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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 3

[Docket ID OCC–2019–0001]

RIN 1557–AE60

## FEDERAL RESERVE SYSTEM

#### 12 CFR Part 217

[Docket ID R–1659]

RIN 7100–AF46

## FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 324

RIN 3064–AE81

### Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio To Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping, and Asset Servicing Activities

**AGENCY:** The Office of the Comptroller of the Currency; 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, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation are issuing a final rule to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Section 402 directs these agencies to amend the regulatory capital rule to exclude from the supplementary leverage ratio certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

**DATES:** The rule is effective April 1, 2020.

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#### I. Overview of the Proposal

In April 2019, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published a notice of proposed rulemaking (proposal)<sup>1</sup> to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (section 402).<sup>2</sup>

Section 402 requires the agencies to amend the supplementary leverage ratio, a measure of capital adequacy that applies to large banking organizations. Under section 402, the supplementary leverage ratio must not take into account funds of a custodial bank that are deposited with certain central banks, provided that any amount that exceeds the value of deposits of the custodial bank that are linked to fiduciary or custodial and safekeeping accounts must be taken into account when calculating the supplementary leverage ratio as applied to the custodial bank.<sup>3</sup> Under section 402, central bank deposits that qualify for the exclusion include deposits of custodial banks placed with (1) the Federal Reserve System, (2) the European Central Bank, and (3) central banks of member countries of the Organisation for Economic Co-operation and

<sup>1</sup> 84 FR 18175 (April 30, 2019).

<sup>2</sup> Public Law 115–174, 132 Stat. 1296 (2018), section 402.

<sup>3</sup> *Id.* at 402(b)(2).

Development (OECD),<sup>4</sup> if the member country has been assigned a zero percent risk weight under the agencies' regulatory capital rule (capital rule) and the sovereign debt of such member country is not in default or has not been in default during the previous five years.<sup>5</sup> Section 402 defines a custodial bank as "any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company."<sup>6</sup>

The proposal would have implemented section 402 by defining the scope of banking organizations considered to be predominantly engaged in custody, safekeeping, and asset servicing activities and by providing the standard by which such banking organizations would determine the amount of central bank deposits that could be excluded from total leverage exposure, which is the denominator of the supplementary leverage ratio in the capital rule.

Under the proposal, a depository institution holding company with a ratio of assets under custody (AUC)-to-total assets of at least 30:1 would have been considered predominantly engaged in custody, safekeeping, and asset servicing activities. Such a banking organization would have been termed a "custodial banking organization." A custodial banking organization would have excluded from the supplementary leverage ratio deposits placed at a "qualifying central bank," which would have included a Federal Reserve Bank, the European Central Bank, or any central bank of a member country of the OECD if the member country meets certain criteria. The amount of central bank deposits that could have been excluded from total leverage exposure would have been limited by the amount of deposit liabilities of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts.

The agencies collectively received six comment letters on the proposal (from banking organizations and other interested parties). Some commenters were supportive of the agencies' proposal to implement section 402. Other commenters acknowledged that the agencies are required to implement section 402 but raised various concerns regarding the potential effect that

implementation of section 402 would have on other aspects of the banking sector.

The agencies have considered all the comments received on the proposal. As described in more detail below, the agencies are adopting the proposal as a final rule without modification. The agencies are required under section 402 to amend the capital rule to exclude from the supplementary leverage ratio certain central bank deposits of banking organizations predominantly engaged in custody, safekeeping, and asset servicing activities. The agencies' adoption of the proposal fulfills this statutory requirement. The final rule becomes effective on April 1, 2020.

## II. Background

### A. The Supplementary Leverage Ratio

The supplementary leverage ratio measures tier 1 capital relative to total leverage exposure, which includes on-balance sheet assets (including deposits at central banks) and certain off-balance sheet exposures.<sup>7</sup> A minimum supplementary leverage ratio of 3 percent applies to certain banking organizations and their depository institution subsidiaries.<sup>8</sup> In addition, banking organizations that will be subject to Category I standards, which are the global systemically important bank holding companies (U.S. GSIBs), as well as their depository institution subsidiaries, are subject to enhanced supplementary leverage ratio (eSLR) standards. The eSLR standards require each U.S. GSIB to maintain a supplementary leverage ratio above 5 percent to avoid limitations on the firm's distributions and certain discretionary bonus payments and also require each of its insured depository institutions to maintain a supplementary leverage ratio of at least 6 percent to be deemed "well capitalized" under the prompt corrective action framework of each agency.<sup>9</sup>

<sup>7</sup> 12 CFR 3.10(a)(5) and (c)(4) (OCC); 12 CFR 217.10(a)(5) and (c)(4) (Board); 12 CFR 324.10(a)(5) and (c)(4) (FDIC).

<sup>8</sup> The agencies recently adopted final rules tailoring the application of capital requirements, including the supplementary leverage ratio, based on a banking organization's risk profile (tailoring rules). See 84 FR 59230 (November 1, 2019), available at <https://www.federalreserve.gov/aboutthefed/boardmeetings/20191010open.htm>. Under the tailoring rules, the minimum supplementary leverage ratio requirement applies to banking organizations subject to Category I, II, and III standards. The tailoring rules will be effective December 31, 2019. Until the tailoring rules are effective, the supplementary leverage ratio applies to advanced approaches banking organizations.

<sup>9</sup> See 79 FR 24528 (May 1, 2014). Under OCC and FDIC rules, a depository institution that is a subsidiary of a bank holding company with more

### B. Fiduciary, Custody, Safekeeping, and Asset Servicing Activities

Certain banking organizations engage in fiduciary, custody, safekeeping, and asset servicing activities. Custody, safekeeping, and asset servicing activities generally involve holding securities or other assets on behalf of clients, as well as activities such as transaction settlement, income processing, and related record keeping and operational services. A banking organization may also act as a fiduciary by, for example, acting as trustee or executor, or by having investment discretion over the management of client assets. Banking organizations typically provide custody, safekeeping, and asset servicing to their fiduciary accounts. While many banking organizations offer some or all of these services, certain banking organizations specialize in these activities and often do not provide the same range or scale of traditional commercial or retail banking products as are provided by other banking organizations.<sup>10</sup>

Fiduciary and custody clients often maintain cash deposits at the banking organization in connection with these services. Clients typically maintain cash positions consisting of funds awaiting investment or distribution that are often in the form of deposits placed in banking organizations. These cash deposits help facilitate the administration of the custody account. Under U.S. generally accepted accounting principles (U.S. GAAP), cash deposits at a banking organization are a deposit liability and thus appear on the banking organization's balance sheet.

Cash deposits that are linked to custody and fiduciary accounts at banking organizations fluctuate depending on the activities of the banking organization's custodial clients. For example, cash deposit balances of such banking organizations generally increase during periods when clients liquidate securities, such as during times of stress. To assist in managing these cash fluctuations, banking organizations may maintain significant cash deposits at central banks. Central bank deposits can be used as an asset-liability management strategy to facilitate these banking organizations' ability to support custodial clients' cash-related needs. Under U.S. GAAP,

than \$700 billion in total consolidated assets or more than \$10 trillion in assets under custody is subject to the eSLR standards. 12 CFR 6.4(c) (OCC); 12 CFR 324.403(b) (FDIC). Under the Board's rule, a bank holding company that is a U.S. GSIB is subject to the eSLR standards. See 12 CFR 217.11(d); 12 CFR part 217, subpart H.

<sup>10</sup> See OCC Comptrollers Handbook, Custody Services (January 2002).

<sup>4</sup> The OECD is an intergovernmental organization founded in 1961 to stimulate economic progress and global trade. A list of OECD member countries is available on the OECD's website, [www.oecd.org](http://www.oecd.org).

<sup>5</sup> Public Law 115–174, section 402(a).

<sup>6</sup> *Id.*, at 402(b).

central bank deposits placed by the banking organization are on-balance sheet assets of the banking organization.

### III. Discussion of the Comments and Final Rule

#### A. Scope of Applicability

##### 1. Definition of Custodial Banking Organization

The proposal would have defined a depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, together with any subsidiary depository institution, as a “custodial banking organization.”<sup>11</sup> To qualify as a custodial banking organization under the proposal, a depository institution holding company would have been required to have a ratio of AUC-to-total assets of at least 30:1, calculated as an average over the prior four calendar quarters.

For the proposal, the agencies considered various measures that they could use to identify and define a custodial banking organization. As noted in the proposal, the agencies believe that the phrase “predominantly engaged in custodial, safekeeping, and asset servicing activities” suggests that the banking organization’s business model is primarily focused on custody, safekeeping, and asset servicing activities, as compared to its commercial lending, investment banking, or other banking activities.<sup>12</sup> Specifically, the agencies considered both an AUC-to-total assets measure and an income-based measure to implement section 402.<sup>13</sup> AUC-to-total assets would

provide a measure of a banking organization’s custody, safekeeping, and asset servicing business relative to its other businesses. An income-based measure would show the percentage of a banking organization’s income that it derives from custodial, safekeeping, and asset servicing activities. As described in the proposal, the agencies’ analysis on both measures indicated a clear separation between The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, and the other depository institution holding companies subject to the supplementary leverage ratio.<sup>14</sup> The agencies’ analysis also revealed a significant positive correlation between the AUC-to-total assets measure and the income-based measure.<sup>15</sup> The agencies proposed the AUC-to-total assets measure to identify and define a custodial banking organization because it appeared to function well and minimized burden by relying on already reported data.

The agencies received several comments on the proposed definition of a custodial banking organization. One commenter supported adoption of the AUC-to-total assets measure under the proposal as a simple assessment that is consistent with legislative intent, and did not support the use of an income-based measure because it would increase reporting burden. Another commenter, however, supported an income-based measure to determine a custodial banking organization, arguing that an income-based measure would be more accurate than an asset-based measure in a stress environment.

While an income-based measure would show the percentage of a banking organization’s income that it derives from custodial, safekeeping, and asset servicing activities, the agencies are concerned that such an approach would increase reporting burden for banking organizations subject to the supplementary leverage ratio, as banking organizations do not currently report income from custodial,

of these activities relative to the banking organization’s other activities.

<sup>14</sup> See 84 FR 18175, 18179. The legislative history of section 402 suggests that members of Congress identified the same three institutions as custodial banking organizations. See, e.g., 115 Cong. Rec. S1714 (Mar. 14, 2018) (statement of Sen. Warner) (“Section 402 provides relief to only three banks: Bank of New York Mellon, State Street, and Northern Trust . . . This provision does not mean that, if a bank has a large custodial business, it should get relief . . .”); 115 Cong. Rec. S1659 (Mar. 13, 2018) (statement of Sen. Heitkamp) (“Under the plain reading of [section 402], the three custodial banking organizations are the only three institutions that are predominantly engaged in the custody business.”).

<sup>15</sup> See 84 FR 18175, 18178.

safekeeping, and asset servicing activities separately from income derived from fiduciary activities. In addition and as noted above, an income-based measure likely would not result in a different outcome than an asset-based measure, as the agencies’ analysis revealed a significant positive correlation between the AUC-to-total assets measure and the income-based measure.

As noted in the proposal, an AUC-to-total assets measure provides a metric for sizing a banking organization’s custodial, safekeeping, and asset servicing business as compared with its other activities. Such a measure would compare assets held in custody—a major activity of banking organizations primarily focused on custody, safekeeping, and asset servicing activities—relative to on-balance sheet assets. The measure is objective because AUC often comprises marketable securities or other assets with widely quoted market values, and banking organizations typically exercise little or no valuation discretion when measuring AUC. In addition, the AUC-to-total assets measure is derived from items that are publicly reported and is subject to review by regulators, banking organizations, and the public.

For these reasons, the agencies are adopting as final the proposed use of an AUC-to-total assets measure as the basis for defining a custodial banking organization.

A commenter pointed out that the agencies omitted “asset servicing activities” from the definitions of “fiduciary or custodial and safekeeping account” and “custodial banking organization” in several parts of the proposal. Section 402 defines “custodial bank” as a “depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities.” In contrast with the term “custodial banking organization” in section 402, the statute uses the term “fiduciary or custodial and safekeeping account” to describe the limit on the exclusion of deposits at qualifying central banks and does not include “asset servicing activities” in this context. Accordingly, the final rule does not use the phrase “asset servicing activities” in the context of the exclusion.

##### 2. Assets Under Custody to Total Assets Measure

In defining a custodial banking organization, the proposal would have set a threshold for the AUC-to-total assets ratio at 30:1. This threshold represents the midpoint between the lowest AUC-to-total assets measure of

<sup>11</sup> The agencies note that the term “custodial bank” under the FDIC’s risk-based deposit insurance assessments serves a separate purpose than the term “custodial banking organization” under this final rule. See 12 CFR 327.5(c). For assessment purposes, the FDIC defines a custodial bank consistent with section 331 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the FDIC to define a custodial bank based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody.

<sup>12</sup> See, e.g., 115 Cong. Rec. S1544 (Mar. 8, 2018) (statement of Sen. Corker) (“Section 402 is not intended to provide relief to an organization engaged in consumer banking, investment banking, or other businesses, and that also happens to have some custodial business or a banking subsidiary that engages in custodial activities . . . section 402 was intended as a very narrowly tailored provision, focused on true custodial banks.”); see also H.R. Rep. No. 115–656, at 3–4 (2018) (“Banks that have a predominant amount of businesses derived from custodial services are different from banks that engage in a wide variety of banking activities . . .”).

<sup>13</sup> The agencies also considered using an absolute amount measure, but such a measure would only take the size of a banking organization’s custodial, safekeeping, and asset servicing activities into account rather than considering the predominance

banking organizations that are subject to the supplementary leverage ratio and that specialize in providing custody, safekeeping, and asset servicing services between second quarter of 2016 through the third quarter of 2018 (52:1) and the highest such measure experienced by other banking organizations subject to the supplementary leverage ratio (9:1) over the same period. This amount also takes into account potential changes in such banking organizations' ratio of AUC-to-total assets during a stress environment. As noted in the proposal, the agencies recognize that a banking organization's ratio of AUC-to-total assets may fluctuate significantly during a stress environment as client securities decline in value or as clients liquidate custodial securities and deposit the cash with the banking organization (thus increasing the banking organization's total assets). Among The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation, the lowest AUC-to-total assets ratio observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 52:1.<sup>16</sup> This means that the banking organization had approximately \$52 in AUC for every \$1 recognized in their total on-balance sheet assets. In comparison, among the other depository institution holding companies subject to the supplementary leverage ratio, the *highest* AUC-to-total assets ratio observed during that same period was approximately 9:1. An AUC-to-total assets ratio of 30:1 is also less than the minimum estimated ratio for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (35:1) over the period from 2004 through the third quarter of 2018, which includes the 2007–2009 financial crisis.<sup>17</sup>

The proposal also incorporated use of a four-quarter average for the AUC-to-total assets measure. This approach would further minimize the effect of

<sup>16</sup> Banking organizations report AUC on the FR Form Y–15, Schedule C, Item 3, and banking organizations report total consolidated assets on the FR Form Y–9C, Schedule HC, Item 12. Quarterly reporting of the FR Y–15 became effective starting with the June 30, 2016 date.

<sup>17</sup> The agencies reviewed insured depository institution-level data from the Consolidated Reports of Condition and Income (Call Report) to approximate the holding company-level AUC-to-total assets ratios of advanced approaches banking organizations during the financial crisis, because banking organizations began reporting FR Y–15 in 2015. Information regarding AUC was derived from Call Report, Schedule RC–T, Items 10 and 11, Columns A (managed assets) and B (non-managed assets), and was used as a proxy for AUC at the holding company level, as most custodial services are conducted out of insured depository institution subsidiaries.

significant fluctuations in a banking organization's AUC-to-total assets ratio, which is a particular concern under stress conditions. The 30:1 AUC-to-total assets measure also would limit the potential for a banking organization subject to the supplementary leverage ratio that does not predominantly engage in custody, safekeeping, and asset servicing activities, as compared to its other activities, to qualify as a custodial banking organization. The agencies did not receive comments on the proposed threshold. In addition, expanding the analysis to include the first and second quarters of 2019 produces the same range of AUC-to-total assets ratios. For the reasons provided above, the agencies are adopting as final the proposed threshold of 30:1 for the AUC-to-total assets measure.

### 3. Scope of Covered Entities

Under the proposal, any subsidiary depository institution of a U.S. top-tier depository institution holding company that qualifies as a custodial banking organization also would be a custodial banking organization and therefore could exclude from total leverage exposure all deposits with a qualifying central bank that are recognized on its consolidated balance sheet in the same manner as its parent depository institution holding company.<sup>18</sup> In other words, the proposal would not have required such a subsidiary depository institution to satisfy separately a ratio of AUC-to-total assets to be able to make this exclusion. The agencies believe this approach is both simple and consistent with section 402, which defines a “custodial bank” based on the characteristics of the holding company and provides that such a subsidiary depository institution may also exclude deposits at qualifying central banks from its supplementary leverage ratio, to the extent that these deposits do not exceed deposit liabilities of the banking organization that are linked to fiduciary or custodial and safekeeping accounts.

The agencies also sought comment on whether to expand the scope of application and definition of custodial banking organization to include a depository institution that is not controlled by a holding company and that has a ratio of AUC-to-total assets of at least 30:1.<sup>19</sup> The agencies did not

<sup>18</sup> This rule applies to all depository institution subsidiaries of a custodial banking organization holding company, including uninsured national banks and Federal savings associations. However, the final rule does not apply to Federal branches and agencies supervised by the OCC.

<sup>19</sup> See 84 FR 18175, 18180 (April 30, 2019) for the agencies' description of this proposed addition to the rule, and request for comment.

receive any comments on this issue. Accordingly, the scope of application and definition of custodial banking organization are adopted in this final rule as proposed.

### B. Mechanics of the Central Bank Deposit Exclusion

Under the proposal, the amount of central bank deposits eligible for exclusion from total leverage exposure would have equaled the average daily balance over the reporting quarter of all deposits placed with a “qualifying central bank.” Under the proposal, and consistent with section 402, a qualifying central bank would have meant a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the OECD if an exposure to the member country receives a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.<sup>20</sup> The proposal would have calculated the exclusion amount based on the average daily balance of deposits with a qualifying central bank over the reporting quarter to align with the calculation of on-balance sheet assets in total leverage exposure.<sup>21</sup>

The agencies did not receive any comments addressing the mechanics of the central bank deposit exclusion. One commenter stated that custodial banking organizations should be permitted to distribute profits received from interest earned on excess reserves. The agencies note that this rulemaking does not affect the types of deposits that a bank may have with a Federal Reserve Bank, or the interest paid on those deposits.

In addition, as discussed in the Supplementary Information to the proposal, all deposits placed with a Federal Reserve Bank qualify for the rule's central bank deposit exclusion, including deposits in a master account, deposits in a term deposit account that offers an early withdrawal feature, and deposits in an excess balance account.<sup>22</sup> Any deposits with a qualifying central bank denominated in a foreign currency should be measured in U.S. dollars to determine the amount of the deposits that can be excluded from total leverage

<sup>20</sup> Under section 32 of the capital rule, an exposure to a member country that qualifies for a zero percent risk weight cannot also be in default or have been in default during the previous five years. The agencies included this latter provision in the proposal, however, for clarity and to align with section 402. 12 CFR 3.32(a) (OCC); 12 CFR 217.32(a) (Board); 12 CFR 324.32(a) (FDIC).

<sup>21</sup> 12 CFR 3.10(c)(4)(i)(A) (OCC); 12 CFR 217.10(c)(4)(i)(A) (Board); 12 CFR 324.10(c)(4)(i)(A) (FDIC).

<sup>22</sup> 84 FR 18175, 18180 (April 30, 2019).

exposure. Similarly, central bank deposits recognized on the consolidated balance sheet of a custodial banking organization may include cash placements with a central bank made by a foreign bank subsidiary. Although a foreign bank subsidiary itself will not be a custodial banking organization, any qualifying central bank deposits of the foreign bank subsidiary may be excluded from total leverage exposure of the parent organization to the extent that the central bank deposits are consolidated on the balance sheet of the parent organization and have satisfied the requirements for a qualifying central bank deposit.

The agencies are adopting as final the proposed mechanics of the central bank deposit exclusion.

### C. Central Bank Deposit Exclusion Limit

Consistent with section 402, the proposal would have limited the amount of a custodial banking organization's deposits with a qualifying central bank that could have been excluded from total leverage exposure. In particular, the amount of such deposits that could have been excluded could not have exceeded an amount equal to the on-balance-sheet deposit liabilities of the custodial banking organization that were linked to fiduciary or custody and safekeeping accounts. After considering the comments discussed below, the agencies are adopting this aspect of the proposal without change.

The proposal would have defined a fiduciary or custodial and safekeeping account as an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal and state law. Under the proposal, a deposit account would have been considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

The agencies sought comment on the advantages and disadvantages of using the FDIC exclusion limit or the reporting instructions to Schedule RC-O of the Call Report for purposes of determining linkage between a deposit account and a fiduciary or custody and safekeeping account to calculate the limit on the amount of deposits that could be excluded from total leverage exposure. In particular, the proposal noted that the asset exclusion limit for "custodial banks" provided under the FDIC's regulations for purposes of

insurance assessments (FDIC exclusion limit) includes the concept of a "linked" deposit and that the Call Report collects information related to such linked deposits on Schedule RC-O.<sup>23</sup> In addition, the agencies sought comment on whether the proposed definition of fiduciary or custody and safekeeping account should explicitly reference the reporting instructions under Schedule RC-T.

One commenter supported defining the scope of fiduciary or custodial and safekeeping accounts in a manner that does not deviate materially from the current scope of fiduciary and custody and safekeeping accounts reported under schedule RC-T of the Call Report. To mitigate additional compliance obligations for the purpose of section 402, the commenter supported using the FDIC exclusion limit and reporting instructions in Schedule RC-O to determine whether a deposit account is linked to a fiduciary or custodial and safekeeping account.

The agencies are adopting as final the proposed definition of fiduciary or custodial and safekeeping accounts. As noted in the proposal, the agencies anticipate that the scope of the fiduciary or custodial and safekeeping accounts under the rule should not deviate materially from the current scope of the fiduciary and custody and safekeeping accounts reported under Schedule RC-T of the Call Report. However, the agencies are clarifying that because this final rule applies to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions, and because holding companies do not report Schedule RC-T of the Call Report, the agencies are not referring directly to schedule RC-T for the scope of fiduciary or custodial and safekeeping accounts.

The agencies are clarifying that the existing FDIC exclusion limit and the reporting instructions to Schedule RC-O are factors that a banking organization may take into account to determine

<sup>23</sup> See 12 CFR 327.5(c) (Assessment base for custodial banks) and FFIEC 031 and FFIEC 041 Instructions, Schedule RC-O, Item No. 11.b., Custodial bank deduction limit ("An institution that meets the definition of custodial bank is eligible to have the FDIC deduct certain assets from its assessment base, subject to a limit . . . which equals the average amount of the institution's transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custodial, or safekeeping account reported in Schedule RC-T—Fiduciary and Related Services. The titling of a transaction account or specific references in the deposit account documents should clearly demonstrate the link between the transaction account and a fiduciary, custodial, or safekeeping account."), available at [www.ffiec.gov](http://www.ffiec.gov).

linkage between a deposit account and a fiduciary or custody and safekeeping account. However, the agencies are not directly defining the linkage standard in the final rule by reference to the FDIC exclusion limit or Schedule RC-O.

The FDIC exclusion limit and the reporting instructions to Schedule RC-O were designed for the purpose of determining risk-based deposit insurance assessments for insured depository institutions. In addition, the FDIC exclusion limit and reporting instructions in Schedule RC-O were designed to limit the custodial bank deduction to transaction account deposit liabilities and therefore Schedule RC-O would not capture non-transaction account deposit liabilities.<sup>24</sup> In contrast to the FDIC exclusion limit, this final rule applies to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions; uses a different standard to define a custodial banking organization; and applies only to custodial banking organizations that are subject to the supplementary leverage ratio. The agencies believe that not directly defining the linkage standard by reference to schedule RC-O and the FDIC exclusion limit is appropriate in light of the purpose served by section 402 (that is, prudential regulation of custodial banking organizations' regulatory capital) as compared to deposit insurance assessments, and because section 402 applies to a narrow set of the largest banking organizations (that is, banking organizations that qualify as custodial banking organizations that are subject to the supplementary leverage ratio). In light of these differences, the agencies are adopting as final the proposal's provision that a deposit account is considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

The fact that a client has both a deposit account and a fiduciary or custody and safekeeping account at the same custodial banking organization, or an affiliate or subsidiary of such custodial banking organization, would not by itself be sufficient for those accounts to be considered "linked" for purposes of the final rule. On the other hand, cash deposits may be used to facilitate the administration of a custody or fiduciary account, such as holding interest and dividend payments related to securities held in the custody or

<sup>24</sup> 76 FR 10680 (February 25, 2011) (FDIC assessments regulation).

fiduciary account; cash transfers or distributions from the custody or fiduciary account; and the purchases and sale of securities for the account. Deposit accounts used in these ways would be considered linked for purposes of the final rule.

Consistent with section 402, under the final rule, a custodial banking organization may exclude from total leverage exposure the lesser of (1) the amount of central bank deposits placed at qualifying central banks by the custodial banking organization (including deposits placed by consolidated subsidiaries), and (2) the amount of on-balance sheet deposit liabilities of the custodial banking organization (including consolidated subsidiaries) that are linked to fiduciary or custodial and safekeeping accounts.<sup>25</sup>

One commenter asked the agencies to clarify that the calculation of the central bank exclusion limit must be done on a quarterly basis, consistent with the calculations required under Schedule RC-T and RC-O.<sup>26</sup> In calculating the central bank exclusion limit, a custodial banking organization should calculate the amount of deposit liabilities linked to a fiduciary or custody and safekeeping account as the average deposit liabilities for such accounts, calculated as of each day of the reporting quarter. This approach is consistent with the calculation of on-balance sheet assets for purposes of the supplementary leverage ratio.

#### D. Regulatory Reporting Requirements

Banking organizations report their supplementary leverage ratios on FFIEC Form 101, Schedule A and Form Y-9C, Schedule HC-R, and Call Reports, Schedule RC-R. The agencies recently proposed modifications to the regulatory reporting requirements for the supplementary leverage ratio in a separate publication in the **Federal Register** to reflect the implementation of the central bank deposit exclusion described in this final rule.<sup>27</sup> The agencies' adoption of these regulatory reporting requirements would fulfill the disclosure requirements for purposes of the capital rule.<sup>28</sup> In particular, custodial banking organizations subject to the supplementary leverage ratio would be subject to the corresponding

disclosure requirements in section 173, and would exclude qualifying central bank deposits from total leverage exposure as reported under section 173.

#### IV. OCC Statement Regarding Standalone Depository Institutions

As discussed in section III, the agencies sought comment on whether to expand the scope of application and definition of "custodial banking organization" to include a depository institution that is not controlled by a holding company and that has a ratio of AUC-to-total assets of at least 30:1. For the reasons stated in the proposal,<sup>29</sup> the OCC is considering this question for a future rulemaking.

#### V. Interaction of Section 402 With Other Rules

##### A. Total Loss-Absorbing Capacity

Under the Board's total loss-absorbing capacity (TLAC) rule, a covered company is subject to requirements that, in part, rely on the covered company's total leverage exposure.<sup>30</sup> Thus, changes to the calculation of total leverage exposure under this final rule could affect the amount of eligible external TLAC required to be held by a covered company that is also a custodial banking organization. Under the proposal, the revised definition of total leverage exposure for custodial banking organizations would also apply for purposes of the TLAC rule.

Some commenters stated that the definition of total leverage exposure should be consistent across the supplementary leverage ratio and TLAC requirements. The commenters asserted that inconsistent treatment across the supplementary leverage ratio and TLAC requirements would be in tension with the legislative intent of section 402. Commenters stated that including central bank deposits in TLAC for custodial banking organizations could undermine the ability for such deposits to serve as a safe store of value for client cash during a stress event. In addition, commenters asserted that there is no compelling policy rationale for requiring a banking organization to include in TLAC an asset for which there is no corresponding capital requirement under the supplementary leverage ratio. Commenters also stated that the use of different measures for the supplementary leverage ratio and TLAC rule would increase complexity for bank

capital allocation without improving risk assessment, because the differences between the measures would only reflect the amount of central bank placements.

The agencies are adopting as final the proposed treatment of total leverage exposure. This treatment will align the TLAC rule with the supplementary leverage ratio and reduce burden by not requiring separate calculations for total leverage exposure under each of the TLAC rule and the supplementary leverage ratio.

##### B. The Enhanced Supplementary Leverage Ratio and Other Comments on the Proposal

Several commenters acknowledged that the agencies are required to implement section 402 but raised various concerns regarding the potential effect that implementation of section 402 could have on other aspects of the banking sector. Two commenters raised concerns that implementation of section 402 would lead to a market concentration in custody services and provide custodial banking organizations with a competitive advantage relative to banking organizations that are subject to the supplementary leverage ratio but are not eligible to exclude central bank deposits. To help mitigate these concerns, these commenters urged for finalization of the proposal to recalibrate the eSLR standards issued by the Board and OCC.<sup>31</sup>

The agencies did not propose recalibrating the eSLR standards as part of this rulemaking. Therefore, the agencies view comments on the eSLR standards as outside the scope of this rulemaking. Another commenter noted that while the agencies are required to implement section 402, the agencies are not prevented from using other authorities to counteract the potential effects of section 402 through making changes to other parts of the capital rule. As noted above, the proposal was designed to implement section 402, and the agencies did not seek comment on other changes. Changes to the capital rule that do not address the supplementary leverage ratio are outside of the scope of this rulemaking, but may be considered by the agencies in subsequent rulemakings.

#### VI. Impact Analysis

Under the final rule, a top-tier U.S. depository institution holding company that qualifies as a custodial banking organization, and any of its depository institution subsidiaries, will be able to exclude certain central bank deposits

<sup>25</sup> The final rule does not affect the calculation of the size indicator under the Board's Banking Organization Systemic Risk Report (FR Y-15).

<sup>26</sup> While the custodial bank deduction limit in item 11.b. of Schedule RC-O is reported on a quarterly basis, the limit is based on an average that is calculated on a daily or weekly basis.

<sup>27</sup> 84 FR 53227 (October 4, 2019).

<sup>28</sup> See 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

<sup>29</sup> See 84 FR 18175, 18180 (April 30, 2019) for the agencies' description of this proposed addition to the rule and request for comment. As discussed previously, the agencies received no comments on this issue.

<sup>30</sup> 12 CFR 252.60 through 252.65; 12 CFR 252.160 through 252.167.

<sup>31</sup> 83 FR 17317 (April 19, 2018).

from total leverage exposure, subject to limits as described above. For custodial banking organization holding companies and their lead depository institution subsidiaries, the agencies estimate that central bank deposits eligible for exclusion represent between 20 and 28 percent of their total leverage exposure.<sup>32</sup> Based on an exclusion of this amount from each of these banking organization's total leverage exposure, the final rule may result in an estimated decrease in the amount of tier 1 capital required by the supplementary leverage ratio of approximately \$8 billion in aggregate across the top-tier U.S. depository institution holding companies and approximately \$8 billion in aggregate across their lead depository institution subsidiaries.<sup>33</sup> However, this estimate relates solely to the supplementary leverage ratio and does not take into account any other applicable capital constraints that would prevent a decrease in tier 1 capital. Rather, the binding capital requirement for a given banking organization is the capital requirement that requires the highest amount of regulatory capital.<sup>34</sup> Holding companies are subject to leverage, risk-based, and post-stress capital requirements, and only one of these requirements binds an individual holding company at any given time.<sup>35</sup> Similarly, only one of the

applicable leverage and risk-based capital requirements binds a depository institution at any given time.<sup>36</sup> The risk profile and the capital requirements for the activities and exposures of a banking organization determine which capital requirement is binding.

Thus, the final rule would reduce the amount of tier 1 capital that must be maintained by a custodial banking organization holding company only if the supplementary leverage ratio currently serves as the binding capital requirement for the banking organization.<sup>37</sup> Data from the third quarter of 2018 shows that top-tier U.S. depository institution holding companies that are expected to qualify as custodial banking organizations currently are bound by post-stress capital requirements. The risk-based capital standards applicable to these organizations also require a higher amount of tier 1 capital than the amount of tier 1 capital that would be required under the final rule for purposes of the supplementary leverage ratio. Therefore, the final rule is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

The supplementary leverage ratio as of the third quarter 2018 serves as the binding constraint for two depository institution subsidiaries of custodial banking organization holding companies. Accordingly, under the final rule, the amount of tier 1 capital required of those institutions to the supplementary leverage ratio will decrease by approximately \$7 billion, which represents approximately 23 percent of the total amount of tier 1 capital that must be maintained by those institutions as of the third quarter 2018. As described above, given the applicable capital requirements for parent holding companies of these depository institutions, the final rule is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

One commenter expressed concern that the rule might allow custodial banking organizations to reduce the amount of tier 1 capital and urged the agencies to use other authorities to offset the potential capital impact. As described above, the capital standards

GSIBs, to hold capital in excess of the minimum capital ratios by requiring them to demonstrate the ability to satisfy the capital requirements, including the supplementary leverage ratio, under stressful conditions. 12 CFR 225.8(e)(2).

<sup>36</sup> Depository institutions are not subject to post-stress capital requirements.

<sup>37</sup> The findings set forth in this impact analysis with respect to the release of capital pertain only to the revisions under this rule, and do not consider the capital impact of anticipated or potential future changes to the capital rule.

and other constraints applicable at the custodial banking organization holding company level are expected to limit the amount of capital that such a holding company could distribute outside of the consolidated organization, thus limiting any safety and soundness or financial stability concerns for the holding company as a whole due to reduced requirements at the depository institution level. In addition, the agencies have regulatory and supervisory tools to ensure that depository institutions and holding companies maintain appropriate amounts of capital for their operations and risk profile.

## VII. Regulatory Analyses

### A. Paperwork Reduction Act

The agencies' capital rule contains "collections of information" 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 OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. The information collections that are part of the agencies' capital rule will not be affected by this final rule and therefore no final submissions will be made by the FDIC or OCC to OMB under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and § 1320.11 of the OMB's implementing regulations (5 CFR part 1320) in connection with this rulemaking.

Related to the final rule, there are required changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)), which will be addressed through one or more separate **Federal Register** notices.<sup>38</sup>

### 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

<sup>32</sup> Analysis reflects data from the Consolidated Financial Statements for Holding Companies (FR Y–9C), the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), as reported by The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation and their depository institution subsidiaries as of third quarter 2018, as well as data from the 2018 Comprehensive Capital Analysis and Review and confidential information on central bank deposits as of third quarter 2018 collected through the supervisory process. The reporting period of 2018 was chosen in the final rule for consistency and comparability of the impact analysis with the proposed rule.

<sup>33</sup> Because The Bank of New York Mellon Corporation and State Street Corporation are each U.S. GSIBs, the amount of tier 1 capital required to meet regulatory minimums and avoid limitations on capital distributions is based on a 5 percent minimum supplementary leverage ratio requirement at the holding company level and a 6 percent minimum supplementary leverage ratio requirement at the depository institution subsidiary level. Because Northern Trust Corporation is not a U.S. GSIB, its required amount of tier 1 capital is based on a 3 percent supplementary leverage ratio requirement at both the holding company and depository institution subsidiary levels.

<sup>34</sup> For purposes of this analysis, a capital requirement is considered binding at the level that it would impose restrictions on the ability of a banking organization to make capital distributions or if the banking organization would no longer be considered "well capitalized" under the agencies' prompt corrective action framework.

<sup>35</sup> The Board's capital plan rule requires certain large bank holding companies, including the U.S.

<sup>38</sup> See 84 FR 53227 (October 4, 2019).

Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of \$600 million or less and trust companies with total revenue of \$41.5 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 December 31, 2018, the OCC supervised 782 small entities. The rule would impose requirements on four OCC supervised entities that are subject to the advanced approaches risk-based capital rule, which typically have assets in excess of \$250 billion, and therefore would not be small entities. Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

*Board:* An initial regulatory flexibility analysis (IRFA) was included in the proposal in accordance with section 603(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* (RFA). In the IRFA, the Board requested comment on the effect of the proposed rule on small entities and on any significant alternatives that would reduce the regulatory burden on small entities. The Board did not receive any comments on the IRFA. The RFA requires an agency to prepare a final regulatory flexibility analysis unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>39</sup>

Under regulations issued by the Small Business Administration, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of \$600 million or less and trust companies with total assets of \$41.5 million or less (small banking organization).<sup>40</sup> On average since the second quarter of 2018, there were approximately 2,976 small bank holding companies, 133 small savings and loan holding companies, 70 small state member banks and no small trust companies.

As discussed in the Supplementary Information section, the final rule

revises the capital rule to implement section 402 of EGRRCPA. Specifically, the final rule allows custodial banking organization to exclude from the denominator of the supplementary leverage ratio certain funds of the banking organization that are deposited with central banks. The supplementary leverage ratio applies only to advanced approaches banking organizations, which are very large banking organizations and their depository institution subsidiaries regardless of size.<sup>41</sup> Therefore, the final rule is not expected to apply to a substantial number of small entities.<sup>42</sup> The Board does not expect that the final rule will result in a material change in the level of capital maintained by small banking organizations or in the compliance burden on small banking organizations. For these reasons, the Board does not expect the rule to have a significant economic impact on a substantial number of small entities.

*FDIC:* The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.<sup>43</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million if they are either independently owned and operated or owned by a holding company that also has less than \$600 million in total assets.<sup>44</sup>

As of June 30, 2019, there were 3,424 FDIC-supervised institutions, of which 2,665 are considered small entities for the purposes of RFA. These small

entities hold \$514 billion in assets, accounting for 16.6 percent of total assets held by FDIC-supervised institutions.<sup>45</sup>

The final rule applies to only three advanced approaches banking organizations, one of which has an IDI subsidiary that is FDIC-supervised and has less than \$600 million in total assets.<sup>46</sup> However, that institution is not a small entity for the purposes of RFA since it is owned by a holding company with over \$600 million in total assets. Since this final rule does not affect any FDIC-supervised institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the rule will not have a significant economic impact on a substantial number of small entities.

### C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act<sup>47</sup> requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

### 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),<sup>48</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and clients of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>49</sup>

The agencies considered the administrative burdens and benefits of the rule in determining its effective date

<sup>41</sup> See 12 CFR 217.100.

<sup>42</sup> To the extent any small entities are subject to the final rule, they will be small subsidiaries within large organizations and would be expected to rely on their parent banking organizations rather than bearing material costs in connection with the final rule.

<sup>43</sup> 5 U.S.C. 601 *et seq.*

<sup>44</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

<sup>45</sup> FDIC Call Report, June 30, 2019.

<sup>46</sup> *Id.*

<sup>47</sup> Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

<sup>48</sup> 12 U.S.C. 4802(a).

<sup>49</sup> 12 U.S.C. 4802.

<sup>39</sup> 5 U.S.C. 605(b).

<sup>40</sup> See 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to \$600 million in assets from \$550 million in assets. 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation 13 CFR 121.103, Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.



and administrative compliance requirements. As such, the final rule will be effective on April 1, 2020.

*E. OCC Unfunded Mandates Reform Act of 1995 Determination*

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).<sup>50</sup> Under this analysis, the OCC considered whether the final 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 annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is near zero. Therefore, the OCC finds that the final rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

*F. The Congressional Review Act*

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major" rule.<sup>51</sup> If a rule is deemed a "major rule" by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.<sup>52</sup>

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.<sup>53</sup> 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.

**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.

**Office of the Comptroller of the Currency**

For the reasons set out in the joint preamble, the OCC amends 12 CFR part 3 as follows:

**PART 3—CAPITAL ADEQUACY STANDARDS**

■ 1. The authority citation for part 3 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by adding the definitions of "Custody bank", "Fiduciary or custodial and safekeeping account", and "Qualifying central bank" in alphabetical order to read as follows:

**§ 3.2 Definitions.**

\* \* \* \* \*

*Custody bank* means a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

\* \* \* \* \*

*Fiduciary or custodial and safekeeping account* means, for purposes of § 3.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

\* \* \* \* \*

*Qualifying central bank* means:

- (1) A Federal Reserve Bank;
- (2) The European Central Bank; and
- (3) The central bank of any member country of the OECD, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 3.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

\* \* \* \* \*

■ 3. Section 3.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

**§ 3.10 Minimum capital requirements.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(ii) For purposes of this part, *total leverage exposure* means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member national bank and Federal savings association and paragraph (c)(4)(ii)(J) for a custody bank:

\* \* \* \* \*

(J) A custodial bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds that the custody bank's clients have on deposit at the custody bank that are linked to fiduciary or custodial and safekeeping accounts. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank, and the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

\* \* \* \* \*

**FEDERAL RESERVE SYSTEM**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

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

■ 4. 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–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371, and 5371 note.

<sup>50</sup> 2 U.S.C. 1531 *et seq.*

<sup>51</sup> 5 U.S.C. 801 *et seq.*

<sup>52</sup> 5 U.S.C. 801(a)(3).

<sup>53</sup> 5 U.S.C. 804(2).

■ 5. Section 217.2 is amended by adding the definitions of “Custodial banking organization,” “Fiduciary or custodial and safekeeping accounts,” and “Qualifying central bank” in alphabetical order to read as follows:

§ 217.2 Definitions.

\* \* \* \* \*

Custodial banking organization means:

(1) A Board-regulated institution that is:

(i) A top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company’s total assets; or

(ii) A state member bank that is a subsidiary of a depository institution holding company described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, total assets are equal to the average of the banking organization’s total consolidated assets for the four most recent calendar quarters. Assets under custody are equal to the average of the Board-regulated institution’s assets under custody for the four most recent calendar quarters.

\* \* \* \* \*

Fiduciary or custodial and safekeeping account means, for purposes of § 217.10(c)(4)(ii)(J), an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

\* \* \* \* \*

Qualifying central bank means:

- (1) A Federal Reserve Bank;
(2) The European Central Bank; and
(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 217.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

\* \* \* \* \*

■ 6. Section 217.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

§ 217.10 Minimum capital requirements.

\* \* \* \* \*

- (c) \* \* \*
(4) \* \* \*

(ii) For purposes of this part, total leverage exposure means the sum of the

items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member Board-regulated institution and paragraph (c)(4)(ii)(J) for a custodial banking organization:

\* \* \* \* \*

(J) A custodial banking organization shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custodial banking organization has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts at the custodial banking organization. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custodial banking organization and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

\* \* \* \* \*

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 7. 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. 780-7 note).

■ 8. Section 324.2 is amended by adding the definitions of “Custody bank,” “Fiduciary or custodial and safekeeping accounts,” and “Qualifying central bank” in alphabetical order as follows:

§ 324.2 Definitions.

\* \* \* \* \*

Custody bank means an FDIC-supervised institution that is a subsidiary of a depository institution

holding company that is a custodial banking organization under 12 CFR 217.2.

\* \* \* \* \*

Fiduciary or custodial and safekeeping account means, for purposes of § 324.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable Federal or state law.

\* \* \* \* \*

Qualifying central bank means:

- (1) A Federal Reserve Bank;
(2) The European Central Bank; and
(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under § 324.32; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

\* \* \* \* \*

■ 9. Section 324.10 is amended by revising paragraph (c)(4)(ii) introductory text and adding paragraph (c)(4)(ii)(J) to read as follows:

§ 324.10 Minimum capital requirements.

\* \* \* \* \*

- (c) \* \* \*
(4) \* \* \*

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) for a clearing member FDIC-supervised institution and paragraph (c)(4)(ii)(J) for a custody bank:

\* \* \* \* \*

(J) A custody bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custody bank that are linked to fiduciary or custodial and safekeeping accounts at the custody bank. For purposes of this paragraph (c)(4)(ii)(J), a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

\* \* \* \* \*

Dated: November 19, 2019.

**Joseph M. Otting,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, November 19, 2019.

**Ann E. Misback,**

*Secretary of the Board.*

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 19, 2019.

**Annamarie H. Boyd,**

*Assistant Executive Secretary.*

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Chapter X

#### Policy Statement on Compliance Aids

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Policy statement.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing this policy statement in order to announce a new designation for certain Bureau guidance, known as “Compliance Aids,” and to explain the legal status and role of guidance with that designation.

**DATES:** This policy statement becomes applicable on February 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Christopher Shelton, Counsel, or Lea Mosena, Senior Counsel, Legal Division, 202-435-7700. Regulatory inquiries can be submitted at <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Bureau’s “primary functions” under the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> include issuing guidance implementing Federal consumer financial law.<sup>2</sup> The Bureau believes that providing clear and

useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

Since its inception, the Bureau has provided guidance through a variety of means, and its guidance functions have evolved and are continuing to evolve in response to feedback from industry and other stakeholders. Some examples of compliance resources that the Bureau has released include small entity compliance guides, instructional guides for disclosure forms, executive summaries, summaries of regulation changes, factsheets, flow charts, compliance checklists, frequently asked questions, and summary tables.

##### II. Policy Statement on Compliance Aids

Going forward, the Bureau intends to establish a new category of materials that are similar to previous compliance resources but will now be designated as “Compliance Aids.” This designation will provide the public with greater clarity regarding the legal status and role of these materials, as discussed below.<sup>3</sup>

The Bureau does not intend to use Compliance Aids to make decisions that bind regulated entities. Unlike the Bureau’s regulations and official interpretations, Compliance Aids are not “rules” under the Administrative Procedure Act.<sup>4</sup> Rather, Compliance Aids present the requirements of existing rules and statutes in a manner that is useful for compliance professionals, other industry stakeholders, and the public.<sup>5</sup> Compliance Aids may also include practical suggestions for how entities might choose to go about complying

<sup>3</sup> This policy statement does not apply to materials that do not bear the label “Compliance Aid,” or to the use of outdated materials that have been withdrawn or superseded. It also does not alter the status of materials that were issued before this policy statement, although the Bureau may re-issue certain existing materials as Compliance Aids if it is in the public interest and as Bureau resources permit. Moreover, this policy statement does not determine the policies of regulators other than the Bureau.

<sup>4</sup> Under the Administrative Procedure Act, generally a “rule” is an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 U.S.C. 551(4). The three main categories of rules are substantive rules, interpretive rules, and general statements of policy. Some examples of rules are regulations like Regulation Z, 12 CFR part 1026, and official interpretations like the Official Interpretations to Regulation Z, 12 CFR part 1026, supp. I.

<sup>5</sup> See, e.g., *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 432 (4th Cir. 2010) (agency documents like FAQs that “restate or report what already exists in the relevant body of statutes, regulations, and rulings” are not themselves rules under the Administrative Procedure Act).

with those rules and statutes.<sup>6</sup> But they may not address all situations. Where there are multiple methods of compliance that are permitted by the applicable rules and statutes, an entity can make its own business decision regarding which method to use, and this may include a method that is not specifically addressed in a Compliance Aid. In sum, regulated entities are not required to comply with the Compliance Aids themselves. Regulated entities are only required to comply with the underlying rules and statutes.

Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes. Accordingly, when exercising its enforcement and supervisory discretion, the Bureau does not intend to sanction, or ask a court to sanction, entities that reasonably rely on Compliance Aids.

##### II. Regulatory Requirements

This policy statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.<sup>7</sup> It is intended to provide information regarding the Bureau’s general plans to exercise its discretion and does not confer any rights. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>8</sup> The Bureau has also determined that this policy statement does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.<sup>9</sup>

Pursuant to the Congressional Review Act,<sup>10</sup> the Bureau will submit a report containing this policy statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this policy statement as not a “major rule” as defined by 5 U.S.C. 804(2).

<sup>6</sup> See, e.g., *Indus. Safety Equip. Ass’n, Inc. v. EPA*, 837 F.2d 1115, 1120-21 (D.C. Cir. 1988) (an agency’s “hortatory advice” regarding potential methods for complying with a rule is not itself a rule under the Administrative Procedure Act).

<sup>7</sup> 5 U.S.C. 553(b). However, this is not a “statement of policy” as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

<sup>8</sup> 5 U.S.C. 603(a), 604(a).

<sup>9</sup> 44 U.S.C. 3501-3521.

<sup>10</sup> 5 U.S.C. 801-808.

<sup>1</sup> Public Law 111-203, 124 Stat. 2081 (2010).

<sup>2</sup> 12 U.S.C. 5511(c)(5). Moreover, the Dodd-Frank Act authorizes the Director of the Bureau to issue guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof. 12 U.S.C. 5512(b)(1). Additionally, the Bureau is authorized to establish general policies, including with respect to implementing the Federal consumer financial laws through guidance. 12 U.S.C. 5492(a)(10).