



[BILLING CODE: 4810-33-P]

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### Agency Information Collection Activities:

#### Information Collection Renewal; Submission for OMB Review;

#### Capital Adequacy Standards

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC 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 OCC is soliciting comment concerning the renewal of its information collection titled "Capital Adequacy Standards." The OCC also is giving notice that it has submitted the collection to OMB for review.

**DATES:** Comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible.

Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-0318, 400 7<sup>th</sup> Street, SW., suite 3E-218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-0318, U.S. Office of Management and Budget, 725 17<sup>th</sup> Street, NW., #10235, Washington, DC 20503 or by email to *oira\_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649-5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public

submit reports, keep records, or provide information to a third party. The OCC is asking that OMB extend its approval of the following collection:

Title: Capital Adequacy Standards.

OMB Control No.: 1557-0318.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Section-by-Section-Analysis

Twelve CFR part 3 sets forth the OCC's minimum capital requirements and overall capital adequacy standards for national banks and federal savings associations (institutions).

Section 3.3(c) allows for the recognition of netting across multiple types of transactions or agreements if an institution obtains a written legal opinion verifying the validity and enforceability of the agreement under certain circumstances and maintains sufficient written documentation of this legal review.

Section 3.22(h)(2)(iii)(A) permits the use of a conservative estimate of the amount of an institution's investment in its own capital or the capital of unconsolidated financial institutions held through the index security with prior approval by the OCC.

Section 3.35(b)(3)(i)(A) requires, for a cleared transaction with a qualified central counterparty (QCCP), that a client bank apply a risk weight of two percent, provided that the collateral posted by the bank to the QCCP is subject to certain arrangements and the client bank has conducted a sufficient legal review (and maintains sufficient written documentation of the legal review) to conclude with a well-founded basis that the arrangements, in the event of a legal challenge, would be found to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

Section 3.37(c)(4)(i)(E), regarding collateralized transactions, requires that an institution have policies and procedures in place describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used.

Section 3.41(b), which sets forth operational requirements for securitization exposures, allows an institution to recognize for risk-based capital purposes, in the case of synthetic securitizations, a credit risk mitigant to hedge underlying exposures if certain conditions are met. Section 3.41(b)(3) includes a requirement that the institution obtain a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions.

Section 3.41(c)(2)(i) requires that an institution demonstrate its comprehensive understanding of a securitization exposure by conducting and documenting an analysis of the risk characteristics of each securitization exposure prior to its acquisition, taking into account a number of specified considerations.

In the case where an institution provides non-contractual support to a securitization, § 3.42(e)(2) requires the institution to publicly disclose that it has provided implicit support to a securitization and the risk-based capital impact to the bank of providing such implicit support.

Section 3.62 sets forth disclosure requirements related to the capital requirements of an institution. These requirements apply to an institution with total consolidated assets of \$50 billion or more that is not a consolidated subsidiary of an entity that is itself subject to Basel III disclosures. Section 3.62(a) requires quarterly disclosure of information in the applicable tables in § 3.63 and, if a significant change occurs, such that the most recent reported amounts are no longer reflective of the institution's capital adequacy and risk profile, § 3.62(a) requires the institution to disclose as soon as

practicable thereafter a brief discussion of the change and its likely impact. Section 3.62(a) also permits annual disclosure of qualitative information that typically does not change each quarter, provided that any significant changes are disclosed in the interim.

Section 3.62(b) requires that an institution have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. Section 3.62(c) permits an institution to disclose more general information about certain subjects if the institution concludes that the specific commercial or financial information required to be disclosed under § 3.62 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the institution provides the reason the specific items of information have not been disclosed.

Section 3.63 sets forth the specific disclosure requirements for a non-advanced approaches institution with total consolidated assets of \$50 billion or more that is not a consolidated subsidiary of an entity that is itself subject to Basel III disclosure requirements. Section 3.63(a) requires those institutions to make the disclosures in Tables 1 through 10 in § 3.63 and in § 3.63(b) for each of the last three years beginning on the effective date of the rule. Section 3.63(b) requires quarterly disclosure of an institution's common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios; total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and a reconciliation of regulatory capital

elements as they relate to its balance sheet in any audited consolidated financial statements. Tables 1 through 10 in § 3.63 set forth qualitative and/or quantitative requirements for scope of application, capital structure, capital adequacy, capital conservation buffer, credit risk, counterparty credit risk-related exposures, credit risk mitigation, securitizations, equities not subject to Subpart F (Market Risk requirements) of the rule, and interest rate risk for non-trading activities.

Section 3.121 requires an institution subject to the advanced approaches risk-based capital requirements to adopt a written implementation plan to address how it will comply with the advanced capital adequacy framework's qualification requirements and also develop and maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. Section 3.122 further requires these institutions to: develop processes for assessing capital adequacy in relation to an organization's risk profile; establish and maintain internal risk rating and segmentation systems for wholesale and retail risk exposures, including comprehensive risk parameter quantification processes and processes for annual reviews and analyses of reference data to determine their relevance; document their processes for identifying, measuring, monitoring, controlling, and internally reporting operational risk; verify the accurate and timely reporting of risk-based capital requirements; and monitor, validate, and refine their advanced systems.

Section 3.123 sets forth ongoing qualification requirements that require an institution to notify the OCC of any material change to an advance system and to establish and submit to the OCC a plan for returning to compliance with the qualification requirements.

Section 3.124 requires an institution to submit to the OCC, within 90 days of consummating a merger or acquisition, an implementation plan for using its advanced systems for the merged or acquired company.

Section 3.132(b)(2)(iii)(A) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and over-the-counter (OTC) derivative contracts, and internal estimates for haircuts. With the prior written approval of the OCC, an institution may calculate haircuts using its own internal estimates of the volatilities of market prices and foreign exchange rates. The section requires institutions to satisfy certain minimum quantitative standards in order to receive OCC approval to use its own internal estimates.

Section 3.132(b)(3) covers counterparty credit risk of repo-style transactions, eligible margin loans, OTC derivative contracts, and simple Value-at-Risk (VaR) methodology. With the prior written approval of the OCC, an institution may estimate exposure at default (EAD) for a netting set using a VaR model that meets certain requirements.

Section 3.132(d)(1) permits the use of the internal models methodology (IMM) to determine EAD for counterparty credit risk for derivative contracts with prior written approval from the OCC. Section 3.132(d)(1)(iii) permits the use of the internal models methodology for derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement with prior written approval from the OCC.

Section 3.132(d)(2)(iv) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, and risk-weighted assets using IMM. Under the IMM, an institution uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. An institution must calculate two EEs and two EADs (one stressed and one unstressed) for

each netting as outlined in this section. An institution may use a conservative measure of EAD subject to prior written approval of the OCC.

Section 3.132(d)(3)(vi) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. To obtain OCC approval to calculate the distributions of exposures upon which the EAD calculation is based, an institution must demonstrate to the satisfaction of the OCC that it has been using for at least one year an internal model that broadly meets the minimum standards, with which the institution must maintain compliance. The institution must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure and they must include stress testing and scenario analysis.

Section 3.132(d)(3)(viii) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. When estimating model parameters based on a stress period, an institution must use at least three years of historical data that include a period of stress to the credit default spreads of the institution's counterparties. The institution must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The institution must demonstrate at least quarterly that the stress period coincides with increased credit default swap (CDS) or other credit spreads of the institution's counterparties. The institution must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the institution's portfolio. The OCC may require the institution to modify its stress calibration to better reflect actual historic losses of the portfolio.

Section 3.132(d)(3)(ix), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts requires that an institution must subject its internal model to an initial validation and annual model review

process that includes consideration of whether the inputs and risk factors, as well as the model outputs, are appropriate. This section requires institutions to have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied.

Section 3.132(d)(3)(x), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, provides that an institution must have policies for the measurement, management, and control of collateral and margin amounts.

Section 3.132(d)(3)(xi), concerning counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts states that an institution must have a comprehensive stress testing program that captures all credit exposures to counterparties, and incorporates stress testing of principal market risk factors and creditworthiness of counterparties.

Section 3.141 relates to operational criteria for recognizing the transfer of risk in connection with a securitization. Section 3.141(b)(3) requires an institution to obtain a well-reasoned legal opinion confirming the enforceability of the credit risk mitigant in all relevant jurisdictions in order to recognize the transference of risk in connection with a synthetic securitization. An institution must demonstrate its comprehensive understanding of a securitization exposure under § 3.141(c)(2) for each securitization exposure by conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure. Sections 3.141(c)(2)(i) and (ii) require that institutions, on an on-going basis (at least quarterly), evaluate, review, and update as appropriate the analysis required under this section for each securitization exposure.

Section 3.142(h)(2), regarding the capital treatment for securitization exposures, requires an institution to disclose publicly if it has provided implicit support to a securitization and the regulatory capital impact to the institution of providing such implicit support.

Section 3.153(b), outlining the Internal Models Approach (IMA) for calculating risk-weighted assets for equity exposures, specifies that an institution must receive prior written approval from the OCC before it can use IMA by demonstrating to the OCC that the national bank or federal savings association meets certain criteria.

Section 3.172 specifies that each advanced approaches institution that has completed the parallel run process must publicly disclose its total and tier 1 risk-based capital ratios and their components.

Section 3.173 addresses disclosures by an advanced approaches institution that is not a consolidated subsidiary of an entity that is subject to the Basel III disclosure requirements. An advanced approaches institution that is subject to the disclosure requirements must make the disclosures described in Tables 1 through 12. The institution must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E.

The tables in § 3.173 require qualitative and quantitative public disclosures for capital structure, capital adequacy, capital conservation and countercyclical buffers, credit risk, securitization, operational risk, equities not subject to the market risk capital requirements, and interest rate risk for non-trading activities.

*Burden Estimates:*

*Estimated Number of Respondents:* 1,365.

*Estimated Total Annual Burden Hours:* 240,711.

Comments: On February 8, 2017, the OCC issued a 60-day notice soliciting comment on the information collection, 82 FR 9958. One comment was received from an individual.

The commenter stated that a capital rule must be simple, easily understood, and not easily gamed by management in order to be useful. The commenter believed that 12 CFR part 3 does not meet these criteria and is too complex to be understood, verified and enforced, especially with respect to large banking organizations. The commenter stated that there were fewer bank failures in certain time periods before minimum capital regulations were adopted. The commenter also stated that revisiting 12 CFR part 3 would be in line with the Executive Order on Core Principles for Regulating the United States Financial System, which states that regulation should be efficient, effective, and appropriately tailored. Revising 12 CFR part 3 would require a rulemaking and cannot be done through this PRA process.

It should be noted that in developing the capital rules in 12 CFR part 3, the OCC addressed specific concerns related to cost, complexity, and burden of the rules. During the recent financial crisis, the lack of confidence in the banking sector increased banking organizations' cost of funding, impaired banking organizations' access to short-term funding, depressed values of banking organizations' equities, and required many banking organizations to seek government assistance. Concerns about banking organizations arose not only because market participants expected steep losses on banking organizations' assets, but also because of substantial uncertainty surrounding estimated loss rates, and thus future earnings. It is important that capital rules are sufficiently granular and risk-sensitive to capture the risks posed by particular exposures. In large part, the complexity of the capital rules is driven by the complexity of the business activities that banking organizations engage in. As banking organizations have engaged

in new, more complicated financial transactions (for example, dealing in derivatives), the capital rules have become more sophisticated to capture the risks posed by these transactions.

The OCC, pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),<sup>1</sup> published several notices to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions, three of which included 12 CFR part 3.<sup>2</sup> Over 30 commenters addressed the OCC's regulatory capital requirements, focusing primarily on the revised capital rules.<sup>3</sup> The comments received and the OCC's response were included in the Federal Financial Institutions Examination Council's Report to Congress on EGRPRA in March 2017.<sup>4</sup> The agencies understand community banks' concerns that the regulatory capital rules are too complex given community banks' size, risk profile, condition, and complexity and are developing a proposal to simplify the regulatory capital rules in a manner that maintains safety and soundness and the quality and quantity of regulatory capital in the banking system. Such amendments may include (1) replacing the framework's complex treatment of high volatility commercial real estate exposures with a more straightforward treatment for most acquisition, development, or construction loans; (2) simplifying the current regulatory capital treatment for mortgage servicing assets, timing difference deferred tax assets, and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

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<sup>1</sup> Pub. L 104–208 (1996), codified at 12 U.S.C. 3311(b).

<sup>2</sup> 79 FR 32172 at 32183 (June 4, 2014); 80 FR 32046 at 32052-32053 (June 5, 2015); and 80 FR 79724 at 79733-79734 (December 23, 2015).

<sup>3</sup> 78 FR 62017 (October 11, 2013).

<sup>4</sup> <https://www.occ.gov/news-issuances/news-releases/2017/nr-ia-2017-33a.pdf>, pages 18-23.

The OCC regularly monitors and analyzes developments in the banking industry to ensure that the revised capital rules appropriately reflect risks faced by banking organizations and considers many issues before determining whether a change to the revised capital rules is appropriate. The safety and soundness of community banks depends, in part, on having and maintaining sufficient regulatory capital. More than 500 banking organizations, mostly community banks, failed in the aftermath of the financial crisis largely because they did not have sufficient capital relative to their risk.

To assist community banks, the agencies published a community bank guide to help community banks understand the sections of the revised 2013 capital rules most relevant to their operations.<sup>5</sup> The OCC has also published a number of guidance documents to assist banks in their capital planning efforts<sup>6</sup> and intends to publish revisions to its capital handbook to make guidance publications and regulatory revisions available in one place.

Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

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<sup>5</sup> "New Capital Rule; Community Bank Guide," [www.occ.gov/news-issuances/news-releases/2013/2013-110b.pdf](http://www.occ.gov/news-issuances/news-releases/2013/2013-110b.pdf).

<sup>6</sup> For example, OCC bulletin 2012-16, (June 7, 2012) "Capital Planning: Guidance for Evaluating Capital Planning and Adequacy," <https://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-16.html>.

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

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