

**DEPARTMENT OF TREASURY**  
**Office of the Comptroller of the Currency**  
**12 CFR Parts 6**  
**Docket ID OCC-2013-0008**  
**RIN 1557-AD69**

**FEDERAL RESERVE SYSTEM**  
**12 CFR Parts 208 and 217**  
**Regulation H and Q**  
**Docket No. []**  
**RIN 7100-AD []**

**FEDERAL DEPOSIT INSURANCE CORPORATION**  
**12 CFR Part 324**  
**RIN 3064-AE01**

**Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and their Subsidiary Insured Depository Institutions.**

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

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:**

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) are seeking comment on a proposal that would strengthen the agencies' leverage ratio standards for large, interconnected U.S. banking organizations. The proposal would apply to any U.S. top-tier bank holding company (BHC) with at least \$700 billion in total consolidated assets or at least \$10 trillion in assets under custody (covered BHC) and any insured depository institution subsidiary of these BHCs. In the revised capital regulations adopted by the agencies (2013 rule), the agencies established a minimum supplementary leverage ratio of 3 percent (supplementary leverage ratio), consistent with the minimum leverage ratio adopted by the Basel Committee on Banking Supervision, for banking organizations subject to the advanced

approaches risk-based capital rules. In this notice of proposed rulemaking (proposal), the agencies are proposing to establish a “well capitalized” threshold of 6 percent for the supplementary leverage ratio for any insured depository institution that is a subsidiary of a covered BHC, under the agencies’ prompt corrective action framework. The Board also proposes to establish a new leverage buffer for covered BHCs above the minimum supplementary leverage ratio requirement of 3 percent (leverage buffer). The leverage buffer would function like the capital conservation buffer for the risk-based capital ratios in the 2013 rule. A covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on distributions and discretionary bonus payments. The proposal would take effect beginning on January 1, 2018. The agencies seek comment on all aspects of this proposal.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments should be directed to:

OCC:

Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible.

Please use the title “**Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions**” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2013-0008” in the Search Box and click “Search”. Results can

be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Hand Delivery/Courier:** 400 7<sup>th</sup> Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Fax:** (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2013-0008” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2013-0008” in the Search box and click "Search". Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: When submitting comments, please consider submitting your comments by e-mail or fax because paper mail in the Washington, D.C. area and at the Board may be subject to delay. You may submit comments, identified by Docket No. [XX][XX], by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- **Fax:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Robert de V. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

All public comments are available from the Board's website at

<http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Street, N.W., Washington, D.C. 20551) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments, identified by RIN 3064-AE01, by any of the following methods:

**Agency Website:** <http://www.fdic.gov/regulations/laws/federal/propose.html>.

Follow instructions for submitting comments on the Agency website.

- **E-mail:** [Comments@fdic.gov](mailto:Comments@fdic.gov). Include the RIN 3064-AE01 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

**Public Inspection:** All comments received must include the agency name and RIN 3064-AE01 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Roger Tufts, Senior Economic Advisor, (202) 649-6981; Nicole Billick, Risk Expert, (202) 649-7932, Capital Policy; or Ron Shimabukuro, Senior Counsel; or Carl Kaminski, Senior Attorney, Legislative and Regulatory Activities Division, (202) 649-5490, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street S.W., Washington, D.C. 20219.

Board: Anna Lee Hewko, Deputy Associate Director, (202) 530-6260; Constance M. Horsley, Manager, (202) 452-5239; Juan C. Climent, Senior Supervisory Financial Analyst, (202) 872-7526; or Holly Kirkpatrick, Senior Financial Analyst, (202) 452-2796, Capital and Regulatory Policy, Division of Banking Supervision and Regulation; or Benjamin McDonough, Senior Counsel, (202) 452-2036; April C. Snyder, Senior Counsel, (202) 452-3099; Christine Graham, Senior Attorney, (202) 452-3005; or David Alexander, Senior Attorney, (202) 452-2877, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: George French, Deputy Director, [gfrench@fdic.gov](mailto:gfrench@fdic.gov); Bobby R. Bean, Associate Director, [bbean@fdic.gov](mailto:bbean@fdic.gov); Ryan Billingsley, Chief, Capital Policy Section, [rbillingsley@fdic.gov](mailto:rbillingsley@fdic.gov); Karl Reitz, Chief, Capital Markets Strategies Section, [kreitz@fdic.gov](mailto:kreitz@fdic.gov); Capital Markets Branch,

Division of Risk Management Supervision, [regulatorycapital@fdic.gov](mailto:regulatorycapital@fdic.gov) or (202) 898-6888; Mark Handzlik, Counsel, [mhandzlik@fdic.gov](mailto:mhandzlik@fdic.gov); or Michael Phillips, Counsel, [mphillips@fdic.gov](mailto:mphillips@fdic.gov); Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The recent financial crisis showed that some financial companies had grown so large, leveraged, and interconnected that their failure could pose a threat to overall financial stability. The sudden collapses or near-collapses of major financial companies were among the most destabilizing events of the crisis. As a result of the imprudent risk taking of major financial companies and the severe consequences to the financial system and the economy associated with the disorderly failure of these companies, the U.S. government (and many foreign governments in their home countries) intervened on an unprecedented scale to reduce the impact of, or prevent, the failure of these companies and the attendant consequences for the broader financial system.

A perception continues to persist in the markets that some companies remain “too big to fail,” posing an ongoing threat to the financial system. First, the existence of the “too-big-to-fail” problem reduces the incentives of shareholders, creditors and counterparties of these companies to discipline excessive risk-taking by the companies. Second, it produces competitive distortions because companies perceived as “too big to fail” can often fund themselves at a lower cost than other companies. This distortion is unfair to smaller companies, damaging to fair competition, and tends to artificially encourage further consolidation and concentration in the

financial system.

An important objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) is to mitigate the threat to financial stability posed by systemically-important financial companies.<sup>1</sup> The agencies have sought to address this problem through enhanced supervisory programs, including heightened supervisory expectations for large, complex institutions and stress testing requirements. The Dodd-Frank Act further addresses this problem with a multi-pronged approach: a new orderly liquidation authority for financial companies (other than banks and insurance companies); the establishment of the Financial Stability Oversight Council (Council) empowered with the authority to designate nonbank financial companies for Federal Reserve Board oversight; stronger regulation of major BHCs and nonbank financial companies designated for Board oversight; and enhanced regulation of over-the-counter (OTC) derivatives, other core financial markets, and financial market utilities.

This notice of proposed rulemaking (proposal, or proposed rule) would build on these efforts by increasing leverage standards for the largest and most interconnected U.S. banking organizations. The agencies have broad authority to set regulatory capital standards.<sup>2</sup> As a general matter, the agencies' authority to set regulatory capital requirements for the institutions they regulate derives from the International Lending Supervision Act (ILSA)<sup>3</sup> and the prompt

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> The agencies have authority to establish capital requirements for depository institutions under the prompt corrective action provisions of the Federal Deposit Insurance Act (12 U.S.C. 1831o). In addition, the Federal Reserve has broad authority to establish various regulatory capital standards for BHCs under the Bank Holding Company Act and the Dodd-Frank Act. See, for example, sections 165 and 171 of the Dodd-Frank Act (12 U.S.C. 5365 and 12 U.S.C. 5371).

<sup>3</sup> 12 U.S.C. §§ 3901-3911.



corrective action (PCA) provisions<sup>4</sup> of Federal Deposit Insurance Corporation Improvement Act (FDICIA). In establishing ILSA, Congress codified its intentions, providing, “It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.”<sup>5</sup> ILSA encourages the agencies to work with their international counterparts to establish effective and consistent supervisory policies and practices and specifically provides agencies the authority to set broadly applicable minimum capital levels<sup>6</sup> as well as individual capital requirements.<sup>7</sup> Additionally, ILSA specifically calls on U.S. regulators to encourage governments, central banks, bank regulatory authorities, and other major banking countries to work toward maintaining, and where appropriate, strengthening the capital bases of banking institutions involved in international banking.<sup>8</sup> With its focus on international lending and the safety of the broader financial system, ILSA provides the agencies with the authority to consider an institution’s interconnectedness and other systemic factors when setting capital standards.

As part of the overall prudential framework for bank capital, the agencies have long expected institutions to maintain capital well above regulatory minimums and have monitored

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<sup>4</sup> 12 U.S.C. § 1831o.

<sup>5</sup> 12 U.S.C. § 3901(a).

<sup>6</sup> “Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.” 12 U.S.C. § 3907(a)(1).

<sup>7</sup> Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.” 12 U.S.C. § 3907(a)(2).

<sup>8</sup> 12 U.S.C. § 3907(b)(3)(C).

banking organizations' capital adequacy through the supervisory process in accordance with this expectation. Additionally, this expectation is codified for insured depository institutions (IDIs) in the statutory PCA requirements, which require the agencies to establish ratio thresholds for both leverage and risk-based capital that banks have to meet to be considered "well capitalized."

Additionally, section 165 of the Dodd-Frank Act requires the Board to impose a package of enhanced prudential standards on BHCs with total consolidated assets of \$50 billion or more and nonbank financial companies the Council has designated for supervision by the Board.<sup>9</sup> The prudential standards for covered companies required under section 165 of the Dodd-Frank Act must include enhanced leverage requirements. In general, the Dodd-Frank Act directs the Board to implement enhanced prudential standards that strengthen existing micro-prudential supervision and regulation of individual companies and incorporate macro-prudential considerations so as to reduce threats posed by covered companies to the stability of the financial system as a whole. The enhanced standards must increase in stringency based on the systemic footprint and risk characteristics of individual covered companies. When differentiating among companies for purposes of applying the standards established under section 165, the Board may consider the companies' size, capital structure, riskiness, complexity, financial activities, and any other risk-related factor the Board deems appropriate.

In the agencies' experience, strong capital is an important safeguard that helps financial institutions navigate periods of financial or economic stress. Maintenance of a strong base of capital at the largest, systemically important institutions is particularly important because capital shortfalls at these institutions can contribute to systemic distress and can have material adverse economic effects. Further, higher capital standards for these institutions would place additional

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<sup>9</sup> See 12 U.S.C. 5365; 77 FR 593 (January 5, 2012); and 77 FR 76627 (December 28, 2012).

private capital at risk before the Federal deposit insurance fund and the Federal government's resolution mechanisms would be called upon, and reduce the likelihood of economic disruptions caused by problems at these institutions. The agencies believe that higher standards for the supplementary leverage ratio would reduce the likelihood of resolutions, and would allow regulators more time to tailor resolution efforts in the event those are needed. By further constraining their use of leverage, higher leverage standards could offset possible funding cost advantages that these institutions may enjoy as a result of the "too-big-to-fail" problem, as discussed above.

#### A. Scope of the Proposal

In November 2011, the Basel Committee on Banking Supervision (BCBS)<sup>10</sup> released a document entitled, *Global systemically important banks: assessment methodology and the additional loss absorbency requirement*,<sup>11</sup> which sets out a framework for a new capital surcharge for global systemically important banks (BCBS framework). The BCBS framework is intended to strengthen the capital position of the global systemically important banking organizations (G-SIBs) beyond the requirements of other banking organizations by expanding the capital conservation buffer for these organizations.

The BCBS framework incorporates five broad characteristics of a banking organization that the agencies consider to be good proxies for, and correlated with, systemic importance --

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<sup>10</sup> The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G-10 countries in 1975. It currently consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Documents issued by the BCBS are available through the Bank for International Settlements Web site at <http://www.bis.org>.

<sup>11</sup> Available at <http://www.bis.org/publ/bcbs207.pdf>.

size, complexity, interconnectedness, lack of substitutes, and cross-border activity. The Board believes that the criteria and methodology used by the BCBS to identify G-SIBs are consistent with the criteria it must consider under the DFA when tailoring enhanced prudential standards based on the systemic footprint and risk characteristics of individual covered companies.

In November 2012 the FSB and BCBS published a list of banks that meet the BCBS definition of a G-SIB based on year-end 2011 data.<sup>12</sup> Each of these organizations has more than \$700 billion in consolidated assets or more than \$10 trillion in assets under custody. For the reasons described in this notice, the agencies are proposing to modify the revised capital regulations recently adopted or under consideration for adoption by the agencies<sup>13</sup> (2013 rule) to implement enhanced leverage standards for the largest, most interconnected U.S. BHCs (that have been, and are likely to continue to be identified as G-SIBs) and their subsidiary IDIs.<sup>14</sup> Accordingly, the agencies propose to use these thresholds to identify covered BHCs and their IDI subsidiaries to which the higher leverage requirements would apply. Over time, as the G-SIB risk-based capital framework is implemented in the United States or revised by the Basel

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<sup>12</sup> The U.S. banking organizations that are currently identified as G-SIBs and that would be subject to the proposal are Citigroup Inc., JP Morgan Chase & Co., Bank of America Corporation, The Bank of New York Mellon Corporation, Goldman Sachs Group, Inc., Morgan Stanley, State Street Corporation, and Wells Fargo & Company. Available at [http://www.financialstabilityboard.org/publications/r\\_121031ac.pdf](http://www.financialstabilityboard.org/publications/r_121031ac.pdf).

<sup>13</sup> The 2013 rule revised and replaced the agencies' risk-based and leverage capital standards and established a 3 percent minimum supplementary leverage ratio for banking organizations subject to the agencies' advanced approaches risk-based capital rules. The Board adopted the 2013 rule as a final rule on July 2, 2013. See <http://www.federalreserve.gov/newsevents/press/bcreg/20130702a.htm>. The OCC is adopting the 2013 rule as a final rule, and the FDIC is adopting the 2013 rule as an interim final rule.

<sup>14</sup> Under the 2013 rule, a "subsidiary" is defined as a company controlled by another company, and a person or company "controls" a company under the rule if it: (1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the company; or (2) consolidates the company for financial reporting purposes. See section 2 of the 2013 rule.

Committee, the agencies may consider modifying the scope of application of the proposed leverage requirements. In addition, independent of the G-SIB capital framework implementation, the agencies will continue to evaluate the proposed applicability thresholds and may consider revising them to ensure they remain appropriate.

#### B. The Supplementary Leverage Ratio

The 2013 rule comprehensively revises and strengthens the capital regulations applicable to banking organizations. The 2013 rule strengthens the definition of regulatory capital, increases the minimum risk-based capital requirements for all banking organizations, and modifies the way banking organizations are required to calculate risk-weighted assets. The 2013 rule also establishes a minimum tier 1 leverage ratio requirement<sup>15</sup> of 4 percent applicable to all insured depository institutions, which is the “generally applicable” leverage ratio for purposes of section 171 of the Dodd-Frank Act. Accordingly, the minimum tier 1 leverage requirement for depository institution holding companies is also 4 percent.<sup>16</sup>

In addition, for advanced approaches banking organizations, the 2013 rule establishes a minimum requirement of 3 percent of tier 1 capital to total leverage exposure (supplementary leverage ratio). Total leverage exposure includes all on-balance sheet assets and many off-balance sheet exposures for banking organizations subject to the agencies’ advanced approaches risk-based capital rules. The supplementary leverage ratio is consistent with the minimum leverage ratio requirement adopted by the Basel Committee on Banking Supervision (Basel III

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<sup>15</sup> The generally applicable leverage ratio under the 2013 rule is the ratio of a banking organization’s tier 1 capital to its average total consolidated assets as reported on the banking organization’s regulatory report minus amounts deducted from tier 1 capital.

<sup>16</sup> 12 U.S.C. 5371.

leverage ratio).<sup>17</sup>

Because total leverage exposure includes off-balance sheet exposures, for any given company with material off-balance sheet exposures, the minimum amount of capital required to meet the supplementary leverage ratio would substantially exceed the amount of capital that would be required to meet the generally applicable leverage ratio, assuming that both ratios were set at the same level. Based on recent supervisory estimates, the 6 percent proposed supplementary leverage ratio for subsidiary IDIs of covered BHCs corresponds to roughly an 8.6 percent generally applicable leverage ratio, while the proposed 5 percent buffer level of the supplementary leverage ratio for covered BHCs corresponds to a roughly 7 percent generally applicable leverage ratio, as shown in Table 1.

**Table 1: Generally applicable leverage ratio equivalents for various values of the supplementary leverage ratio**

Leverage Concept	Supplementary leverage ratio level:					
	3%	4%	5%	6%	7%	8%
Implied generally applicable ratio*	4.3%	5.7%	7.2%	8.6%	10.0%	11.4%
Current BHC minimum**	4%					
Current IDI minimum	4%					
Current IDI well-capitalized threshold	5%					

\*Assumes total leverage exposure for the supplementary leverage ratio is \$143 for every \$100 of current generally applicable leverage exposure based on a group of advanced approaches banking organizations as of 3Q 2012. Amounts by which total leverage exposure exceeds balance sheet amounts will vary across banking organizations depending on the composition of their off-balance sheet assets.

\*\*Under the 2013 rule, the minimum leverage ratio for BHCs is 4 percent.

The introduction of the Basel III leverage ratio as a minimum standard is an important step in improving the BCBS framework for international capital standards (Basel capital

<sup>17</sup> See BCBS, “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems” (December 2010), available at <http://www.bis.org/publ/bcbs189.htm>.

framework), and the BCBS described it as a backstop to the risk-based capital ratios and an overall constraint on leverage. The agencies believe the leverage requirement should produce a simple and transparent measure of capital adequacy that will be credible to market participants and ensure a meaningful amount of capital is available to absorb losses. The Basel III leverage ratio is a non-risk-based measure of capital adequacy that measures both on- and off-balance sheet exposures relative to tier 1 capital.<sup>18</sup> This is particularly important for large, complex organizations that often have substantial off-balance sheet exposures. The financial crisis demonstrated the risks from off-balance sheet exposures that can require capital support, especially during a period of stress. The agencies note that the BCBS has committed to collecting additional data and potentially recalibrating the Basel III leverage ratio requirements. The agencies will review any modifications to the Basel III leverage ratio made by the BCBS and consider proposing revisions to the U.S. requirements, as appropriate.

## **II. Proposed Revisions to Strengthen the Supplementary Leverage Ratio Standards**

### **A. Factors Contributing to the Proposed Revisions**

In developing this proposal, the agencies considered various factors, including comments regarding the supplementary leverage ratio when the agencies proposed the revisions to their capital standards that are in the 2013 rule,<sup>19</sup> and the calibration objectives and methodologies of the agencies in developing the risk-based capital and leverage requirements in the 2013 rule.

Some commenters on the supplementary leverage ratio in the 2012 proposal recommended that the agencies implement a higher minimum requirement. These commenters

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<sup>18</sup> The BCBS recently published a consultative paper seeking comment on a number of specific changes to the supplementary leverage ratio denominator. If and when any of these changes are finalized, the agencies would consider the appropriateness of their application in the United States.

<sup>19</sup> See 77 FR 52792 (August 30, 2012) (2012 proposal).

argued that the risk-based capital ratios are less transparent and more subject to manipulation than leverage ratios and therefore should not be the binding requirement. Other commenters recommended that the agencies wait to implement a supplementary leverage ratio until the BCBS completes any refinements to the Basel III leverage ratio.<sup>20</sup> Some commenters stated that if a leverage ratio is the binding regulatory capital requirement, banking organizations may have incentives to increase their holdings of riskier assets.

In calibrating the revised risk-based capital framework, the BCBS identified those elements of regulatory capital that would be available to absorb unexpected losses on a going-concern basis. The BCBS agreed that an appropriate regulatory minimum level for the risk-based capital requirements should force banking organizations to hold enough loss-absorbing capital to provide market participants a high level of confidence in their viability. The BCBS also determined that a buffer above the minimum risk-based capital requirements would enhance stability, and that such a buffer should be calibrated to allow banking organizations to absorb a severe level of losses while still remaining above the regulatory minimums requirements. The buffer is conceptually similar, but not identical in function, to the PCA “well capitalized” category for IDIs.

The BCBS’s approach for determining the minimum level of the Basel III leverage ratio was different than the calibration approach described above for the risk-based capital ratios. The BCBS used the most loss-absorbing measure of capital, common equity tier 1 capital, as the basis for calibration for the risk-based capital ratios, but not for the Basel III leverage ratio. In

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<sup>20</sup> If the BCBS finalizes changes in the definition of the total leverage exposure measure, the agencies will consider the appropriateness of incorporating those changes into the definition of the supplementary leverage ratio and its appropriate levels for purposes of U.S. regulation. Any such changes would be based on a notice and comment rulemaking process.



addition, the BCBS did not calibrate the minimum Basel III leverage ratio to meet explicit loss absorption and market confidence objectives as it did in calibrating the minimum risk-based capital requirements and did not implement a capital conservation buffer level above the minimum leverage ratio. Rather, the BCBS focused on calibrating the Basel III leverage ratio to be a backstop to the risk-based capital ratios and an overall constraint on leverage. The agencies believe that while the establishment of the Basel III leverage ratio internationally is an important achievement, further steps could be taken to ensure that the risk-based and leverage capital requirements effectively work together to enhance the safety and soundness of the largest, most systemically important banking organizations.

An estimated half of the covered BHCs that were BHCs in 2006 would have met or exceeded a 3 percent minimum supplementary leverage ratio at the end of 2006, and the other half were quite close to the minimum. This suggests that the minimum requirement would not have placed a significant constraint on the pre-crisis buildup of leverage at the largest institutions. Based on their experience during the financial crisis, the agencies believe that there could be benefits to financial stability and reduced costs to the deposit insurance fund by requiring these banking organizations to meet a well-capitalized standard or capital buffer in addition to the 3 percent minimum supplementary leverage ratio requirement.

The agencies have also considered the complementary nature of leverage capital requirements and risk-based capital requirements as well as the potential complexity and burden of additional leverage standards. From a safety-and-soundness perspective, each type of requirement offsets potential weaknesses of the other, and the two sets of requirements working together are more effective than either would be in isolation. In this regard, the agencies note that the 2013 rule strengthens U.S. banking organizations' risk-based capital requirements

considerably more than it strengthens their leverage requirements. Relative to the new supplementary leverage ratio in the 2013 rule, the tier 1 risk-based capital requirements under the 2013 rule will be proportionately stronger than was the case under the previous rules.<sup>21</sup> At the same time, the degree to which banking organizations could potentially benefit from active management of risk-weighted assets before they breach the leverage requirements may be greater. Such potential behavior suggests that the increase in stringency of the leverage and risk-based standards should be more closely calibrated to each other so that they remain in an effective complementary relationship. This was an important factor the agencies considered in identifying the proposed levels for the well-capitalized and buffer levels of the supplementary leverage ratio.

This proportionality rationale applies to all banking organizations and to both the generally applicable and supplementary leverage ratios. However, the agencies believe it is appropriate to weigh the burden and complexity of imposing a leverage buffer and enhanced PCA standards against the benefits to financial stability and addressing the concern that some institutions benefit from a real or perceived implicit Federal safety net subsidy or may be viewed as “too big to fail.” The agencies are therefore proposing to apply enhanced leverage standards only to those U.S. banking organizations that pose the greatest potential risk to financial stability, which are covered BHCs and their subsidiary IDIs.

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<sup>21</sup> See section 10 of the 2013 rule. The agencies’ current risk-based capital rules are at 12 CFR part 3, appendix A, 12 CFR part 167 (OCC); 12 CFR parts 208 and 225, appendix A (Board); and 12 CFR part 325, appendix A, and 12 CFR part 390, subpart Z (FDIC). The agencies’ current leverage rules are at 12 CFR 3.6(b), 3.6(c), and 167.6 (OCC); 12 CFR part 208, appendix B, and 12 CFR part 225, appendix D (Board); and 12 CFR 325.3, and 390.467 (FDIC).

In this regard, the proposed heightened standards for the supplementary leverage ratio for covered BHCs and their subsidiary IDIs should provide meaningful incentives to encourage these banking organizations to conserve capital, thereby reducing the likelihood of their instability or failure and consequent negative external effects on the financial system. The calibration of the proposed heightened standards is based on consideration of all of the factors described in this section.

#### B. Description of the Proposed Revisions

In the 2013 rule, the agencies established a minimum supplementary leverage ratio requirement of 3 percent for advanced approaches banking organizations based on the Basel III leverage ratio. The supplementary leverage ratio is defined as the simple arithmetic mean of the ratio of the banking organization's tier 1 capital to total leverage exposure calculated as of the last day of each month in the reporting quarter.

Under this proposal, a covered BHC would be subject to a leverage buffer of tier 1 capital in addition to the minimum supplementary leverage ratio requirement established in the 2013 rule. Similar to the capital conservation buffer in the 2013 rule, under the proposal, a covered BHC that maintains a leverage buffer of tier 1 capital in an amount greater than 2 percent of its total leverage exposure would not be subject to limitations on its distributions and discretionary bonus payments.<sup>22</sup> If the BHC maintains a leverage buffer of 2 percent or less, it would be subject to increasingly stricter limitations on such payouts. The proposed leverage buffer would follow the same general mechanics and structure as the capital conservation buffer contained in the 2013 rule.<sup>23</sup> The leverage buffer constraints on distributions and discretionary bonus

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<sup>22</sup> See section 11(a)(4) of the 2013 rule.

<sup>23</sup> See section 11(a) of the 2013 rule.

payments would be independent of any constraints imposed by the capital conservation buffer or other supervisory or regulatory measures.

In the 2013 rule, the agencies incorporated the 3 percent supplementary leverage ratio minimum requirement into the PCA framework as an adequately capitalized threshold for IDIs subject to the agencies' advanced approaches risk-based capital rules, but did not establish an explicit well-capitalized threshold for this ratio. Under the proposal, an IDI that is a subsidiary of a covered BHC would be required to satisfy a 6 percent supplementary leverage ratio to be considered well capitalized for PCA purposes. The leverage ratio thresholds under the 2013 rule and this proposal are shown in Table 2.

**Table 2: PCA levels in the 2013 rule for advanced approaches banking organizations that are insured depository institutions and proposed well-capitalized level for subsidiary IDIs of covered BHCs**

<b>PCA category</b>	<b>Generally applicable leverage ratio (percent)</b>	<b>Supplementary leverage ratio (percent)</b>	<b>Proposed supplementary leverage ratio for subsidiary IDIs of covered BHCs (percent)</b>
Well Capitalized	$\geq 5$	Not applicable	$\geq 6$
Adequately Capitalized	$\geq 4$	$\geq 3$	$\geq 3$
Undercapitalized	$< 4$	$< 3$	$< 3$
Significantly Undercapitalized	$< 3$	Not applicable	Not applicable
Critically Undercapitalized	Tangible equity (defined as tier 1 capital plus non-tier 1 perpetual preferred stock) to Total Assets $\leq 2$	Not applicable	Not applicable

Note: The supplementary leverage ratio includes many off-balance sheet assets in its denominator; the generally applicable leverage ratio does not. See the supplementary leverage ratio under section I.B. of this preamble for additional information.

Consistent with the transition provisions set forth in subpart G of the 2013 rule, the agencies propose to adopt the leverage buffer for covered BHCs and the 6 percent well-capitalized threshold for subsidiary IDIs of covered BHCs beginning on January 1, 2018.

The agencies note that by setting the minimum supplementary leverage ratio plus leverage buffer at 5 percent for covered BHCs and the well-capitalized threshold for subsidiary IDIs of covered BHCs at 6 percent, the proposal would be structurally consistent with the current relationship between the generally applicable leverage ratio requirements applicable to IDIs and BHCs under section 10 of the 2013 rule. Under the 2013 rule, IDIs must maintain a 5 percent generally applicable leverage ratio to be well capitalized for PCA purposes, whereas BHCs must maintain a minimum 4 percent generally applicable leverage ratio under separate BHC regulations.

Under this proposed rule, the well-capitalized supplementary leverage ratio standard for subsidiary IDIs of covered BHCs would become a more stringent requirement than the current 5 percent well-capitalized standard under PCA with respect to the generally applicable leverage ratio. Accordingly, the agencies are considering eliminating the 5 percent well-capitalized standard for the generally applicable leverage ratio for subsidiary IDIs of covered BHCs if the agencies finalize the 6 percent well-capitalized threshold for the supplementary leverage ratio as proposed.

### C. Required Capital and Credit Availability

In developing this proposal, the agencies analyzed its potential impact on the amount of capital the covered organizations would be required to hold and, in general terms, factors relevant to the potential effects on credit availability.

Some perspective on the potential effects of the proposed rule can be gained by considering information obtained from the Board's Comprehensive Capital Analysis and Review (CCAR) process in which all of the agencies participate. This information reflects banking organizations' own projections of their Basel III capital ratios under the supervisory baseline scenario, including institutions' own assumptions about earnings retention and other strategic actions. It does not reflect supervisory views. In the 2013 CCAR, all 8 covered BHCs met the 3 percent supplementary leverage ratio as of third quarter 2012, and almost all projected that their supplementary leverage ratios would exceed 5 percent at year-end 2017.

If the proposed supplementary leverage ratio thresholds had been in effect as of third quarter 2012, covered BHCs under the proposal that did not meet a 5 percent supplementary leverage ratio would have needed to increase their tier 1 capital by about \$63 billion to meet that ratio. The incremental capital needs associated with higher supplementary leverage ratios need to be evaluated in the context of the proposed 2018 effective date and institutions' efforts to build their capital to meet Basel III requirements and for other purposes. Given these capital-building activities, it is likely that incremental capital needs to meet a 5 percent supplementary leverage ratio would be significantly less as the effective date approaches than if the requirements had been in place in September 2012. While projections and future economic conditions are subject to considerable uncertainty, covered BHCs' 2013 CCAR projections are currently the best available evidence on which to base an estimate of the ultimate incremental capital needs of the proposed rule. Based on these projections, achieving the proposed 5 percent supplementary leverage ratio for covered BHCs appears generally in line with current and planned capital strengthening initiatives and within the financial capacity of these organizations to achieve.

Because CCAR is focused on the consolidated capital of BHCs, BHCs did not project future Basel III leverage ratios for their IDIs. To estimate the impact of the proposal on the lead IDIs of covered BHCs, the agencies assumed that an IDI has the same ratio of total leverage exposure to total assets as its BHC. Using this assumption and CCAR 2013 projections, all 8 lead IDIs of covered BHCs are estimated to meet the 3 percent supplementary leverage ratio as of third quarter 2012. If the proposed supplementary leverage ratio thresholds had been in effect as of third quarter 2012, the lead IDIs that did not meet a 6 percent ratio would have needed to increase their tier 1 capital by about \$89 billion to meet that ratio.<sup>24</sup> The agencies believe that the CCAR projections made by covered BHCs under the proposal in many cases reflect similar anticipated capital trends at these BHCs' lead IDIs and that affected IDIs under the proposal would be able to effectively manage their capital structures to meet a 6 percent supplementary leverage ratio at year-end 2017.

In short, the agencies' assessment of the capital impact of the proposed rule is that it would formalize and preserve a strengthening of U.S. systemically important banking organizations' capital that is already underway and anticipated to continue.

The agencies considered a number of broad considerations relevant to the potential effects of the proposal on credit availability. Roughly speaking, banking organizations fund themselves with debt and equity, and both funding sources support lending. The agencies believe the effect of higher banking organization capital requirements on lending would likely depend on a number of factors. First, if the higher capital requirement is less than the banking organization's planned capital holdings, the higher capital requirement may not directly affect

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<sup>24</sup> The \$89 billion estimate was calculated by assuming that CCAR results were proportionally applied based upon the total assets of the lead IDI relative to the BHC.

lending. If the higher capital requirement does exceed planned capital levels, but the increase in capital does not increase overall funding costs (perhaps because the risk premium demanded by counterparties is sufficiently reduced), the higher capital requirement may not affect lending. If actual capital held increases and this causes overall funding costs to increase, and if these costs are passed on to borrowers, then there would likely be an increase in the cost of credit that could affect lending, in an amount that depends on the materiality of the increase in the cost of funding.

The proposed rule would permit covered BHCs and their IDI subsidiaries to fund themselves more than 90 percent with debt while still satisfying the proposed leverage thresholds. In the extreme, if an organization had to increase its actual capital holdings by a full 3 percentage points of its total leverage exposures, corresponding to the establishment of a 6 percent well-capitalized threshold above the 3 percent adequately-capitalized threshold, the remainder of its funding sources would be expected to carry the same or possibly lower cost (lower if counterparty-demanded risk premiums come down) while a small percentage of its funding sources, in an amount equal to 3 percent of total leverage exposure, could come at a higher cost reflecting the replacement of debt with equity. The agencies note that to the extent that higher capital standards increase the cost of credit and reduce the volume of lending, this effect should be weighed against the potential long-term benefits to the availability of credit resulting from a better capitalized and more stable banking system that is less prone to crises. Historically, banking crises are often followed by long periods of diminished lending and economic growth.

### **III. Request for Comment**

The agencies seek comment on all aspects of the proposed strengthening of the leverage standards for covered BHCs and their subsidiary IDIs. Comments are requested about the



potential advantages of the proposal in strengthening the individual safety and soundness of these banking organizations and the stability of the financial system. Comments are also requested about the calibration and capital impact of the proposal, including whether the proposal maintains an appropriately complementary relationship between the risk-based and leverage capital requirements, and the nature and extent of any costs to the affected institutions or the broader economy. While the proposal references the supplementary leverage ratio defined in the 2013 rule, comments are also sought about alternative definitions. Finally, the agencies seek commenters' views about future rulemaking efforts that should be considered for simplification or other improvements to the agencies' regulatory capital rules generally.

**Question 1:** How would proposed strengthening of the supplementary leverage ratio for covered BHCs and their subsidiary IDIs contribute to financial stability and thus economic growth?

**Question 2:** Would the proposed strengthening of the leverage ratio mitigate public-policy concerns about the regulatory treatment of banking organizations that may pose risks to the broader economy?

**Question 3:** The agencies solicit commenters' views on what economic data suggest about leverage ratios and risk-based capital ratios as predictors of bank distress and thus tools to prevent the failure of large systemically-important banking organizations.

**Question 4:** Would the proposal create any risk-reducing incentives and around what specific activities? Would the proposal create incentives for subject banking organizations to take additional risk and if so, would this effect be expected to limit the safety-and-soundness benefits of the proposal?

**Question 5:** What are commenters' views on the proposed calibration of the leverage standards? Is the proposed 6 percent well-capitalized standard for subsidiary IDIs and the proposed 5 percent minimum supplementary leverage ratio plus leverage buffer for covered BHCs appropriate or should these requirements be higher or lower? In particular with regard to covered BHCs, what are the advantages and disadvantages of establishing the minimum supplementary leverage ratio plus leverage buffer at 5 percent for all covered BHC's versus establishing the amount between 4 and 5.5 percent according to each covered BHC's risk-based capital surcharge (that is, to reflect the minimum supplementary leverage ratio of 3 percent plus between 1 and 2.5 percent depending upon each covered BHC's risk-based capital surcharge)? With respect to the subsidiary IDIs of covered BHCs, the agencies seek commenters' views on what, if any, specific challenges these institutions would face in meeting the proposed well-capitalized threshold of 6 percent beginning on January 1, 2018.

**Question 6:** The agencies solicit commenters' views on whether a strengthened leverage ratio requirement would enhance the competitive position of U.S. banking organizations relative to foreign banking organizations by enhancing the relative safety of the U.S. banking system. Alternatively, could the proposed strengthened leverage ratio requirement place U.S. banking organizations at a competitive disadvantage relative to foreign banking organizations and if so, in what areas?

**Question 7:** How would this proposal affect counterparty incentives and behavior?

**Question 8:** The agencies seek commenters' views on the macroeconomic implications of the proposal, particularly the potential effects the proposal could have on the allocation of credit and the volume of lending. For example, could a strengthened leverage ratio requirement as proposed cause a shift in favor of lending to individuals and businesses as opposed to markets-

based activity by banking organizations? If covered BHCs were better capitalized as a group, to what extent would this improve their ability to serve as a source of credit to the economy during periods of economic stress? Conversely, to what extent would the proposal create incentives for banking organizations to shrink or otherwise modify their activities?

**Question 9:** What are the incremental costs to banking organizations of the proposed rule compared to the costs of currently anticipated and planned capitalization initiatives?

**Question 10:** The agencies are interested in comment on the appropriate measure of capital that should be used as the numerator of the supplementary leverage ratio. Among the many measures of capital used by banks, regulators and the market, the agencies considered the following measures: (1) common equity tier 1 capital, (2) tier 1 capital, (3) total capital, and (4) tangible equity (as these terms are defined in the agencies' capital regulations as of the date of the issuance of this proposed rule, including the 2013 rule). What are the advantages and disadvantages of each of these as well as alternative measures?

**Question 11:** What, if any, alternatives to the definition of total leverage exposure should be considered and why?

**Question 12:** In light of the proposed enhanced leverage requirement and ongoing standardized risk-based capital floors, should the agencies consider, in some future regulatory action, simplifying or eliminating portions of the advanced approaches rule if they are unnecessary or duplicative? Are there opportunities to simplify the standardized risk-based capital framework that would be consistent with safety and soundness or other policy objectives?

**Question 13:** The proposed scope of application is U.S. top-tier BHCs with more than \$700 billion in total assets or more than \$10 trillion in assets under custody and their subsidiary IDIs. Should the proposed requirements also be applied to other advanced approaches banking

organizations? Why or why not? Should all IDI subsidiaries of a covered BHC be subject to the proposed well-capitalized standard, and if not, why? Please provide specific factors and the associated rationale the agencies should consider in establishing any exemption from the proposed well-capitalized standard.

#### **IV. Regulatory Analysis:**

##### A. Paperwork Reduction Act (PRA)

There is no new collection of information pursuant to the PRA (44 U.S.C. 3501 *et seq.*) contained in this proposed rule.

##### B. Regulatory Flexibility Act Analysis

###### *OCC*

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), requires an agency to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of \$175 million or less, and, after July 22, 2013, total assets of \$500 million or less).

As described in sections I. and II. of this preamble, the proposal would strengthen the supplementary leverage ratio standards for U.S. top-tier bank holding companies with total assets of more than \$700 billion or assets under custody of more than \$10 trillion and the insured depository institutions they control. Using the SBA's recently issued size standards, as of December 31, 2012, the OCC supervised approximately 1,291 small entities.<sup>25</sup> Because the

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<sup>25</sup> The OCC based the estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which as of July 21, 2013 will be \$500 million and \$35.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR §121.103(a), the OCC counts the assets

proposed rule only applies to large internationally active banks, it does not impact any OCC-supervised small entities. Therefore, the OCC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The OCC certifies that the NPR would not have a significant economic impact on a substantial number of small national banks and small Federal savings associations.

### *Board*

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. As discussed above, this proposed rule is designed to enhance the safety and soundness of U.S. top-tier bank holding companies with at least \$700 billion in consolidated assets or at least \$10 trillion in assets under custody (covered BHCs), and the insured depository institution subsidiaries of covered BHCs. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$500 million or less (a small banking organization).<sup>26</sup> As of March 31, 2013, there were approximately 636 small state member banks. As of December 31, 2012, there were approximately 3,802 small bank holding companies.<sup>27</sup>

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of affiliated financial institutions when determining whether to classify a banking organization as a “small entity” for the purposes of the Regulatory Flexibility Act. The OCC used December 31, 2012, to determine size because the SBA has provided that a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See, footnote 8 to the U.S. Small Business Administration’s Table of Size Standards.

<sup>26</sup> See 13 CFR 121.201. Effective July 22, 2013, the Small Business Administration revised the size standards for banking organizations to \$500 million in assets from \$175 million in assets. 78 FR 37409 (June 20, 2013).

<sup>27</sup> Under the prior Small Business Administration threshold of \$175 million in assets, as of March 31, 2013 the Board supervised approximately 369 small state member banks. As of December 31, 2012, there were approximately 2,259 small bank holding companies.

The proposal would apply only to very large bank holding companies and their insured depository institution subsidiaries. Currently, no small top-tier bank holding company would meet the threshold criteria provided in this NPR, so there would be no additional projected compliance requirements imposed on small bank holding companies. One covered bank holding company has one small state member bank subsidiary, which would be covered by this proposal. The Board expects that this entity would rely on its parent banking organization for compliance and would not bear additional costs. The Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed rule. The Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

### *FDIC*

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (RFA), requires an agency to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of \$175 million or less, and, after July 22, 2013, total assets of \$500 million or less).<sup>28</sup>

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<sup>28</sup> Effective July 22, 2013, the Small Business Administration revised the size standards for banking organizations to \$500 million in assets from \$175 million in assets. 78 FR 37409 (June 20, 2013).

As described in sections I. and II. of this preamble, the proposal would strengthen the supplementary leverage ratio standards for U.S. top-tier bank holding companies with total assets of more than \$700 billion or assets under custody of more than \$10 trillion and the insured depository institutions they control. As of March 31, 2013, based on a \$175 million threshold, 1 (out of 2,453) small state nonmember bank and no (out of 159) small state savings associations were subsidiaries of a covered BHC. As of March 31, 2013, based on a \$500 million threshold, 2 (out of 3,398) small state nonmember banks and no (out of 316) small state savings associations were subsidiaries of a covered BHC. Therefore, the FDIC does not believe that the proposed rule will result in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the NPR would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

### C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

“ Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?

“ Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

“ Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

“ Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?

“ Is this section format adequate? If not, which of the sections should be changed and how?

“ What other changes can the agencies incorporate to make the regulation easier to understand?

[INSERT OCC UNFUNDED MANDATES]

### **List of Subjects**

#### **12 CFR Part 3**

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

#### **12 CFR Part 5**

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

#### **12 CFR Part 6**

National banks.

#### **12 CFR Part 165**

Administrative practice and procedure, Savings associations.

#### **12 CFR Part 167**

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

#### **12 CFR Part 208**

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.



**12 CFR Part 217**

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

**12 CFR Part 225**

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk.

**12 CFR Part 324**

Administrative practice and procedure, Banks, banking, Capital Adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

12 CFR Chapter I

**Authority and Issuance**

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a, 1831o, and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 6 of chapter I of title 12, Code of Federal Regulations as follows:

**PART 6 – PROMPT CORRECTIVE ACTION**

1. Section 6.4(c)(1)(iv) is revised to add paragraphs (A) and (B) as follows:

(c) Capital categories applicable on and after January 1, 2015. On January 1, 2015, and thereafter, for purposes of the provisions of section 38 and this part, a national bank or Federal savings association shall be deemed to be: (1) “Well capitalized” if:

\* \* \* \* \*

(iv) Leverage Measure:

(A) The national bank or Federal savings association has a leverage ratio of 5.0 percent or greater; and

(B) With respect to a national bank or Federal savings association that is a subsidiary of a U.S. top-tier bank holding company that has more than \$700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (Y-15), on January 1, 2018 and thereafter, the national bank or Federal savings association has a supplementary leverage ratio of 6.0 percent or greater; and

\* \* \* \* \*

## **Board of Governors of the Federal Reserve System**

### **12 CFR CHAPTER II**

#### **Authority and Issuance**

For the reasons set forth in the common preamble, parts 208 and 217 of chapter II of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

#### **PART 208 – MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)**

##### **Subpart A—General Membership and Branching Requirements**

2. In § \_\_\_\_.208.41, add a definition of covered BHC to read as follows:

##### **§ 208.41 Definitions for purposes of this subpart.**

\* \* \*

Covered BHC means a covered BHC as defined in § 217.2 of Regulation Q (12 CFR 217.2).

\* \* \*

3. In § \_\_\_.208.43, add paragraph (a)(2)(iv)(C) and revise paragraph (c)(1)(iv) to read as follows:

**§ 208.43 Capital measures and capital category definitions.**

(a) \* \* \*

\* \* \* \* \*

(2) \* \* \*

\* \* \* \* \*

(iv) \* \* \*

\* \* \* \* \*

(C) With respect to any bank that is a subsidiary (as defined in § 217.2 of Regulation Q (12 CFR 217.2)) of a covered BHC, on January 1, 2018, and thereafter, the supplementary leverage ratio.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(iv) Leverage Measure:

(A) The bank has a leverage ratio of 5.0 percent or greater; and

(B) Beginning on January 1, 2018, with respect to any bank that is a subsidiary of a covered BHC under the definition of “subsidiary” in section 2 of part 217 (12 CFR 217.2), the bank has a supplementary leverage ratio of 6.0 percent or greater.

\* \* \* \* \*

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

**Subpart A – General Provisions**

4. In §217.1, revise paragraph (f)(1)(iii)(C) to read as follows:

**§217.1 Purpose, applicability, reservations of authority, and timing.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

\* \* \* \* \*

(iii) \* \* \*

\* \* \* \* \*

(C) Beginning January 1, 2018, a covered BHC as defined in §\_\_.2 is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(ii) of §\_\_.11 and the maximum leverage payout amount as determined under paragraph (c)(3) of §\_\_.11.

\* \* \* \* \*

5. In §217.2, add a definition of covered BHC to read as follows:

**§217.2 Definitions.**

\* \* \*

Covered BHC means a U.S. top-tier bank holding company that has more than \$700 billion in total assets as reported on the company's most recent Consolidated Financial Statement for Bank Holding Companies (FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company's most recent Banking Organization Systemic Risk Report (FR Y-15).

\* \* \* \* \*

**Subpart B – Capital Ratio Requirements and Buffers**

6. In §217.11, add paragraphs (a)(2)(v) and (a)(2)(vi), revise paragraphs (a)(4)(ii) and (a)(4)(iii), and add paragraph (c) to read as follows:

**§217.11 Capital conservation buffer, countercyclical capital buffer amount, and leverage buffer.**

(a) \* \* \*

(2)

\* \* \* \* \*

(v) Maximum leverage payout ratio. The maximum leverage payout ratio is the percentage of eligible retained income that a covered BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum leverage payout ratio is based on the covered BHC's leverage buffer, calculated as of the last day of the previous calendar quarter, as set forth in Table 2.

(vi) Maximum leverage payout amount. A covered BHC's maximum leverage payout amount for the current calendar quarter is equal to the covered BHC's eligible retained income, multiplied by the applicable maximum leverage payout ratio, as set forth in Table 2.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(ii) A Board-regulated institution that has a capital conservation buffer that is greater than 2.5 percent plus 100 percent of its applicable countercyclical capital buffer, in accordance with paragraph (b) of this section, and, if applicable, that has a leverage buffer that is greater than

2.0 percent, in accordance with paragraph (c) of this section, is not subject to a maximum leverage payout amount under this section.

(iii) Negative eligible retained income. Except as provided in paragraph (a)(4)(iv) of this section, a Board-regulated institution may not make distributions or discretionary bonus payments during the current calendar quarter if the Board-regulated institution’s:

(A) Eligible retained income is negative; and

(B) Capital conservation buffer was less than 2.5 percent, or, if applicable, leverage buffer was less than 2.0 percent, as of the end of the previous calendar quarter.

\* \* \* \* \*

(c) Leverage buffer. (1) General. A covered BHC is subject to the lower of the maximum payout amount as determined under paragraph (a)(2)(ii) of this section and the maximum leverage payout amount as determined under paragraph (a)(2)(vi) of this section.

(2) Composition of the leverage buffer. The leverage buffer is composed solely of tier 1 capital.

(3) Calculation of leverage buffer. (i) A covered BHC’s leverage buffer is equal to the covered BHC’s supplementary leverage ratio minus 3 percent, calculated as of the last day of the previous calendar quarter based on the covered BHC’s most recent Consolidated Financial Statement for Bank Holding Companies (FR Y–9C).

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the covered BHC’s supplementary leverage ratio is less than or equal to 3 percent, the covered BHC’s leverage buffer is zero.

TABLE 2 to §217.11 – CALCULATION OF MAXIMUM LEVERAGE PAYOUT AMOUNT

Leverage buffer	Maximum leverage payout ratio
-----------------	-------------------------------

	<b>(as a percentage of eligible retained income)</b>
Greater than 2.0 percent	No payout ratio limitation applies
Less than or equal to 2.0 percent, and greater than 1.5 percent	60 percent
Less than or equal to 1.5 percent, and greater than 1.0 percent	40 percent
Less than or equal to 1.0 percent, and greater than 0.5 percent	20 percent
Less than or equal to 0.5 percent	0 percent

**Federal Deposit Insurance Corporation**

**12 CFR Chapter III**

**Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 324 of chapter III of Title 12, Code of Federal Regulations as follows:

**PART 324—CAPITAL ADEQUACY**

6. In § 324.403, re-designate paragraph (b)(1)(v) as paragraph (b)(1)(vi), and add a new paragraph (b)(1)(v) to read as follows:

**§ 324.403 Capital measures and capital category definitions**

\* \* \* \* \*

(b)     \*    \*    \*

(1) \* \* \*

(v) Beginning on January 1, 2018 and thereafter, an FDIC-supervised institution that is a subsidiary of a covered BHC will be deemed to be “well capitalized” if the FDIC-supervised institution satisfies paragraphs (b)(1)(i)-(iv) of this paragraph and has a supplementary leverage ratio of 6.0 percent or greater. For purposes of this paragraph, a covered BHC means a U.S. top-tier bank holding company with more than \$700 billion in total assets as reported on the company’s most recent Consolidated Financial Statement for Bank Holding Companies (FR Y-9C) or more than \$10 trillion in assets under custody as reported on the company’s most recent Banking Organization Systemic Risk Report (FR Y-15); and

\* \* \* \* \*



[THIS SIGNATURE PAGE RELATES TO THE ISSUANCE OF THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REGULATORY CAPITAL RULES: REGULATORY CAPITAL, ENHANCED SUPPLEMENTARY LEVERAGE RATIO STANDARDS FOR CERTAIN BANK HOLDING COMPANIES AND THEIR SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS”]

Dated: [insert date]

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Thomas J. Curry,

Comptroller of the Currency.

[THIS SIGNATURE PAGE RELATES TO THE ISSUANCE OF THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REGULATORY CAPITAL RULES: REGULATORY CAPITAL, ENHANCED SUPPLEMENTARY LEVERAGE RATIO STANDARDS FOR CERTAIN BANK HOLDING COMPANIES AND THEIR SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS”]

By order of the Board of Governors of the Federal Reserve System, [date].

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Robert deV. Frierson  
Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE ISSUANCE OF THE JOINT NOTICE OF PROPOSED RULEMAKING TITLED “REGULATORY CAPITAL RULES: REGULATORY CAPITAL, ENHANCED SUPPLEMENTARY LEVERAGE RATIO STANDARDS FOR CERTAIN BANK HOLDING COMPANIES AND THEIR SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS”]

Dated at Washington, D.C., this [] day of [month, year].

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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Robert E. Feldman,

Executive Secretary.