DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of December 31, 2019; Report to Congressional Committees

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

ACTION: Report to Congressional Committees.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences among the accounting and capital standards used by the agencies for insured depository institutions. Section 37(c) requires that this report be published in the Federal Register. The agencies have not identified any material differences among the agencies' accounting and capital standards applicable to the insured depository institutions they regulate and supervise.

FOR FURTHER INFORMATION CONTACT:

OCC: Andrew Tschirhart, Risk Expert, Capital Policy, (202) 649-6370, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

Board: Juan Climent, Manager, Capital and Regulatory Policy, (202) 872-7526, and Donald Gabbai, Lead Financial Institution Policy Analyst, (202) 452-3358, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, (202) 898-6853, Richard Smith, Capital Policy Analyst, Capital Policy Section, (202) 898-6931, Division of Risk Management Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

Under section 37(c) of the Federal Deposit Insurance Act (section 37(c)), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate that describes any differences among the accounting and capital standards established by the agencies for insured depository institutions (institutions).[1]

In accordance with section 37(c), the agencies are submitting this joint report, which covers differences among their accounting or capital standards existing as of December 31, 2019, applicable to institutions.[2] In recent years, the agencies have acted together to harmonize their accounting and capital standards and eliminate as many differences as possible. As of December 31, 2019, the agencies have not identified any material differences among the agencies' accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rules for institutions (capital rules),[3] which harmonized the agencies' capital rules in a comprehensive manner.[4] Since 2013, the agencies have revised the capital rules on several occasions, further reducing the number of differences in the agencies' capital rules.[5] Today, only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally nonmaterial

---

[1] See 12 U.S.C. 1831n(c)(1). This report must be published in the Federal Register. See 12 U.S.C. 1831n(c)(3).

[2] Although not required under section 37(c), this report includes descriptions of certain of the Board's capital standards applicable to depository institution holding companies where such descriptions are relevant to the discussion of capital standards applicable to institutions.

[3] See 78 FR 62018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 FR 55340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 FR 20754 (April 14, 2014). The agencies' respective capital rules are at 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC). These capital rules apply to institutions, as well as to certain bank holding companies and savings and loan holding companies. See 12 CFR 217.1(c).

[4] The capital rules reflect the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to bank holding companies, savings and loan holding companies, and state member banks, while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

[5] See e.g., 84 FR 35234 (July 22, 2019). The OCC and FDIC revised their capital rules to conform with language in the Board's capital rule related to the qualification criteria for additional tier 1 capital instruments and the definition of corporate exposures. As a result, these differences, which were included in the previous report submitted by the agencies pursuant to section 37(c), have been eliminated.

differences among the agencies' capital rules. No new material differences were identified in the capital standards applicable to institutions in this report compared to the previous report submitted by the agencies pursuant to section 37(c).

Differences in Accounting Standards among the Federal Banking Agencies

As of December 31, 2019, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

Differences in Capital Standards among the Federal Banking Agencies

The following are the remaining technical differences among the capital standards of the agencies' capital rules.[6]

Definitions

The agencies' capital rules largely contain the same definitions.[7] The differences that exist generally serve to accommodate the different needs of the institutions that each agency charters, regulates, and/or supervises.

The agencies' capital rules have differing definitions of a pre-sold construction loan. The capital rules of all three agencies provide that a pre-sold construction loan means any "one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n), and, in addition to other criteria, the purchaser has not terminated the contract."[8] The Board's definition provides further clarification that, if a purchaser has terminated the contract, the institution must

[6] Certain minor differences, such as terminology specific to each agency for the institutions that it supervises, are not included in this report.
[7] See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).
[8] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Consolidated Reports of Condition and Income (Call Report).[9] Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rules would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rules generally provide uniform eligibility criteria for regulatory capital instruments, there are some textual differences among the agencies' capital rules. All three agencies' capital rules require that, for an instrument to qualify as common equity tier 1 or additional tier 1 capital, cash dividend payments be paid out of net income and retained earnings, but the Board's capital rule also allows cash dividend payments to be paid out of related surplus.[10] In addition, both the Board's capital rule and the FDIC's capital rule include an additional sentence noting that institutions regulated by each agency are subject to restrictions independent of the capital rule on paying dividends out of surplus and/or that would result in a reduction of capital stock.[11] These additional sentences do not create differences in substance between the agencies' capital standards, but rather note that restrictions apply under separate regulations. The provision in the Board's capital rule that allows dividends to be paid out of related surplus is a difference

---

[9] 12 CFR 217.2.

[10] 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board).

[11] See 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board); 12 CFR 324.20(b)(1)(v) and 324.20(c)(1)(viii) (FDIC). Although not referenced in the capital rule, the OCC has similar restrictions on dividends; see 12 CFR 5.55 and 12 CFR 5.63.

in substance among the agencies' capital rules. However, due to the restrictions on institutions regulated by the Board in separate regulations, this additional language in the Board's rule has a practical impact only on bank holding companies and savings and loan holding companies and is not a difference as applied to institutions. As a result, the agencies apply the criteria for determining eligibility of regulatory capital instruments in a manner that ensures consistent outcomes for institutions.

In addition, the Board's capital rule includes a requirement that a bank holding company or a savings and loan holding company must obtain prior approval before redeeming regulatory capital instruments.[12] This requirement applies only to a bank holding company or a savings and loan holding company and is, therefore, not included in the OCC and FDIC capital rules. However, all three agencies require institutions to obtain prior approval before redeeming regulatory capital instruments.[13] The additional provision in the Board's rule, therefore, only has a practical impact on bank holding companies and savings and loan holding companies and is not a difference as applied to institutions.

Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rules with regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct

[12] 12 CFR 217.20(f).
[13] See 12 CFR 5.46, 5.47, 5.55, and 5.56 (OCC); 12 CFR 208.5 (Board); 12 CFR 303.241 and 12 CFR 390.345 (incorporated into 12 CFR 303.241, effective Feb. 20, 2020 (85 FR 3232 (Jan. 21, 2020))) (FDIC).

identified losses from common equity tier 1 capital elements, to the extent that the institutions' common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.[14] Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

For example, identified losses may include, among other items, assets classified as loss, off-balance-sheet items classified as loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities. The Board and the OCC expect their supervised institutions to promptly recognize examiner-identified losses, but the requirement is not explicit under their capital rules. Instead, the Board and the OCC apply their supervisory authorities to ensure that their supervised institutions charge off any identified losses.

Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in activities that are not permissible for national banks.[15] When subsidiaries of a savings association are engaged in activities that are not permissible for

[14] 12 CFR 324.22(a)(9).
[15] See 12 U.S.C. 1464(t)(5).

national banks,[16] the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association. If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.[17] As the appropriate federal banking agencies for federal and state savings associations, respectively, the OCC and the FDIC apply this capital treatment to those types of institutions. The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

Tangible Capital Requirement

Federal statutory law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.[18] The capital rules of the OCC and the FDIC include a requirement that savings associations maintain a tangible capital ratio of 1.5 percent.[19] This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of

[16] Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.
[17] A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.
[18] See 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).
[19] See 12 CFR 3.10(a)(6) (OCC); 12 CFR 324.10(a)(6) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

total assets.[20] Generally speaking, the appropriate federal banking agency must appoint a receiver within 90 days after an institution becomes critically undercapitalized.[21]

Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that took effect beginning on January 1, 2018.[22] These standards require certain bank holding companies to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these bank holding companies to meet a 6 percent supplementary leverage ratio to be considered "well capitalized" under the PCA framework.[23] The rule text establishing the scope of application for the enhanced supplementary leverage ratio differs among the agencies. The Board applies the enhanced supplementary leverage ratio standards to bank holding companies identified as global systemically important bank holding companies as defined in 12 CFR 217.2 and those bank holding companies' Board-supervised institution subsidiaries.[24] The OCC and the FDIC apply enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier bank holding company that has more than $700 billion in total assets or more than $10 trillion in assets under custody.[25] The distinction is of little practical consequence at this time because the set of bank holding companies identified by each agency's regulations is the same.

---

[20] See 12 U.S.C. 1831o(c)(3); see also 12 CFR 6.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 324.403 (FDIC).
[21] 12 U.S.C. 1831o(h)(3)(A).
[22] See 79 FR 24528 (May 1, 2014).
[23] See 12 CFR 6.4(c)(1)(iv)(B) (OCC); 12 CFR 208.43(b)(1)(iv)(B) (Board); 12 CFR 324.403(b)(1)(v) (FDIC).
[24] See 80 FR 49082 (August 14, 2015).
[25] See 12 CFR 6.4(c)(1)(iv)(B) (OCC); 12 CFR 324.403(b)(1)(v) (FDIC).

Brian P. Brooks,

Acting Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on or about July 2, 2020.

Robert E. Feldman,

Executive Secretary.

BILLING CODES: 4810-33-P; 6210-01-P; 6714-01-P

[FR Doc. 2020-14991 Filed: 7/10/2020 8:45 am; Publication Date: 7/13/2020]