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12

[20] A top-tier HC may submit a separate FR Y-9LP on behalf of each of its lower-tier HCs.

U.S.C. § 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. § 1467a(b)(2) and (3)), as amended by sections 369(8) and 604(h)(2) of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act); on U.S. intermediate holding companies pursuant to section 5 of the BHC Act (12 U.S.C § 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act (12 U.S.C. §§ 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. § 1850a(c)(1)(A)). The obligation to submit the FR Y 9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y-9CS, which is voluntary.

With respect to the FR Y 9C report, Schedule HI's data item 7(g) "FDIC deposit insurance assessments," Schedule HC P's data item 7(a) "Representation and warranty reserves for 1 4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies," and Schedule HC P's data item 7(b) "Representation and warranty reserves for 1 4 family residential mortgage loans sold to other parties" are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y 9C report, Schedule HC's memorandum item 2.b. and the FR Y 9SP report, Schedule SC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. § 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Additionally, items on the FR Y-9C, Schedule HC-C for loans modified under Section 4013, data items Memorandum items 16.a, "Number of Section 4013 loans outstanding"; and Memorandum items 16.b, "Outstanding balance of Section 4013 loans" are considered confidential. While the Board generally makes institution-level FR Y-9C report data publicly available, the Board is collecting Section 4013 loan information as part of condition reports for the impacted HCs and the Board considers disclosure of these items at the HC level would not be in the public interest. Such information is permitted to be collected on a confidential basis, consistent with 5 U.S.C. § 552(b)(8). In addition, holding companies may be reluctant to offer modifications under Section 4013 if information on these modifications made by each holding company is publicly available, as analysts, investors, and other users of public FR Y-9C report information may penalize an institution for using the relief provided by the CARES Act. The Board may disclose Section 4013 loan data on an aggregated basis, consistent with confidentiality.

Aside from the data items described above, the remaining data items on the FR Y-9C report and the FR-Y 9SP report are generally not accorded confidential treatment. The data items collected on FR Y-9LP, FR Y-9ES, and FR Y-9CS reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y-9C, FR Y-9LP, FR Y-9SP, and FR Y-9ES reports each respectively direct the financial institution to retain the work papers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)). In addition, the financial institution's work papers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. § 552(b)(4)).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[21] The RFA requires an agency to prepare a final regulatory flexibility analysis when it promulgates a final rule after being required to publish a general notice of proposed rulemaking.[22] As discussed previously, the agencies have decided to adopt, without changes, revisions to the community bank leverage ratio framework made under the statutory interim final rule and the

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[21] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with annual receipts of $41.5 million or less. See 13 CFR 121.201.

[22] 5 U.S.C. 604.

transition interim final rule. There is no general notice of proposed rulemaking associated with this final rule. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to the promulgation of this final rule.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[23] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[24] Each Federal banking agency has determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply. In any event, the final rule shall be effective October 1, 2020.

E. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[25] requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of

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[23] 12 U.S.C. 4802(a).

[24] 12 U.S.C. 4802.

[25] 12 U.S.C. 4809.

this requirement, the agencies have sought to present the final rule in a simple and straightforward manner. The agencies did not receive any comments on the use of plain language.

F. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 et seq., requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.[26] Therefore, because the OCC has found good cause to dispense with notice and comment for the final rule, the OCC concludes that the requirements of UMRA do not apply to this final rule.

Authority and Issuance

For the reasons set forth in the joint preamble, the interim final rules which were published at 85 FR 22924 and 85 FR 22930 on April 23, 2020, are adopted as a final rule without change.

Brian P. Brooks,
Acting Comptroller of the Currency

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

Ann Misback,
Secretary of the Board.

[26] See 2 U.S.C. 1532(a).

Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on or about ___, 2020.
Robert E. Feldman,
Executive Secretary.