

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

12 CFR Parts 3 and 50

Docket ID OCC-2019-0009

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**FEDERAL RESERVE SYSTEM**

12 CFR Parts 217 and 249

Regulations Q, WW; Docket No. R-1628

RIN 7100-AF21

**FEDERAL DEPOSIT INSURANCE CORPORATION**

12 CFR Parts 324 and 329

RIN 3064-AE96

**Changes to applicability thresholds for regulatory capital and liquidity requirements**

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

**ACTION:** Final rule

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (together, the agencies) are adopting a final rule to revise the criteria for determining the applicability of regulatory capital and liquidity requirements for large U.S. banking organizations and the U.S. intermediate holding companies of certain foreign banking organizations.

The final rule establishes four risk-based categories for determining the applicability of requirements under the agencies' regulatory capital rule and liquidity coverage ratio (LCR) rule. Under the final rule, such requirements increase in stringency based on measures of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The final rule applies tailored regulatory capital and liquidity requirements to depository institution holding companies and U.S. intermediate holding companies with \$100 billion or more in total consolidated assets as well as to certain depository institutions.

Separately, the Board is adopting a final rule that revises the criteria for determining the applicability of enhanced prudential standards for large domestic and foreign banking organizations using a risk-based category framework that is consistent with the framework described in this final rule, and makes additional modifications to the Board's company-run stress test and supervisory stress test rules. In addition, the Board and the FDIC are separately adopting a final rule that amends the resolution planning requirements under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act using a risk-based category framework that is consistent with the framework described in this final rule.

**DATES:** The final rule is effective [INSERT 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

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**I. Introduction**

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) are finalizing the framework set forth under the agencies' recent proposals to change the applicability thresholds under the regulatory capital and liquidity requirements for U.S. banking organizations (domestic proposal) and the U.S. operations of foreign banking organizations (foreign bank proposal, and together, the proposals), with certain adjustments in response to comments.<sup>1</sup> The final rule establishes four risk-based categories for determining the

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<sup>1</sup> See "Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements," 83 FR 66024 (December 21, 2018); "Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries," 84 FR 24296 (May 24, 2019). The final rule would combine these two proposals into a single final rule.

regulatory capital and liquidity requirements applicable to large U.S. banking organizations and the U.S. intermediate holding companies of foreign banking organizations, which apply generally based on indicators of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure.<sup>2</sup> The final rule measures these indicators based on the risk profile of the top-tier banking organization.<sup>3</sup> For the largest and most systemic and interconnected U.S. bank holding companies, the final rule retains the identification methodology in the Board’s global systemically important bank holding company (GSIB) surcharge rule.<sup>4</sup> Under the final rule, the capital and liquidity requirements that apply to U.S. intermediate holding companies and their depository institution subsidiaries generally align with those applicable to similarly situated U.S. banking organizations.

## **II. Background: Regulatory Capital and Liquidity Framework**

In 2013, the agencies adopted a revised capital rule that, among other things, addressed weaknesses in the regulatory framework that became apparent during the financial crisis.<sup>5</sup> The

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<sup>2</sup> The Board’s rules require foreign banking organizations with \$50 billion or more in U.S. non-branch assets to establish a U.S. intermediate holding company and to hold its ownership interest in all U.S. subsidiaries (other than companies whose assets are held pursuant to section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2) and DPC branch subsidiaries) through its U.S. intermediate holding company. *See* 12 CFR 252.153.

<sup>3</sup> A “top tier banking organization” means the top-tier bank holding company, U.S. intermediate holding company, savings and loan holding company, or depository institution domiciled in the United States. As of the date of this final rule, no depository institution that is not also a subsidiary of a bank holding company, U.S. intermediate holding company, or savings and loan holding company meets any risk-based indicator threshold. Accordingly, references to “top tier banking organization” in this Supplementary Information as a practical matter refer to holding companies, including U.S. intermediate holding companies.

<sup>4</sup> *See* “Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies,” 80 FR 49082 (Aug. 14, 2015)

<sup>5</sup> The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340).

revised capital rule strengthened the regulatory capital requirements applicable to banking organizations supervised by the agencies, including U.S. intermediate holding companies and depository institution subsidiaries of foreign banking organizations, by improving both the quality and quantity of regulatory capital and enhancing the risk sensitivity of capital requirements.<sup>6</sup> In 2014, the agencies adopted the liquidity coverage ratio (LCR) rule to improve the banking sector's resiliency to liquidity stress by requiring large U.S. banking organizations to be more actively engaged in monitoring and managing liquidity risk.<sup>7</sup> The LCR rule generally applies to large depository institution holding companies, certain of their depository institution subsidiaries, and large depository institutions that do not have a parent holding company.<sup>8</sup> Banking organizations subject to the LCR rule must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30-calendar-day period.<sup>9</sup> In addition, in June 2016, the agencies invited comment on a proposal

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The FDIC adopted the interim final rule as a final rule with no substantive changes on April 14, 2014 (79 FR 20754).

<sup>6</sup> Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, appendix C, and 12 CFR 238.9), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

<sup>7</sup> See 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

<sup>8</sup> The LCR rule applies to depository institutions with \$10 billion or more in total consolidated assets that are subsidiaries of a holding company subject to the full requirements of the agencies' LCR rule.

<sup>9</sup> For certain depository institution holding companies with \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in on-balance sheet foreign

to implement a net stable funding ratio (NSFR) requirement that would apply to the same U.S. banking organizations, including U.S. intermediate holding companies, as are subject to the LCR rule.<sup>10</sup> The NSFR proposed rule would establish a quantitative metric to measure and help ensure the stability of a banking organization's funding profile over a one-year time horizon. During the same period, the Board implemented enhanced prudential standards for large bank holding companies and foreign banking organizations.<sup>11</sup>

These and other post-crisis financial regulations have resulted in substantial gains in the resiliency of individual banking organizations and the financial system as a whole. U.S. banking organizations, including the U.S. operations of foreign banking organizations, hold higher levels of high-quality capital and liquidity than before the financial crisis. Robust regulatory capital, stress testing, and liquidity regulations for large banking organizations operating in the United States have helped to ensure that they are better positioned to continue lending and perform other financial intermediation functions through periods of economic stress and market turbulence.

The agencies regularly review their regulatory framework, including capital and liquidity requirements, to ensure it is functioning as intended. These efforts include assessing the impact of regulations as well as exploring alternatives that achieve regulatory objectives and promote safe and sound practices while improving the simplicity, transparency, and efficiency of the

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exposure, the Board separately adopted a modified LCR requirement. *See* 12 CFR 249 subpart G.

<sup>10</sup> *See* "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements," 81 FR 35124 (Proposed June 1, 2016). For certain depository institution holding companies with \$50 billion or more, but less than \$250 billion, in total consolidated assets and less than \$10 billion in total on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

<sup>11</sup> *See* "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations," 79 FR 17240 (March 27, 2014) (the enhanced prudential standards rule), codified at 12 CFR part 252.

regulatory regime. The final rule is the product of such a review. The final rule revises the applicability of requirements for U.S. banking organizations and U.S. intermediate holding companies in a way that enhances the risk sensitivity and efficiency of the agencies' capital and liquidity regulations, maintains the fundamental reforms of the post-crisis framework, and supports banking organizations' resilience. Thus, the final rule seeks to better align the regulatory requirements for large banking organizations with their risk profiles, taking into account the size and complexity of these banking organizations as well as their potential systemic risks. The final rule is consistent with considerations and factors set forth under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),<sup>12</sup> as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).<sup>13</sup>

The final rule also builds upon the agencies' practice of differentiating requirements among banking organizations based on one or more risk-based indicators. Specifically, prior to this final rule, the agencies applied more stringent capital and liquidity requirements to banking organizations with \$250 billion or more in total consolidated assets or \$10 billion or more in total on-balance sheet foreign exposure (advanced approaches banking organizations) relative to banking organizations that did not meet these thresholds.<sup>14</sup> The Board also established a

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<sup>12</sup> Pub. L. 111–203, 124 Stat. 1376 (2010), sec. 165, codified at 12 U.S.C. 5365.

<sup>13</sup> Pub. L. 115–174, 132 Stat. 1296 (2018).

<sup>14</sup> See 12 CFR 217.1(c), 12 CFR 217.100(b), 249.1 (Board); 12 CFR 3.1(c), 12 CFR 3.100(b), 50.1 (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b), 329.1 (FDIC). The agencies designed these thresholds to identify large, interconnected and internationally active banking organizations and to act as broad indicators for banking organizations with more complex risk profiles. With respect to capital, the agencies required banking organizations meeting these thresholds to calculate risk-weighted assets for credit risk and operational risk using advanced methodologies and be subject to risk-based capital requirements that are not less than the generally applicable risk-based capital requirement; calculate a supplementary leverage ratio; and include most

methodology under its GSIB surcharge rule to identify the largest, most interconnected and systemically risky banking organizations and to apply additional requirements to those organizations.<sup>15</sup> By refining the application of capital and liquidity requirements based on the risk profile of a banking organization, the final rule further improves upon the risk sensitivity and efficiency of the agencies' rules.

### **III. Overview of the Notices of Proposed Rulemaking and General Summary of Comments**

In 2018 and 2019, the agencies sought comment on two separate proposals to revise the requirements for determining the applicability of regulatory capital and liquidity requirements

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elements of accumulated other comprehensive income in regulatory capital. Advanced approaches banking organizations must also increase their capital conservation buffers by the amount of a countercyclical capital buffer under certain circumstances. Similarly, the agencies applied the LCR requirement to banking organizations based on the same measures of total asset size and total on-balance sheet foreign exposure. The Board's regulations also applied a less stringent, modified LCR requirement to certain depository institution holding companies that do not meet the advanced approaches thresholds but have total consolidated assets of \$50 billion or more. U.S. GSIBs form a sub-category of advanced approaches banking organizations.

<sup>15</sup> See 12 CFR part 217, subpart H. The additional requirements for U.S. GSIBs include a risk-based capital surcharge at the top-tier bank holding company level, calibrated to reflect GSIBs' respective systemic footprints, total long term debt and loss-absorbing capacity requirements (TLAC) applicable at the top-tier bank holding company level, and enhanced supplementary leverage ratio standards at both the top-tier bank holding company level and depository institution subsidiary level. Certain internal TLAC requirements also apply to the U.S. intermediate holding companies of foreign GSIBs. The FDIC and OCC apply an enhanced supplementary leverage ratio standard to depository institution subsidiaries of U.S. top-tier bank holding companies with more than \$700 billion in total consolidated assets or more than \$10 trillion in total assets under custody, whereas the Board's regulation applies these requirements to depository institution subsidiaries of U.S. GSIBs. There is currently no difference between the U.S. holding companies identified by these regulations, and the OCC has proposed to amend its regulation to reference the Board's U.S. GSIB definition. See "Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies," 83 FR 17317 (proposed April 19, 2018).

for large banking organizations. On December 21, 2018, the agencies published a proposal to revise the criteria for determining the applicability of requirements under the capital rule, LCR rule, and the proposed NSFR rule for U.S. banking organizations with \$100 billion or more in total consolidated assets, based on four risk-based categories (domestic proposal).<sup>16</sup> Using the risk profile of the top-tier banking organization, Category I would have been based on the methodology in the Board's GSIB surcharge rule for identification of U.S. GSIBs, whereas Categories II through IV would have been based on size and levels of cross-jurisdictional activity, nonbank assets, off-balance sheet exposure, and weighted short-term wholesale funding (together with size, the risk-based indicators). Capital and liquidity requirements for depository institution subsidiaries, if applicable, would have been based on the risk profile of the top-tier banking organization.

Subsequently, on May 24, 2019, the agencies published a proposal to revise the criteria for determining the applicability of capital and liquidity requirements with respect to the U.S. operations of foreign banking organizations (foreign bank proposal).<sup>17</sup> This proposal also included certain changes to the domestic proposal, as described below.<sup>18</sup> The foreign bank proposal was largely consistent with the domestic proposal, with certain adjustments to reflect the unique structures through which foreign banking organizations operate in the United States. The foreign bank proposal would have applied three categories of standards (Category II, III, or IV) to foreign banking organizations with large U.S. operations, as Category I under the

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<sup>16</sup> 83 FR 66024 (Dec. 21, 2018).

<sup>17</sup> 84 FR 24296 (May 24, 2019).

<sup>18</sup> Specifically, under the foreign bank proposal, the Board proposed applying standardized liquidity requirements to a U.S. depository institution holding company that would have been subject to Category IV standards if the depository institution holding company significantly relies on short-term wholesale funding.

domestic proposal was proposed to apply only to U.S. GSIBs. For capital, the foreign bank proposal would have determined the application of requirements for U.S. intermediate holding companies with total consolidated assets of \$100 billion or more and their depository institution subsidiaries. For liquidity, the foreign bank proposal would have applied an LCR requirement to, and amended the scope of the proposed NSFR rule to include, certain foreign banking organizations with combined U.S. assets of \$100 billion or more.<sup>19</sup> Foreign banking organizations would have been subject to an LCR requirement with respect to any U.S. intermediate holding company and certain of their large depository institution subsidiaries. Additionally, in the foreign bank proposal the Board requested comment on whether and how it should approach the potential application of standardized liquidity requirements for foreign banking organizations with respect to their U.S. branch and agency networks.

The agencies received approximately 50 public comments on the proposals, from U.S. and foreign banking organizations, public entities (including a foreign central bank and a U.S. state regulator), public interest groups, private individuals, and other interested parties. Agency staff also met with some commenters at those commenters' requests to discuss their comments on the proposals.<sup>20</sup> Many commenters supported the proposals as meaningfully tailoring

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<sup>19</sup> Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any company whose assets are held pursuant to section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q).

<sup>20</sup> Summaries of these meetings may be found on the agencies' public websites. *See* <https://www.regulations.gov/docket?D=OCC-2019-0009> (OCC); <https://www.federalreserve.gov/regreform/reform-systemic.htm> (Board); <https://www.fdic.gov/regulations/laws/federal/2018/2018-proposed-changes-to-applicability-thresholds-3064-ae96.html> (FDIC).

prudential standards, and some were particularly supportive of the proposed approach to further tailor regulatory capital and liquidity requirements. Many commenters, however, expressed the view that the proposed framework would not have sufficiently aligned the agencies' capital and liquidity requirements to the risk profile of a banking organization.<sup>21</sup> For example, some commenters argued that banking organizations with less than \$250 billion in assets that do not meet a separate indicator of risk should not be subject to prudential standards under the proposals and that Category IV standards should be eliminated. Other commenters argued that the proposed Category II standards were too stringent given the risks indicated by a high level of cross-jurisdictional activity. By contrast, other commenters argued that the proposals would have revised the criteria for determining the applicability and stringency of standards in a way that would weaken the safety and soundness of large banking organizations and increase risks to U.S. financial stability, and asserted that the agencies had gone beyond the changes required by EGRRCPA. Other commenters believed that the proposals could be further revised to more closely align standards to the risk profile of banking organizations in that category. For example, one commenter argued for further differentiation in the standards between Categories I and II. A number of these commenters argued that all risk-based indicators should exclude transactions with affiliates. In addition, some commenters expressed the general view that the thresholds set forth in the proposals should be further justified.

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<sup>21</sup> The agencies received a number of comments that were not specifically responsive to the proposals. In particular, commenters recommended more targeted revisions or requests for clarification related to the U.S. GSIB capital surcharge rule, generally applicable capital rule, capital plan rule, stress capital buffer proposal, total loss absorbing capacity rule, current expected credit losses standard, Volcker rule, and capital simplifications final rule. These comments are not within the scope of this rulemaking, and therefore are not discussed in this Supplementary Information.

In response specifically to the foreign bank proposal, industry commenters argued that the proposal would unfairly increase requirements applicable to foreign banking organizations. These commenters also expressed the general view that certain aspects of the foreign bank proposal were inconsistent with the principle of national treatment and equality of competitive opportunity, and argued that the proposals should defer more broadly to compliance with home country standards applicable to the parent foreign banking organization. In particular, commenters argued that the foreign bank proposal should not determine the applicability of the LCR and proposed NSFR requirements for a foreign banking organization with respect to its U.S. intermediate holding company based on the risk profile of the foreign banking organization's combined U.S. operations. These commenters asserted that the final rule should instead determine the application of standardized liquidity requirements for a foreign banking organization's U.S. intermediate holding company based on the risk-based indicator levels of the U.S. intermediate holding company. Commenters argued that the risk-based indicators, if applied to combined U.S. assets, would disproportionately result in the application of more stringent requirements to foreign banking organizations, and asserted the proposal could disrupt the efficient functioning of global financial markets and lead to increased fragmentation. These commenters also generally opposed the potential issuance of a separate proposal that would apply standardized liquidity requirements to the U.S. branch and agency network of a foreign banking organization, on the basis that such an approach could lead to ring-fencing and regulatory inconsistencies across jurisdictions.

By contrast, other commenters criticized the foreign bank proposal for reducing the stringency of standards beyond the changes required by EGRRCPA, and argued that the proposal understated the financial stability risks posed by foreign banking organizations. These

commenters supported the application of standardized liquidity requirements for a foreign banking organization's U.S. intermediate holding company based on the risk profile of the foreign banking organization's combined U.S. operations, supported the application of standardized liquidity requirements to the U.S. branches and agencies of foreign banking organizations, and criticized the agencies for not proposing such requirements for U.S. branches and agencies.

As discussed in this Supplementary Information, the final rule largely adopts the proposals, with certain adjustments in response to the comments.

#### **IV. Overview of Final Rule**

The final rule establishes four categories to apply regulatory capital and liquidity requirements to large U.S. banking organizations and U.S. intermediate holding companies.<sup>22</sup> The criteria for each category are based on certain indicators of risk that are measured at the level of the top-tier banking organization. This approach represents an amendment from the foreign bank proposal, as under the final rule the liquidity requirements applicable to a U.S. intermediate holding company are based on its own risk characteristics rather than those of the combined U.S. operations of the foreign banking organization, as discussed further below.

Under the final rule, and unchanged from the domestic proposal, the most stringent capital and liquidity requirements apply to U.S. GSIBs and their depository institution subsidiaries under Category I, as these banking organizations have the potential to pose the

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<sup>22</sup> Regulatory capital requirements also apply to depository institution subsidiaries of banking organizations subject to Category I, II, III, or IV standards, while liquidity requirements apply to depository institution subsidiaries of banking organizations subject to Category I, II, or III standards where those depository institution subsidiaries have \$10 billion or more in total consolidated assets.

greatest risks to U.S. financial stability. The Category I standards generally reflect agreements reached by the Basel Committee on Banking Supervision (BCBS)<sup>23</sup> and include additional requirements adopted by the Board to increase the resiliency of these banking organizations and to mitigate the potential risk their material financial distress or failure could pose to U.S. financial stability. Category I standards generally remain unchanged from existing requirements.

The second set of standards, under Category II, apply to U.S. banking organizations and U.S. intermediate holding companies with total consolidated assets of \$700 billion or more or cross-jurisdictional activity of \$75 billion or more, and that do not qualify as U.S. GSIBs.<sup>24</sup> Like Category I standards, Category II standards generally reflect agreements reached by the BCBS, and requirements for banking organizations in this category remain largely unchanged from requirements previously applicable to banking organizations with \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance-sheet foreign exposure. Applying requirements that reflect agreements reached by the BCBS is appropriate for the risk profiles of banking organizations in this category. For example, foreign operations and cross-border positions add operational and funding complexity in normal times and complicate the ability of a banking organization to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. The application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity also helps to promote international competitive equity and reduce opportunities for regulatory arbitrage.

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<sup>23</sup> International standards that reflect agreements reached by the BCBS may be implemented in the United States through notice and comment rulemaking.

<sup>24</sup> The Board's GSIB surcharge rule does not apply to U.S. intermediate holding companies, and therefore, a U.S. intermediate holding company does not qualify as a U.S. GSIB. *See* 12 CFR part 217, subpart H.

The third set of standards, under Category III, apply to U.S. banking organizations and U.S. intermediate holding companies that do not meet the criteria for Category I or II, and have total consolidated assets of \$250 billion or more or \$75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure. Category III standards reflect the heightened risk profiles of these banking organizations relative to smaller and less complex banking organizations, such as those subject to Category IV standards. As compared to existing requirements, under the final rule regulatory capital and liquidity requirements under Category III are more stringent for some banking organizations and less stringent for others. For example, under Category III, a banking organization with weighted short-term wholesale funding of \$75 billion or more is subject to the full set of requirements under the LCR rule; however, a banking organization below that threshold is subject to a reduced LCR requirement, calibrated to 85 percent of the full LCR requirement.<sup>25</sup> With respect to capital, banking organizations subject to Category III standards are subject to the supplementary leverage ratio, among other requirements, but are not required to calculate risk-weighted assets under the advanced approaches. For some banking organizations subject to Category III standards, application of the supplementary leverage ratio is a new requirement. In addition, although some banking organizations subject to Category III standards were previously required to include elements of accumulated other comprehensive income (AOCI) in regulatory capital, these banking organizations can now elect to exclude most elements of AOCI from regulatory capital. Similarly, some banking organizations in Category III will now be subject to simpler regulatory

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<sup>25</sup> For banking organizations subject to Category III with less than \$75 billion in weighted short-term wholesale funding, the reduced LCR requirement under this final rule is calibrated to 85 percent of the full LCR. All other requirements of the LCR rule, including the maturity mismatch add-on, apply to these banking organizations. *See* section VI.B of this Supplementary Information.

capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions, relative to those that previously applied. These banking organizations also will now be subject to a simplified treatment for the amount of capital issued by a consolidated subsidiary and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital.<sup>26</sup>

The fourth set of standards, under Category IV, apply to U.S. banking organizations and U.S. intermediate holding companies with total consolidated assets of \$100 billion or more that do not meet the thresholds for one of the other three categories. Banking organizations in Category IV generally have greater scale and operational and managerial complexity relative to smaller banking organizations, but less than banking organizations subject to Category I, II, or III standards. Category IV regulatory capital requirements remain largely unchanged relative to prior requirements. With regard to liquidity requirements, the final rule applies a reduced LCR requirement to a banking organization subject to Category IV standards with weighted short-term wholesale funding of at least \$50 billion, but less than \$75 billion, calibrated at 70 percent of the full LCR requirement.<sup>27</sup> The reduced LCR requirement does not apply to a depository institution subsidiary of a banking organization subject to Category IV standards. Further, the LCR rule does not apply to banking organizations subject to Category IV standards with less than \$50 billion in weighted short-term wholesale funding. Similar to banking organizations in

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<sup>26</sup> See “Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996,” 84 FR 35234 (July 22, 2019) (simplifications final rule).

<sup>27</sup> Similar to Category III, all other requirements of the LCR rule apply to such banking organizations, including the LCR rule’s maturity mismatch requirement. See section VI.B of this Supplementary Information.

Categories I, II, and III, banking organizations subject to Category IV standards must monitor and report information regarding the risk-based indicators, as described further below. In addition, under a separate final rule the Board is adopting to revise the criteria for determining the applicability of enhanced prudential standards for large domestic and foreign banking organizations using a risk-based category framework that is consistent with the framework described in this final rule (Board-only final rule), all banking organizations subject to Category I, II, III or IV standards are subject to enhanced prudential standards as well as liquidity data reporting under the Board’s Complex Institution Liquidity Monitoring Report (FR 2052a).

**Table I: Scoping Criteria for Categories of Regulatory Capital and Liquidity Requirements**

<b>Category</b>	<b>U.S. Banking Organizations<sup>†</sup></b>	<b>Foreign Banking Organizations<sup>‡</sup></b>
<b>I</b>	U.S. GSIBs and their depository institution subsidiaries	N/A
<b>II</b>	\$700 billion or more in total consolidated assets; or \$75 billion or more in cross-jurisdictional activity; do not meet the criteria for Category I	
<b>III</b>	\$250 billion or more in total consolidated assets; or \$75 billion or more in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure; do not meet the criteria for Category I or II	
<b>IV</b>	\$100 billion or more in total consolidated assets; do not meet the criteria for Category I, II or III	

<sup>†</sup> For U.S. banking organizations, the applicable category of regulatory capital and liquidity requirements is measured at the level of the top-tier banking organization level, and applies to any of its depository institution subsidiaries for purposes of capital requirements or to any of its depository institution subsidiaries with \$10 billion or more in total consolidated assets for liquidity requirements.

<sup>‡</sup> For foreign banking organizations, the applicable category of regulatory capital and liquidity requirements is measured at the level of the top-tier U.S. intermediate holding company level, and applies to any depository institution subsidiary of such holding company for purposes of capital requirements or to any depository institution subsidiary with \$10 billion or more in total consolidated assets for liquidity requirements.

## V. Framework for the Application of Capital and Liquidity Requirements

This section describes the framework for determining the application of regulatory capital and liquidity requirements under this final rule, including a discussion of comments received on the proposed framework. The final rule largely establishes the framework set forth in the proposals and introduces four categories of capital and liquidity requirements based on certain indicators of risk that are measured at the level of the top-tier banking organization.<sup>28</sup>

### A. *Indicators-based approach and the alternative scoring methodology*

The proposals would have established four categories of regulatory capital and liquidity requirements and the criteria for Categories II, III and IV would have relied on the following risk-based indicators: size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets. These risk-based indicators are already used in the Board's existing regulatory framework and reported by large U.S. bank holding companies, U.S. intermediate holding companies, and covered savings and loan holding companies.<sup>29</sup>

The proposals also sought comment on an alternative approach that would have used a single, comprehensive score based on the GSIB identification methodology, which is currently used to identify U.S. GSIBs and apply risk-based capital surcharges to these banking organizations (scoring methodology).<sup>30</sup> Under the alternative approach, a banking organization's

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<sup>28</sup> Comments regarding the NSFR proposal will be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies.

<sup>29</sup> A covered savings and loan holding company means a savings and loan holding company that is not substantially engaged in insurance and commercial underwriting activities.

<sup>30</sup> For more discussion relating to the scoring methodology, see the Board's final rule establishing the GSIB identification methodology. *See* "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies," 80 FR 49082 (Aug. 14, 2015).

size and its score from the scoring methodology would have been used to determine which category of standards would apply to the banking organization.<sup>31</sup>

Most commenters preferred the proposed indicators-based approach to the alternative scoring methodology for determining the category of standards that would apply to large banking organizations. These commenters stated that the indicators-based approach would be more transparent, less complex, and more appropriate for applying categories of standards to banking organizations that are not U.S. GSIBs. Some commenters also asserted that if the agencies used the scoring methodology, the agencies should use only method 1. These commenters argued that method 2 would be inappropriate for tailoring capital and liquidity requirements on the basis that the denominators to method 2 are fixed, rather than updated annually. Commenters also argued against using method 2 on the basis that method 2 was calibrated specifically for U.S. GSIBs.

The final rule adopts the indicators-based approach for applying Category II, III, or IV standards to a banking organization, as this approach provides a simple framework that supports the objectives of risk sensitivity and transparency. Many of the risk-based indicators are used in the agencies' existing regulatory frameworks or reported by top-tier banking organizations. By using indicators that exist or are reported by most banking organizations subject to the final rules, the indicators-based approach limits additional reporting requirements. The agencies will continue to use the scoring methodology to apply Category I standards to a U.S. GSIB and its depository institution subsidiaries.

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<sup>31</sup> The scoring methodology contains two methods, method 1 and method 2. The alternative proposal would have used the higher of method 1 or method 2 to determine the applicable category of standards.

*B. Choice of risk-based indicators*

To determine the applicability of Category II, III, or IV standards, the proposals considered a top-tier banking organization's level of five risk-based indicators: size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure.

The agencies received a number of comments on the choice of risk-based indicators and suggested modifications to the calculation of the indicators. Several commenters expressed the general view that the proposed risk-based indicators were poor measures of risk. A number of these commenters also asserted that the agencies did not provide sufficient justification to support the proposed risk-based indicators, and requested that the agencies provide additional explanation regarding their selection. Commenters also asserted that the framework should take into consideration additional risk-mitigating characteristics when measuring the proposed risk-based indicators. Several other commenters argued that the proposals are too complex and at odds with the stated objectives of simplicity and burden reduction.

By considering the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for assessing a banking organization's financial stability and safety and soundness risks. The risk-based indicators generally track measures already used in the Board's existing regulatory framework and rely on information that is already publicly reported by affected banking organizations.<sup>32</sup> Together with fixed, uniform thresholds, use of

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<sup>32</sup> Bank holding companies, covered savings and loan holding companies, and U.S. intermediate holding companies subject to this final rule already report the information required to determine size, weighted short-term wholesale funding, and off-balance sheet exposure on the Banking Organization Systemic Risk Report (FR Y-15). Such bank holding companies and covered savings and loan holding companies also currently report the information needed to calculate cross-jurisdictional activity on the FR Y-15. Nonbank assets are reported on FR Form Y-9 LP. This information is publicly available.

the risk-based indicators supports the agencies' objectives of transparency and efficiency, while providing for a framework that enhances the risk sensitivity of the agencies' capital and liquidity rules in a manner that continues to allow for comparability across banking organizations. Risk-mitigating factors, such as a banking organization's HQLA and the presence of collateral to secure an exposure, are incorporated into the enhanced standards to which the banking organization is subject.

One commenter asserted that an analysis of the proposed risk-based indicators based on a measure of the expected capital shortfall of a banking organization in the event of a steep equity market decline (SRISK)<sup>33</sup> demonstrated that only the cross-jurisdictional activity and weighted short-term wholesale funding indicators were positively correlated with SRISK, whereas the other risk-based indicators were not important drivers of a banking organization's SRISK measures. However, because SRISK is conditioned on a steep decline in equity markets, it does not capture the probability of a financial crisis or an idiosyncratic failure of a large banking organization. In addition, SRISK does not directly capture other important aspects of systemic risk, such as a banking organization's interconnectedness with other financial market participants. For these reasons, SRISK alone is not a sufficient means of determining the risk-based indicators used in the tailoring framework.

Accordingly, and as discussed below, the agencies are adopting the risk-based indicators as proposed.

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<sup>33</sup> For the definition and measurement of SRISK, see Acharya, V., Engle, R. and Richardson, M. (2012). Capital shortfall: A new approach to ranking and regulating systemic risks. *American Economic Review*, 102(3), pp.59-64, see also Brownlees, Christian, and Robert F. Engle (2017). "SRISK: A conditional capital shortfall measure of systemic risk." *The Review of Financial Studies* 30.1 (2016): 48-79.

## *I. Size*

The proposals would have considered size in tailoring the application of capital and liquidity requirements to a domestic banking organization or the U.S. operations of a foreign banking organization. Some commenters argued that the proposals placed too much reliance on size for determining the prudential standards applicable to large banking organizations. These commenters generally criticized the size indicator as not sufficiently risk sensitive and a poor measure of systemic and safety and soundness risk, and suggested using risk-weighted assets, as determined under the capital rule, rather than total consolidated assets or combined U.S. assets, as applicable. Several commenters argued that the proposals did not adequately explain the relationship between size and safety and soundness risk, particularly risks associated with operational or control gaps.

Other commenters, however, supported the use of size as a measure of financial stability and safety and soundness risk. These commenters asserted that size serves as an indicator of credit provision that could be disrupted in times of stress, as well as the difficulties associated with the resolution of a large banking organization. These commenters also recommended placing additional emphasis on size for purposes of tailoring prudential standards, and expressed the view that the size indicator is less susceptible to manipulation through temporary adjustments at the end of a reporting period as compared to the other risk-based indicators.

Section 165 of the Dodd-Frank Act, as amended by EGRRCPA, establishes thresholds based on total consolidated assets.<sup>34</sup> Size is also among the factors that the Board must take into

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<sup>34</sup> See generally 12 U.S.C. 5635 and EGRRCPA § 401.

consideration in differentiating among banking organizations under section 165.<sup>35</sup> A banking organization's size provides a measure of the extent to which stress at its operations could be disruptive to U.S. markets and present significant risks to U.S. financial stability. A larger banking organization has a greater number of customers and counterparties that may be exposed to a risk of loss or suffer a disruption in the provision of services if the banking organization were to experience distress. In addition, size is an indicator of the extent to which asset fire sales by a banking organization could transmit distress to other market participants, given that a larger banking organization has more counterparties and more assets to sell. The failure of a large banking organization in the U.S. also may give rise to challenges that complicate the resolution process due to the size and diversity of its customer base and the number of counterparties that have exposure to the banking organization.

The complexities associated with size also can give rise to operational and control gaps that are a source of safety and soundness risk and could result in financial losses to a banking organization and adversely affect its customers. A larger banking organization operates on a larger scale, has a broader geographic scope, and generally will have more complex internal operations and business lines relative to a smaller banking organization. Growth of a banking organization, whether organic or through an acquisition, can require more robust risk

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<sup>35</sup> EGRRCPA § 401(a)(1)(B)(i) (codified at 12 U.S.C. 5365(a)(2)(A)). The agencies have also previously used size as a simple measure of a banking organization's potential systemic impact and risk, and have differentiated the stringency of capital and liquidity requirements based on total consolidated asset size. For example, prior to the adoption of this final rule, advanced approaches capital requirements, the supplementary leverage ratio, and the LCR requirement generally applied to banking organizations with total consolidated assets of \$250 billion or more or total consolidated on-balance sheet foreign exposure of \$10 billion or more.

management and development of enhanced systems or controls; for example, when managing the integration and maintenance of information technology platforms.

Size also can be a proxy for other measures of complexity, such as the amount of trading and available-for-sale securities, over-the-counter derivatives, and Level 3 assets.<sup>36</sup> Using Call Report data from the first quarter of 2005 to the first quarter of 2018, the correlation between a bank's total trading assets (a proxy of complexity) and its total assets (a proxy of size) is over 90 percent.<sup>37</sup> As was seen in the financial crisis, a more complex institution can be more opaque to the markets and may have difficulty managing its own risks, warranting stricter standards for both capital and liquidity.

Further, notwithstanding commenters' assertions that risk-weighted assets more appropriately capture risk, an approach that relies on risk-weighted assets as an indication of size would not align with the full scope of risks intended to be measured by the size indicator. Risk-weighted assets serve as an indication of credit risk and are not designed to capture the risks associated with managerial and operational complexity or the potential for distress at a large banking organization to cause widespread market disruptions.

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<sup>36</sup> The FR Y15 and the GSIB surcharge methodology include three indicators of complexity that are used to determine a banking organization's systemic importance for purposes of the U.S. GSIB surcharge rule: Notional amount of OTC derivatives, Level 3 assets, and trading and AFS securities. In the second quarter of 2019, the average complexity score of a U.S. GSIB was 104.7, the average complexity score of a banking organization with assets of greater than \$250 billion that is not a U.S. GSIB was 12.0, the average complexity score of a banking organization with assets of more than \$100 billion but less than \$250 billion was 3.5, and the average complexity score of a banking organization with assets of \$50 billion but less than \$100 billion was 0.4.

<sup>37</sup> See Amy G. Lorenc and Jeffery Y. Zhang (2018) "The Differential Impact of Bank Size on Systemic Risk," *Finance and Economics Discussion Series* 2018-066. Washington: Board of Governors of the Federal Reserve System, available at: <https://doi.org/10.17016/FEDS.2018.066>.

Some commenters argued that the Board staff analysis cited in the proposals does not demonstrate that size is a useful indicator for determining the systemic importance of a banking organization.<sup>38</sup> Specifically, one commenter asserted that the Board staff analysis (1) uses a flawed measure of bank stress and (2) does not use robust standard errors or sufficiently control for additional macroeconomic factors that may contribute to a decline in economic activity.

The Board staff paper employs the natural logarithm of deposits at failed banks as a proxy of bank stress. This choice was informed by Bernanke's 1983 article, which uses the level (namely, thousands of dollars) of deposits at failed banks to proxy bank stress.<sup>39</sup> The staff paper makes modifications to the stress proxy in order to account for the evolution of the banking sector over time. In contrast to Bernanke's study of a three-year period during the Great Depression, Board staff's analysis spans almost six decades. Expressing bank stress in levels as the commenter suggests (namely, trillions of dollars) would not account for the structural changes that have occurred in the banking sector and therefore would place a disproportionately greater weight on the bank failures that occurred during the 2008-2009 financial crisis. In

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<sup>38</sup> As described in the proposals, relative to a smaller banking organization, the failure of a large banking organization is more likely to have a destabilizing effect on the economy, even if the two banking organizations are engaged in similar business lines. Board staff estimated that stress at a single large banking organization with an assumed \$100 billion in deposits would result in approximately a 107 percent decline in quarterly real U.S. GDP growth, whereas stress among five smaller banking organizations—each with an assumed \$20 billion in deposits—would collectively result in roughly a 22 percent decline in quarterly real U.S. GDP growth. Both scenarios assume \$100 billion in total deposits, but the negative impact is significantly greater when the larger banking organization fails. *Id.*

<sup>39</sup> Bernanke, Ben S. 1983. "Non-monetary Effects of the Financial Crisis in the Propagation of the Great Depression." *The American Economic Review* Vol. 73, No. 3, pp. 257 - 276.

addition to the analysis conducted by Board staff, other research has found evidence of a link between size and systemic risk.<sup>40</sup>

For the reasons discussed above, the agencies are adopting the proposed measure of size for foreign and domestic banking organizations without change.<sup>41</sup> Size is a simple and transparent measure of systemic importance and safety and soundness risk that can be readily understood and measured by banking organizations and market participants.

## 2. *Cross-jurisdictional activity*

The proposals would have included a measure of cross-jurisdictional activity as a risk-based indicator to determine the application of Category II standards. For U.S. banking

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<sup>40</sup> See Bremus, Buck, Russ and Schnitzer, *Big Banks and Macroeconomic Outcomes: Theory and Cross-Country Evidence of Granularity*, Journal of Money, Credit and Banking (July 2018). Allen, Bali, and Tang construct a measure of systemic risk (CATFIN) and demonstrate that the CATFIN of both large and small banking organizations can forecast macroeconomic declines, and found that the CATFIN of large banks can successfully forecast lower economic activity sooner than that of small banks. See Allen, Bali, and Tang, *Does Systemic Risk in the Financial Sector Predict Future Economic Downturns?*, Review of Financial Studies, Vol. 25, Issue 10 (2012). Adrian and Brunnermeier constructed a measurement of systemic risk, designated CoVaR, and show that firms with higher leverage, more maturity mismatch, and larger size are associated with larger systemic risk contributions. Specifically, the authors find that if a bank is 10 percent larger than another bank, then the size coefficient predicts that the larger bank's CoVaR per unit of capital is 27 basis points higher than the smaller bank's CoVaR. See Adrian & Brunnermeier, *CoVar*, American Economic Review Journal, Vol. 106 No. 7 (July 2016).

In the same vein, research conducted by the Bank for International Settlements suggests that the ratio of one institution's systemic importance to a smaller institution's systemic importance is larger than the ratio of the respective sizes. See Tarashev, Borio and Tsatsaronis, *Attributing systemic risk to individual institutions*, BIS Working Paper No. 308 (2010). Relatedly, Dávila and Walther (2017) show that large banks take on more leverage relative to small banks in times of stress. See Dávila & Walther, *Does Size Matter? Bailouts with Large and Small Banks*, NBER Working Paper No. 24132 (2017).

<sup>41</sup> The final rule calibrates liquidity and capital requirements for U.S. intermediate holding companies based on the risk profile, including size, of the U.S. intermediate holding company. However, the elements of the size indicator itself, as well as the other risk-based indicators, are being finalized without change.

organizations, the domestic proposal would have defined cross-jurisdictional activity as the sum of cross-jurisdictional claims and liabilities. In recognition of the structural differences between foreign and domestic banking organizations, the foreign bank proposal would have adjusted the measurement of cross-jurisdictional activity for foreign banking organizations to exclude inter-affiliate liabilities and certain collateralized inter-affiliate claims.<sup>42</sup> Specifically, claims on affiliates<sup>43</sup> would have been reduced by the value of any financial collateral in a manner consistent with the agencies' capital rule,<sup>44</sup> which permits, for example, banking organizations to recognize financial collateral when measuring the exposure amount of repurchase agreements and securities borrowing and securities lending transactions (together, repo-style transactions).<sup>45</sup> The foreign bank proposal sought comment on alternative adjustments to the cross-jurisdictional

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<sup>42</sup> Specifically, the proposal would have excluded from the cross-jurisdictional activity indicator all inter-affiliate claims of a foreign banking organization secured by financial collateral, in accordance with the capital rule. Financial collateral is defined under the capital rule to mean collateral, (1) in the form of (i) cash on deposit with the banking organization (including cash held for the banking organization by a third-party custodian or trustee), (ii) gold bullion, (iii) long-term debt securities that are not resecuritization exposures and that are investment grade, (iv) short-term debt instruments that are not resecuritization exposures and that are investment grade, (v) equity securities that are publicly traded; (vi) convertible bonds that are publicly traded, or (vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) in which the banking organization has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent). *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); and 12 CFR 324.2 (FDIC).

<sup>43</sup> For the combined U.S. operations, the measure of cross-jurisdictional activity would have excluded all claims between the foreign banking organization's U.S. domiciled affiliates, branches, and agencies to the extent such items are not already eliminated in consolidation. For the U.S. intermediate holding company, the measure of cross-jurisdictional activity would have eliminated through consolidation all inter-affiliate claims within the U.S. intermediate holding company.

<sup>44</sup> *See* 12 CFR 3.37 (OCC); 12 CFR 217.37 (Board); 12 CFR 324.37 (FDIC).

<sup>45</sup> *See* the definition of repo-style transaction at 12 CFR 217.2.

activity indicator for foreign banking organizations, and on other modifications to the components of the indicator.

Some commenters urged the agencies to adopt the cross-jurisdictional activity indicator as proposed. By contrast, a number of commenters expressed concern regarding this aspect of the proposals. Several commenters opposed the inclusion of cross-jurisdictional liabilities in the cross-jurisdictional activity indicator. Some commenters argued that cross-jurisdictional liabilities are not a meaningful indicator of systemic risk as measured by SRISK.<sup>46</sup> Other commenters asserted that cross-jurisdictional liabilities can reflect sound risk-management practices on the basis that cross-jurisdictional liabilities can indicate a diversity of funding sources and may be used to fund assets in the same foreign jurisdiction as the liabilities. These commenters suggested modifying the indicator to exclude the amount of any central bank deposits, other HQLA, or assets that receive a zero percent risk weight under the capital rule if those assets are held in the same jurisdiction as a cross-jurisdictional liability.

A number of commenters suggested revisions to the cross-jurisdictional activity indicator that would exclude specific types of claims or liabilities. For example, some commenters asserted that the measure of cross-jurisdictional activity should exclude any claim secured by HQLA or highly liquid assets<sup>47</sup> based on the nature of the collateral. Another commenter suggested excluding operating payables arising in the normal course of business, such as merchant payables. Other commenters suggested that the indicator exclude exposures to U.S. entities or projects that have a foreign guarantee or foreign insurer, unless the U.S. direct counterparty does not meet an appropriate measure of creditworthiness. Some commenters

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<sup>46</sup> See *supra* note 33.

<sup>47</sup> See 12 CFR part 252.35(b)(3)(i) and 252.157(c)(7)(i).

recommended that investments in co-issued collateralized loan obligations be excluded from the measure of cross-jurisdictional activity.

Commenters also suggested specific modifications to exclude exposures to certain types of counterparties. For example, several commenters suggested excluding exposures to sovereign, supranational, international, or regional organizations. Commenters asserted that these exposures do not present the same interconnectivity concerns as exposures with other types of counterparties and that claims on these types of entities present little or no credit risk.

Another commenter suggested excluding transactions between a U.S. intermediate holding company and any affiliated U.S. branches of its parent foreign banking organization, on the basis that the foreign bank proposal could disadvantage foreign banking organizations relative to U.S. banking organizations that eliminate such inter-affiliate transactions in consolidation. Similarly, one commenter suggested excluding transactions between a U.S. intermediate holding company and any U.S. branch of a foreign banking organization, whether affiliated or not, on the basis that such exposures are geographically domestic. Another commenter argued that exposures denominated in a foreign banking organization's home currency should be excluded. By contrast, one commenter argued that cross-jurisdictional activity should be revised to include derivatives, arguing that derivatives can be used as a substitute for other cross-jurisdictional transactions and, as a result, could be used to avoid the cross-jurisdictional activity threshold.

A number of commenters provided other suggestions for modifying the cross-jurisdictional activity indicator. In particular, some commenters recommended that the cross-jurisdictional activity indicator permit netting of claims and liabilities with a counterparty, with only the net claim or liability counting towards cross-jurisdictional activity. Several commenters suggested that the agencies should consider excluding assets or transactions that satisfy another

regulatory requirement. For example, these commenters argued that the agencies should consider excluding transactions resulting in the purchase of or receipt of HQLA.

Other commenters suggested modifications to the criteria for determining whether an exposure would be considered cross-border. Specifically, commenters requested modifications to the calculation of cross-jurisdictional activity for claims supported by multiple guarantors or a combination of guarantors and collateral, for example, by not attributing the claim to the jurisdiction of the entity holding the claim or collateral that bears the highest rating for reporting on an ultimate-risk basis. Commenters also requested that the agencies presume that an exposure created through negotiations with agents or asset managers would generally create an exposure based in the jurisdiction of the location of the agent or manager for their undisclosed principal.

Foreign banking organization commenters generally supported the approach taken in the foreign bank proposal with respect to the treatment of inter-affiliate cross-jurisdictional liabilities, but stated that such an approach would not adequately address the differences between domestic and foreign banking organizations. These commenters urged the agencies to eliminate the cross-jurisdictional activity indicator for foreign banking organizations or, alternatively, to eliminate all inter-affiliate transactions from measurement of the indicator.

Significant cross-border activity can indicate heightened interconnectivity and operational complexity. Cross-jurisdictional activity can add operational complexity in normal times and complicate the ability of a banking organization to undergo an orderly resolution in times of stress, generating both safety and soundness and financial stability risks. In addition, cross-jurisdictional activity may present increased challenges in resolution because there could be legal or regulatory restrictions that prevent the transfer of financial resources across borders where multiple jurisdictions and regulatory authorities are involved. Banking organizations with

significant cross-jurisdictional activity may require more sophisticated risk management to appropriately address the complexity of those operations and the diversity of risks across all jurisdictions in which the banking organization provides financial services. For example, banking organizations with significant cross-border activities may require more sophisticated risk management related to raising funds in foreign financial markets, accessing international payment and settlement systems, and obtaining contingent sources of liquidity. In addition, the application of consistent capital and liquidity standards to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity in the United States as well as abroad.

Measuring cross-jurisdictional activity taking into account both assets and liabilities—instead of just assets—provides a broader gauge of the scale of cross-border operations and associated risks, as it includes both borrowing and lending activities outside of the United States.<sup>48</sup> While both borrowing and lending outside the United States may reflect prudent risk management, cross-jurisdictional activity of \$75 billion or more indicates a level of organizational complexity that warrants more stringent prudential standards. With respect to commenters' suggestion to exclude central bank deposits, HQLA, or assets that receive a zero percent risk weight in the same jurisdiction as a cross-jurisdictional liability, such an exclusion would assume that all local liabilities are used to fund local claims. However, because foreign affiliates rely on local funding to different extents, such an exclusion could understate risk.<sup>49</sup>

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<sup>48</sup> The BCBS recently amended its measurement of cross-border activity to more consistently reflect derivatives, and the Board anticipates it will separately propose changes to the FR Y-15 in a manner consistent with this change. Any related changes to the proposed cross-jurisdictional activity indicator would be updated through those separately proposed changes to the FR Y-15.

<sup>49</sup> Based on data collected from the FFIEC 009, some affiliates of U.S. banking organizations relied extensively (75 percent) on local funding, while others collected almost no local funding.

The cross-jurisdictional activity indicator and threshold identify banking organizations with significant cross-border activities. Significant cross-border activities indicate a complexity of operations, even if some of those activities are low risk. Excluding additional types of claims or liabilities would reduce the transparency and simplicity of the tailoring framework. In addition, excluding certain types of assets based on the credit risk presented by the counterparty would be inconsistent with the purpose of the indicator as a measure of operational complexity and risk. The measure of cross-jurisdictional activity in the final rule therefore does not exclude specific types of claims or liabilities, or claims and liabilities with specific types of counterparties, other than the proposed treatment of inter-affiliate liabilities and certain inter-affiliate claims.

The proposals requested comment on possible additional changes to the components of the cross-jurisdictional activity indicator to potentially provide more consistent treatment across repurchase agreements and other securities financing transactions and with respect to the recognition and treatment of collateral across types of transactions. Commenters were generally supportive of these additional changes. The proposals also requested comment on the most appropriate way in which the proposed cross-jurisdictional activity indicator could account for the risk of transactions with a delayed settlement date. Several commenters argued that the indicator should exclude trade-date receivables or permit the use of settlement-date accounting in calculating the cross-jurisdictional activity indicator. Commenters also supported measuring

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In particular, approximately 40 percent of bank-affiliate locations had no local lending. *See* Nicola Cetorelli & Linda Goldberg, “Liquidity Management of U.S. Global Banks: Internal Capital Markets In the Great Recession” (Fed. Reserve Bank of N. Y. Staff Report No. 511, 2012), available at [http://www.newyorkfed.org/research/staff\\_reports/sr511.pdf](http://www.newyorkfed.org/research/staff_reports/sr511.pdf).

securities lending agreements and repurchase agreements on an ultimate-risk basis, rather than allocating these exposures based on the residence of the counterparty.

The final rule adopts the cross-jurisdictional activity indicator as proposed. Under the final rule cross-jurisdictional activity is measured based on the instructions to the FR Y-15 and, by reference, to the Country Exposure Report Form (FFIEC 009).<sup>50</sup> The agencies are considering whether additional technical modifications and refinements to the cross-jurisdictional indicator would be appropriate, including with respect to the treatment of derivatives, and would seek comment on any such changes to the indicator through a separate notice. Specifically, under the final rule, cross-jurisdictional claims are measured according to the instructions to the FFIEC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions and the Board is not altering the measurement of repurchase agreements and securities financing transactions under this final rule. This approach maintains consistency between the FR Y-15 and FFIEC 009. In addition, the cross-jurisdictional indicator maintains the use of trade-date accounting for purposes of the final rule. The preference for trade-date accounting is consistent with other reporting forms (e.g., Consolidated Financial Statements for Holding Companies Form (FR Y- 9C)) and with generally accepted accounting principles. With respect to netting, the instructions to the FFIEC 009 permit netting in limited circumstances. Allowing banking organizations to net all claims and liabilities with a counterparty could significantly understate an

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<sup>50</sup> Specifically, cross-jurisdictional claims are measured on an ultimate-risk basis according to the instructions to the FFIEC 009. The instructions to the FFIEC 009 currently do not permit risk transfer for repurchase agreements and securities financing transactions. Foreign banking organizations must include in cross-jurisdictional claims only the net exposure (i.e., net of collateral value subject to haircuts) of all secured transactions with affiliates to the extent that these claims are collateralized by financial collateral or excluded in consolidation. *See supra* note 43.

organization's level of international activity, even if such netting might be appropriate from the perspective of managing risk.

As noted above, the risk-based indicators generally track measures already used in the Board's existing regulatory framework and rely on information that banking organizations covered by the final rule already publicly report.<sup>51</sup> The agencies believe that the measure of cross-jurisdictional activity as proposed (including the current reported measurements of repurchase agreements and securities financing transactions, trade date accounting items, and netting) along with the associated \$75 billion threshold, appropriately captures the risks that warrant the application of Category II standards. The agencies may consider future changes regarding the measurement of the cross-jurisdictional activity indicator, and in doing so, would consider the comments described above and the impact of any future changes on the \$75 billion threshold, and would draw from supervisory experience following the implementation of the final rule. Any such changes would be considered in the context of a separate rulemaking process.

### 3. *Nonbank assets*

The proposals would have considered the level of nonbank assets in determining the applicable category of standards. The amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant activities in nonbank subsidiaries are more likely to have complex corporate structures and funding relationships. In addition, in certain cases nonbank subsidiaries are subject to less prudential regulation than regulated banking entities.

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<sup>51</sup> See Form FR Y-15. This information is publicly available.

Under the proposals, nonbank assets would have been measured as the average amount of assets in consolidated nonbank subsidiaries and equity investments in unconsolidated nonbank subsidiaries.<sup>52</sup> The proposals would have excluded from this measure assets in a depository institution subsidiary, including a national bank, state member bank, state nonmember bank, federal savings association, federal savings bank, or state savings association subsidiary. The proposals also would have excluded assets of subsidiaries of these depository institutions, as well as assets held in each Edge or Agreement Corporation that is held through a bank subsidiary.<sup>53</sup>

A number of commenters argued that measuring nonbank assets based on the location of the assets in a nonbank subsidiary provides a poor measure of risk. Some commenters requested that the agencies instead consider whether the assets relate to bank-permissible activities. Other commenters argued that activities conducted in nonbank subsidiaries can present less risk than banking activities. Specifically, some commenters argued that the proposed measure of nonbank assets was over-inclusive on the basis that many of the assets in nonbank subsidiaries would receive a zero percent risk weight under the agencies' capital rule. In support of this position,

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<sup>52</sup> For a foreign banking organization, nonbank assets would have been measured as the average amount of assets in consolidated U.S. nonbank subsidiaries and equity investments in unconsolidated U.S. nonbank subsidiaries.

<sup>53</sup> As noted above, the Parent Company Only Financial Statements for Large Holding Companies (FR Y-9LP), Schedule PC-B, line item 17 is used to determine nonbank assets. For purposes of this item, nonbank companies exclude (i) all national banks, state member banks, state nonmember insured banks (including insured industrial banks), federal savings associations, federal savings banks, and thrift institutions (collectively for purposes of this item, "depository institutions") and (ii) except for an Edge or Agreement Corporation designated as "Nonbanking" in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b), any subsidiary of a depository institution (for purposes of this item, "depository institution subsidiary"). The revised FR Y-15 includes a line item that would automatically populate this information. *See* section XV of the Supplementary Information in the Board-only final rule.

commenters noted that retail brokerage firms often hold significant amounts of U.S. treasury securities.

Other commenters argued that the measure of nonbank assets is poorly developed and infrequently used and urged the agencies to provide additional support for the inclusion of the indicator in the proposed framework. Specifically, commenters requested that the agencies provide additional justification for nonbank assets as an indicator of complex corporate structures and funding relationships, as well as interconnectedness. A number of commenters argued that, to the extent the measure was intended to address risk in broker-dealer operations, it was unnecessary in light of existing supervision and regulation of broker-dealers and application of consolidated capital, stress testing, and risk-management requirements to the parent banking organization.

A number of commenters argued that, if retained, the nonbank assets indicator should be more risk sensitive. Some commenters suggested excluding assets related to bank-permissible activities as well as certain types of nonbanking activities, such as retail brokerage activity. The commenters argued that, at a minimum, the nonbank assets indicator should exclude any nonbank subsidiary or asset that would be permissible for a bank to own. Other commenters suggested risk-weighting nonbank assets or deducting certain assets held by nonbank subsidiaries, such as on-balance sheet items that are deducted from regulatory capital under the capital rule (e.g., deferred tax assets and goodwill).

Both the organizational structure of a banking organization and the activities it conducts contribute to its complexity and risk profile. Banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate

transactions, and funding relationships.<sup>54</sup> A banking organization's complexity is positively correlated with the impact of the organization's failure or distress.<sup>55</sup>

Market participants typically evaluate the financial condition of a banking organization on a consolidated basis. Therefore, the distress or failure of a nonbank subsidiary could be destabilizing to, and cause counterparties and creditors to lose confidence in, the banking organization as a whole. In addition, the distress or failure of banking organizations with significant nonbank assets has coincided with or increased the effects of significant disruptions to the stability of the U.S. financial system.<sup>56</sup>

Nonbank activities also may involve a broader range of risks than those associated with activities that are permissible for a depository institution to conduct directly and can increase interconnectedness with other financial firms, requiring sophisticated risk management and governance, including capital planning, stress testing, and liquidity risk management. For example, holding companies with significant nonbank assets are generally engaged in financial intermediation of a different nature (such as complex derivatives activities) than those typically conducted through a depository institution. If not adequately managed, the risks associated with nonbank activities could present significant safety and soundness concerns and increase financial stability risks. Nonbank assets also reflect the degree to which a banking organization may be

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<sup>54</sup> See "Evolution in Bank Complexity", Nicola Cetorelli, James McAndrews and James Traina, Federal Reserve Bank of New York Economic Policy Review (December 2014) (discussing acquisitions of nonbanking subsidiaries and cross-industry acquisitions as contributing to growth in organization complexity), available at: <https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412cet2.pdf>.

<sup>55</sup> See 80 FR 49082 (August 14, 2015). See also BCBS, "Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement" (paragraph 25), available at: <http://www.bis.org/publ/bcbs255.htm>.

<sup>56</sup> An example includes the near-failure of Wachovia Corporation, a financial holding company with \$162 billion in nonbank assets as of September 30, 2008.

engaged in activities through legal entities that are not subject to separate capital or liquidity requirements or to the direct regulation and supervision applicable to a regulated banking entity.

The nonbank assets indicator in the final rule provides a proxy for operational complexity and nonbanking activities without requiring banking organizations to track assets, income, or revenue based on whether a depository institution has the legal authority to hold such assets or conduct the related activities (legal authority). In addition, a depository institution's legal authority depends on the institution's charter and may be subject to additional interpretation over time.<sup>57</sup> A measure of nonbank assets based on legal authority would be costly and complex for banking organizations to implement, as they do not currently report this information based on legal authority. Defining nonbank assets based on the type of entity that owns them, rather than legal authority, reflects the risks associated with organizational complexity and nonbanking activities without imposing additional reporting burden as a result of implementing the final rule or monitoring any future changes to legal authority. In addition, as noted above, the nonbank assets indicator is designed, in part, to identify activities that a banking organization conducts in subsidiaries that may be subject to less prudential regulation, which makes relevant whether the asset or activity is located in a bank or nonbank subsidiary.

Commenters' suggested modifications to exclude certain types of assets or entities, or to risk-weight nonbank assets, would not align with the full scope of risks intended to be measured by the indicator, including risks associated with operational and managerial complexity. In particular, under the generally applicable risk-based capital requirements, the risk weight

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<sup>57</sup> See e.g., "OCC Releases Updated List of Permissible Activities for Nat'l Banks & Fed. Sav. Associations," OCC NR 17-121 (Oct. 13, 2017) ("The OCC may permit national banks and federal savings associations to conduct additional activities in the future"), available at: <https://www.occ.treas.gov/publications/publications-by-type/other-publications-reports/pub-activities-permissible-for-nat-banks-fed-saving.pdf>.

assigned to an individual asset is primarily designed to measure credit risk, so relying on risk-weighted assets could underestimate operational and other risks. Further, because nonbank entities are permitted to conduct a wide range of complex activities, assets held by those entities, including those that receive a zero percent risk weight, may be held in connection with complex activities, such as certain prime brokerage or other trading activities. Finally, as noted above, the nonbank asset measure is a relatively simple and transparent measures of a banking organization's nonbank activities, and exclusion of specific assets based on risk could undermine the simplicity and transparency of the indicator. For these reasons, the agencies are finalizing the nonbank assets indicator, including the measurement of the indicator, generally as proposed.

#### *4. Off-balance sheet exposure*

The proposals would have included off-balance sheet exposure as a risk-based indicator to complement the measure of size. Under the proposals, off-balance sheet exposure would have been measured as the difference between total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, and total assets.<sup>58</sup> Total exposure includes on-balance sheet assets plus certain off-balance sheet exposures, including derivative exposures and commitments.

A number of commenters argued that the proposed measure of off-balance sheet exposure was not sufficiently risk sensitive. Specifically, these commenters argued that the exposures captured by the indicator were generally associated with low-risk activities or assets, such as securities lending activities. In addition, the commenters argued that the proposed measure

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<sup>58</sup> Total exposure would be reported for domestic holding companies on the FR Y-15, Schedule A, Line Item 5, and for foreign banking organizations' U.S. intermediate holding companies and combined U.S. operations on the FR Y-15, Schedule H, Line Item 5. Total off-balance sheet exposure would be reported as Line Item M5 on Schedules A and H.

could be harmful to economic activity by discouraging corporate financing through commitments and letters of credit. Commenters accordingly urged the agencies to modify the proposed approach to measuring the risk of off-balance sheet exposures; for example, by using the combination of credit conversion factors and risk weights applied under the agencies' capital rule. Other commenters suggested that the agencies exclude certain types of exposures from the indicator, such as letters of credit. Foreign banking organization commenters also argued that inter-affiliate transactions should be excluded from the measure, including any guarantee related to securities issued to fund the foreign parent, and guarantees used to facilitate clearing of swaps and futures for affiliates that are not clearing members. With respect to guarantees used to facilitate clearing, commenters argued that these exposures are the result of mandatory clearing requirements and help support the central clearing objectives of the Dodd-Frank Act. Commenters expressed concern that including these exposures also could result in increased concentration of clearing through U.S. GSIBs. For the same reasons, commenters argued that potential future exposures associated with derivatives cleared by an affiliate also should be excluded from the measure of off-balance sheet exposure.

Off-balance sheet exposure complements the size indicator under the tailoring framework by taking into account additional risks that are not reflected in a banking organization's measure of on-balance sheet assets. This indicator provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services stemming from off-balance sheet activities. In addition, off-balance sheet exposure can lead to significant future draws on liquidity, particularly in times of stress. For example, during stress conditions vulnerabilities at individual banking organizations may be exacerbated by calls on commitments and the need to post collateral on

derivatives exposures. The nature of these off-balance sheet risks for banking organizations of significant size and complexity can also lead to financial stability risk, as they can manifest rapidly and with less transparency and predictability to other market participants relative to on-balance sheet exposures.

Excluding certain off-balance sheet exposures would be inconsistent with the purpose of the indicator as a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. Commitments and letters of credit, like extensions of credit through loans and other arrangements included on a banking organization's balance sheet, help support economic activity. Because corporations tend to increase their reliance on committed credit lines during periods of stress in the financial system, draws on these instruments can exacerbate the effects of stress conditions on banking organizations by increasing their on-balance sheet credit exposure.<sup>59</sup> During the 2008- 2009 financial crisis, reliance on lines of credit was particularly pronounced among smaller and non-investment grade corporations, suggesting that an increase in these exposures may be associated with decreasing credit quality.<sup>60</sup>

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<sup>59</sup> During the financial crisis, increased reliance on credit lines began as early as 2007, and increased after September 2008. See Jose M. Berrospide, Ralf R. Meisenzahl, and Briana D. Sullivan, "Credit Line Use and Availability in the Financial Crisis: The Importance of Hedging," available at: <https://www.federalreserve.gov/pubs/feds/2012/201227/201227pap.pdf>. Some have found evidence that an increase in draws on credit lines may have been motivated by concerns about the ability of financial institutions to provide credit in the future. See Victoria Ivashina & David Scharfstein, "Bank Lending During the Financial Crisis of 2008," 97 J. Fin. Econ. 319-338 (2010). See William F. Bassett, Simon Gilchrist, Gretchen C. Weinbach, and Egon Zakrajšek, "Improving Our Ability to Monitor Bank Lending" chapter on *Risk Topography: Systemic Risk and Macro Modeling* (2014), Markus Brunnermeier and Arvind Krishnamurthy, ed., pp. 149–161, available at: <http://www.nber.org/chapters/c12554>.

<sup>60</sup> *Id.*

Including guarantees to affiliates related to cleared derivative transactions in off-balance sheet exposure also is consistent with the overall purpose of the indicator. A clearing member that guarantees the performance of an affiliate to a central counterparty is exposed to a risk of loss if the affiliate were to fail to perform its obligations under a derivative contract. By including these exposures, the indicator identifies a source of interconnectedness with other financial market participants. These transactions can arise with respect not only to principal trades, but also because a client wishes to face a particular part of the organization, and thus excluding these guarantees could understate risk and interconnectedness.<sup>61</sup>

As described above, the tailoring framework's risk-based indicators and uniform category thresholds balance risk sensitivity with simplicity and transparency. Excluding certain types of exposures would not align with the full scope of risks intended to be measured by the indicator. The final rule, therefore, adopts the off-balance sheet exposure indicator as proposed.

#### *5. Weighted short-term wholesale funding*

The proposed weighted short-term wholesale funding indicator would have measured the amount of a banking organization's short-term funding obtained generally from wholesale counterparties. Reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks. The proposals would have calculated this indicator as the weighted-average amount of funding obtained from wholesale

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<sup>61</sup> In order to facilitate clearing generally, the capital rule more specifically addresses the counterparty credit risk associated with transactions that facilitate client clearing, such as a shorter margin period of risk, and provides incentives that are intended to help promote the central clearing objectives of the Dodd-Frank Act. *See* 12 CFR 3.35 (OCC); 12 CFR 217.35 (Board); 12 CFR 324.35 (FDIC).

counterparties, certain brokered deposits, and certain sweep deposits with a remaining maturity of one year or less, in the same manner as currently reported by holding companies on the FR Y-15.<sup>62</sup>

A number of commenters expressed concern regarding the use of the weighted short-term wholesale funding indicator in the tailoring framework. Several commenters argued that this indicator fails to take into account the extent to which the risk of short-term wholesale funding has been mitigated through existing regulatory requirements, such as the Board's enhanced prudential standards rule and, for foreign banking organizations, standardized liquidity requirements applicable to foreign banking organizations at the global consolidated level. Other commenters argued that the indicator is a poor measure of risk more broadly because it fails to consider the maturity of assets funded by short-term wholesale funding. Commenters argued that focusing on liabilities and failing to recognize the types of assets funded by the short-term funding would disproportionately affect foreign banking organizations' capital market activities and ability to compete in the United States.

The weighted short-term wholesale funding indicator is designed to serve as a broad measure of the risks associated with elevated, ongoing reliance on funding sources that are typically less stable than funding of a longer term or funding such as fully-insured retail deposits, long-term debt, and equity. For example, a banking organization's weighted short-term wholesale funding level serves as an indication of the likelihood of funding disruptions in firm-specific or market-wide stress conditions. These funding disruptions may give rise to

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<sup>62</sup> Average amounts over a 12 month period in each category of short-term wholesale funding are weighted based on four residual maturity buckets; the asset class of collateral, if any, securing the funding; and liquidity characteristics of the counterparty. Weightings reflect risk of runs and attendant fire sales. *See* 12 CFR 217.406 and 80 FR 49082 (August 14, 2015).

urgent liquidity needs and unexpected losses, which warrant heightened application of liquidity and regulatory capital requirements. A measure of funding dependency that reflects the various types or maturities of assets supported by short-term wholesale funding sources, as suggested by commenters, would add complexity to the indicator. For example, because a banking organization's funding is fungible, monitoring the direct relationship between specific liabilities and assets with various maturities requires a methodology for asset-liability matching and liability maturity. The LCR rule and the proposed NSFR rule therefore include methodologies for reflecting asset maturity in regulatory requirements that address the associated risks.<sup>63</sup>

Commenters suggested revisions to the weighted short-term wholesale funding indicator that would align with the treatment of certain assets and liabilities under the LCR rule. For example, some commenters recommended that the agencies more closely align the indicator's measurement of weighted short-term wholesale funding with the outflow rates applied in the LCR rule, such as by excluding from the indicator funding that receives a zero percent outflow rate in the LCR rule or reducing the weights for secured funding to match the LCR's outflow treatment. Similarly, commenters suggested that the agencies provide a lower weighting for brokered and sweep deposits from affiliates, consistent with the lower outflow rates assigned to these deposits in the LCR rule. Specifically, commenters argued that the weighted short-term wholesale funding indicator inappropriately applies the same 25 percent weight to sweep deposits sourced by both affiliates and non-affiliates alike, and treats certain non-brokered sweep deposits in a manner inconsistent with the LCR rule.

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<sup>63</sup> For example, the LCR rule includes cash inflows from certain maturing assets and the proposed NSFR rule would use the maturity profile of a banking organization's assets to determine its required stable funding amount.

The agencies note that when the Board established the weights applied in calculating and reporting short-term wholesale funding for purposes of the GSIB surcharge rule, the Board took into account the treatment of certain liabilities in the LCR rule and fire sale risks in key short-term wholesale funding markets. The agencies continue to believe the current scope of the weighted short-term wholesale funding indicator, and the weights applied in the indicator, are appropriately calibrated for assessing the risk to broader financial stability as a result of a banking organization's reliance on short-term wholesale funding. The final rule treats brokered deposits as short-term wholesale funding because they are generally considered less stable than standard retail deposits. In order to preserve the relative simplicity of the short-term wholesale funding metric, the final rule does not distinguish among different types of brokered deposits and sweep deposits. Accordingly, all retail deposits identified as brokered deposits and brokered sweep deposits under the LCR rule are reported on the FR Y-15 as retail brokered deposits and sweeps for purpose of the weighted short-term wholesale funding indicator.

Commenters also suggested other specific revisions to the calculation of the weighted short-term wholesale funding indicator. Some commenters argued that the weighted short-term wholesale funding indicator should look to the original maturity of the funding relationship—instead of the remaining maturity—and exclude long-term debt that is maturing within the next year. Commenters also urged the agencies to recognize certain offsets to reduce the amount of short-term wholesale funding included in the indicator. For example, a number of commenters suggested that the amount of short-term wholesale funding should be reduced by the amounts of HQLA held by the banking organization, cash deposited at the Federal Reserve by the banking organization, or of any high-quality collateral used for secured funding. Commenters argued that this approach would better reflect the banking organization's liquidity risk because it would

take into account assets that could be used to meet cash outflows as well as collateral that typically maintains its value and therefore would not contribute to asset fire sales. Commenters also argued that the measure of weighted short-term wholesale funding should exclude funding that the commenters viewed as stable, such as credit lines from Federal Home Loan Banks and Federal Reserve Banks, savings and checking accounts of wholesale customers, and brokered sweep deposits received from an affiliate.

The agencies believe that the remaining maturity of a funding relationship, instead of original maturity as suggested by commenters, provides a more accurate measure of the banking organization's ongoing exposure to rollover risk. As discussed above, because a banking organization's inability to rollover funding may generate safety and soundness and financial stability risks, the agencies believe that using remaining maturity is more appropriate given the purposes of the short-term wholesale funding indicator. Further, the weighted short-term wholesale funding indicator takes into account the quality of collateral used in funding transactions by assigning different weights to average amounts of secured funding depending on its collateral. These weights reflect the liquidity characteristics of the collateral and the extent to which the quality of such assets may mitigate fire sale risk. Revising the short-term wholesale funding indicator to permit certain assets to offset liabilities because the assets may be used to address cash outflows, as suggested by commenters, could understate financial stability and safety and soundness risk because such an approach assumes those assets are available to offset funding needs in stress conditions. Similarly, excluding a banking organization's reliance on certain types of short-term funding from the indicator may result in an underestimation of a banking organization's potential to contribute to systemic risk because such funding may be unavailable for use in a time of stress. Thus, the final rule does not

exclude short-term borrowing from the Federal Home Loan Banks, which may be secured by a broad range of collateral, and the final rule treats such short-term borrowing the same as borrowing from other wholesale counterparties in order to identify risk. More generally, incorporating commenters' recommended exclusions and offsets would reduce the transparency of the weighted short-term wholesale funding indicator, contrary to the agencies' intention to provide a simplified measure to identify banking organizations with heightened risks. For these reasons, the final rule adopts the weighted short-term wholesale funding indicator without change.

Commenters also provided suggestions to reduce or eliminate inter-affiliate transactions from the measure of weighted-short term wholesale funding. Specifically, commenters provided suggestions to weight inter-affiliate transactions or net transactions with affiliates.

Including funding from affiliated sources provides an appropriate measure of the risks associated with a banking organization's general reliance on short-term wholesale funding. Banking organizations that generally rely on funding with a shorter contractual maturity from financial sector affiliates may present higher risks relative to those that generally rely on funding with a longer contractual term from outside of the financial sector. Based on the contractual term, the risks presented by ongoing reliance on short-term funding from affiliates may be similar to funding from non-affiliated sources. For the reasons discussed above, the final rule adopts the weighted short-term wholesale funding indicator as proposed.

### *C. Application of Standards Based on the Proposed Risk-Based Indicators*

The proposed risk-based indicators would have determined the application of capital and liquidity requirements under Categories II, III, and IV. By taking into consideration the relative presence or absence of each risk-based indicator, the proposals would have provided a basis for

assessing a banking organization's financial stability and safety and soundness risks for purposes of determining the applicability and stringency of these requirements.

Commenters criticized the methods by which the proposed risk-based indicators would determine the category of standards applicable to a banking organization. Certain commenters expressed concern that a banking organization could become subject to Category II or III standards without first being subject to Category IV standards, due to the disjunctive use of the size and other risk-based indicators under the proposals. One commenter suggested that the agencies should instead apply a category of standards based on a weighted average of the risk-based indicators. Another commenter suggested that application of Category II standards should be based on other or additional risk factors. Several commenters suggested that the application of standardized liquidity requirements should be based only on the levels of the weighted short-term wholesale funding indicator, and not based on the levels of any other risk-based indicator. One commenter criticized the proposals for not providing sufficient justification for the number of categories.

Because each indicator serves as a proxy for various types of risk, a high level in a single indicator warrants the application of more stringent standards to mitigate those risks and support the overall purposes of each category. The agencies therefore do not believe using a weighted average of a banking organization's levels in the risk-based indicators, or the methods that would require a banking organization to exceed multiple risk-based indicators, is appropriate to determine the applicable category of standards. The final rule therefore adopts the use of the risk-based indicators generally as proposed.

Certain commenters suggested that the agencies reduce requirements under the foreign bank proposal to account for the application of standards at the foreign banking organization

parent. The final rule takes into account the standards that already apply to the foreign banking organization parent. Specifically, the final rule tailors the application of capital and liquidity requirements based, in part, on the size and complexity of a foreign banking organization's activities in the United States. Moreover, under the Board-only final rule, the standards applicable to foreign banking organizations with a more limited U.S. presence largely rely on compliance with comparable home-country standards applied at the consolidated foreign parent level. In this way, the final rule helps to mitigate the risk such banking organizations present to safety and soundness and U.S. financial stability, consistent with the overall objectives of the tailoring framework. Requiring foreign banking organizations to maintain financial resources in the jurisdictions in which they operate subsidiaries also reflects existing agreements reached by the BCBS and international regulatory practice.

#### *D. Calibration of Thresholds and Indexing*

The proposals would have employed fixed nominal thresholds to assign the categories of standards that apply to banking organizations. In particular, the proposals included total asset thresholds of \$100 billion, \$250 billion, and \$700 billion, along with \$75 billion thresholds for each of the other risk-based indicators. The foreign bank proposal also included a \$50 billion weighted short-term wholesale funding threshold for U.S. and foreign banking organizations subject to Category IV standards.

Some commenters expressed concerns regarding the use of \$75 billion thresholds for cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. In particular, these commenters stated that the \$75 billion thresholds were poorly justified and requested additional information as to why the agencies chose these thresholds. A number of these commenters also supported the use of a higher threshold for these

risk-based indicators. Other commenters urged the agencies to retain the discretion to adjust the thresholds on a case-by-case basis, such as in the case of a temporary excess driven by customer transactions or for certain transactions that would result in a sudden change in categorization.

The \$75 billion thresholds are based on the degree of concentration of a particular risk indicator for each banking organization relative to total assets. That is, a threshold of \$75 billion represents at least 30 percent and as much as 75 percent of total assets for banking organizations with between \$100 billion and \$250 billion in total assets.<sup>64</sup> Thus, for banking organizations that do not meet the size threshold for Category III standards, other risks represented by the risk-based indicators would be substantial, while banking organizations with \$75 billion in cross-jurisdictional activity have a substantial international footprint. In addition, setting the thresholds at \$75 billion ensures that banking organizations that account for the vast majority of the total amount of each risk-based indicator among banking organizations with \$100 billion or more in total consolidated assets are subject to prudential standards that account for the associated risks of these risk-based indicators, which facilitates consistent treatment of these risks across banking organizations. The use of a single threshold also supports the overall simplicity of the framework. Moreover, a framework in which thresholds are regularly adjusted on a temporary and case-by-case basis would not support the objectives of predictability and transparency.

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<sup>64</sup> The \$100 billion and \$250 billion size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by 401 of EGRRCPA. Section 165 requires the application of enhanced prudential standards to bank holding companies and foreign banking organizations with \$250 billion or more in total consolidated assets. Section 165 authorizes the Board to apply enhanced prudential standards to such banking organizations with assets between \$100 billion and \$250 billion, taking into consideration the banking organization's capital structure, riskiness, complexity, financial activities (including those of subsidiaries), size, and any other risk-related factors the Board deems appropriate. 12 U.S.C. 5365.

One commenter stated that the agencies should not use the \$700 billion size threshold as the basis for applying Category II standards, arguing that the agencies had not provided sufficient justification for that threshold. However, as noted in the proposals, historical examples suggest that the distress or failure of a banking organization of this size would have systemic impacts. For example, during the 2008-2009 financial crisis, significant losses at Wachovia Corporation, which had \$780 billion in total assets at the time of being acquired in distress, had a destabilizing effect on the financial system. The \$700 billion size threshold under Category II addresses the substantial risks that can arise from the activities and potential distress of very large banking organizations that are not U.S. GSIBs. Commenters did not request additional explanation regarding the \$100 billion and \$250 billion total asset thresholds. As noted above, these size thresholds are consistent with those set forth in section 165 of the Dodd-Frank Act, as amended by section 401 of EGRRCPA.<sup>65</sup>

Several commenters requested that the agencies index certain of the proposed thresholds based on changes in various measures, such as growth in domestic banking assets, inflation, gross domestic product growth or other measures of economic growth, or share of the indicator held by the banking organization in comparison to the amount of the indicator held in the financial system. These commenters requested that the thresholds be automatically adjusted on an annual basis based on changes in the relevant index, by operation of a provision in the rule. Other commenters expressed concern that indexing can have pro-cyclical effects.

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<sup>65</sup> *Id.*

As commenters noted, the \$100 billion and \$250 billion size thresholds prescribed in the Dodd-Frank Act, as amended by EGRRCPA, are fixed by statute.<sup>66</sup> Indexing the other thresholds would add complexity, a degree of uncertainty, and potential discontinuity to the framework. The agencies acknowledge the thresholds should be reevaluated over time to ensure they appropriately reflect growth on a macroeconomic and industry-wide basis, as well as to continue to support the objectives of this rule. The agencies plan to accomplish this by periodically reviewing the thresholds and proposing changes through the notice and comment process, rather than including an automatic adjustment of thresholds based on indexing.<sup>67</sup>

*E. The risk-based categories*

*1. Category I*

Under the domestic proposal, Category I standards would have applied to U.S. GSIBs, which are banking organizations that have a U.S. GSIB score of 130 or more under the scoring methodology. Category I standards would have included the most stringent standards relative to those imposed under the other categories, to reflect the heightened risks that banking organizations subject to Category I standards pose to U.S. financial stability. The requirements applicable to U.S. GSIBs would have remained largely unchanged from existing requirements.

The agencies did not receive comments regarding the criteria for application of Category I standards to U.S. GSIBs. Several commenters expressed concern regarding applying

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<sup>66</sup> Section 165 of the Dodd-Frank Act does provide the Board with discretion to establish a minimum asset threshold above the statutory thresholds for some, but not all, enhanced prudential standards. However, the Board may only utilize this discretion “pursuant to a recommendation by the Financial Stability Oversight Council in accordance with section 115 of the Dodd-Frank Act.” This authority is not available for stress testing and risk committee requirements. 12 U.S.C. 5365(a)(2)(B).

<sup>67</sup> Similarly, the Board-only final rule does not include an automatic indexing function.

more stringent standards than Category II standards to foreign banking organizations, even if the risk profile of a foreign banking organization's U.S. operations were comparable to a U.S. GSIB.<sup>68</sup> The final rule adopts the scoping criteria for Category I, and the capital and liquidity standards that apply under this category as proposed. U.S. GSIBs have the potential to pose the greatest risks to U.S. financial stability due to their systemic risk profile and, accordingly, should be subject to the most stringent capital and liquidity standards. The treatment for U.S. GSIBs aligns with international efforts to address the financial stability risks posed by the largest, most interconnected financial institutions. In 2011, the BCBS adopted a framework to identify global systemically important banking organizations and evaluate their systemic importance.<sup>69</sup> This framework generally applies to the global consolidated parent organization, and does not apply separately to subsidiaries and operations in host jurisdictions. Consistent with this approach, U.S. intermediate holding companies of foreign banking organizations are not subject to Category I standards under the final rule. The agencies will continue to monitor the systemic risk profiles of foreign banking organizations' U.S. operations, and consider whether application of more stringent requirements is appropriate to address any increases in their size, complexity or overall systemic risk profile.

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<sup>68</sup> As noted above, the foreign bank proposal would not have applied Category I standards to the U.S. operations of foreign banking organizations because the Board's GSIB surcharge rule would not identify a foreign banking organization or a U.S. intermediate holding company as a U.S. GSIB. The foreign bank proposal sought comment on the advantages and disadvantages of applying enhanced prudential standards that are more stringent than Category II standards to the U.S. operations of foreign banking organizations with a comparable risk profile to U.S. GSIBs.

<sup>69</sup> See BCBS, "Global systemically important banks: Assessment methodology and the additional loss absorbency requirement" (November 4, 2011).

## 2. *Category II*

The proposals would have applied Category II standards to banking organizations with \$700 billion in total assets or \$100 billion or more in total assets and \$75 billion or more in cross-jurisdictional activity. Like Category I standards, Category II capital and liquidity standards are generally based on standards that reflect agreements reached by the BCBS. The proposals also sought comment on whether Category II standards should apply based on a banking organization's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the \$75 billion threshold that would apply for Category III standards.

Some commenters argued that cross-jurisdictional activity should be an indicator for Category III standards rather than Category II standards. Another commenter expressed concern with expanding the criteria for Category II standards to include any of the other risk-based indicators used for purposes of Category III standards. Some commenters also argued that the proposed Category II standards were too stringent relative to the risks indicated by a high level of cross-jurisdictional activity or very large size. Other commenters argued that application of Category II standards to foreign banking organizations was unnecessary because these banking organizations are already subject to BCBS-based standards on a global, consolidated basis by their home-country regulators. Another commenter requested that the agencies make clearer distinctions between Category I and Category II standards.

As discussed above, banking organizations that engage in significant cross-jurisdictional activity present complexities that support the application of more stringent standards relative to those that would apply under Category III. In addition, application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-

jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers, while applying standards that appropriately reflect the risk profiles of banking organizations that meet the thresholds for Category III standards. As noted above, this approach is consistent with international regulatory practice.

Accordingly, and consistent with the proposal, the final rule applies Category II standards to U.S. banking organizations and U.S. intermediate holding companies with \$700 billion in total consolidated assets or cross-jurisdictional activity of \$75 billion or more.

### *3. Category III*

Under the proposals, Category III standards would have applied to banking organizations that are not subject to Category I or II standards and that have total assets of \$250 billion or more. They also would have applied to banking organizations with \$100 billion or more in total assets and \$75 billion or more in nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure.

A number of commenters supported the proposed scoping criteria for Category III, as well as the standards that would have applied under this category. Several other commenters requested certain changes to the specific thresholds and risk-based indicators used to determine which banking organizations would have been subject to Category III standards, as well as the capital and liquidity standards that would have applied under this category. Comments regarding the capital and liquidity requirements that would have applied under Category III are discussed in section V.B of this Supplementary Information.

The final rule generally adopts the scoping criteria for Category III, and the capital and liquidity standards that apply under this Category as proposed.

#### 4. *Category IV*

Under the proposals, Category IV standards would have applied to banking organizations with \$100 billion or more in total assets that do not meet the thresholds for any other category. A number of commenters argued that no heightened prudential standards should apply to banking organizations that meet the criteria for Category IV standards because such banking organizations are not as large or complex as banking organizations that would be subject to more stringent categories of standards under the proposals. Alternatively, these commenters suggested that the threshold for application of Category IV standards should be raised from \$100 billion to \$250 billion in total assets.<sup>70</sup> In contrast, one commenter argued that the agencies should not reduce the requirements applicable to banking organizations that would be subject to Category IV until current requirements have been in effect for a full business cycle.

The final rule includes Category IV because banking organizations subject to this category of standards generally have greater scale and operational and managerial complexity relative to smaller banking organizations and, as a result, present heightened safety and soundness risks. In addition, the failure of one or more banking organizations subject to Category IV standards could have a more significant negative effect on economic growth and employment relative to the failure or distress of smaller banking organizations. The banking organizations subject to Category IV standards have lower risk profiles than those subject to Category I, II, or III standards. Banking organizations subject to these standards therefore generally will be subject to capital and liquidity requirements that are similar to those applicable

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<sup>70</sup> Commenters also argued that the Board had not sufficiently justified the application of enhanced prudential standards to banking organizations subject to Category IV standards, in the manner required under EGRRCPA. These comments are addressed in section VI.D of the Supplementary Information in the Board-only final rule.

to banking organizations with less than \$100 billion in assets. To the extent a banking organization subject to Category IV standards has elevated levels of short-term wholesale funding, it will be subject to a reduced LCR requirement. The agencies believe this approach strikes the right balance in applying standards that are tailored to the risk profiles of banking organizations subject to Category IV standards.

*F. Treatment of Depository Institution Subsidiaries*

The proposals generally would have applied the same category of standards to U.S. depository institution holding companies and their depository institution subsidiaries. As discussed in section VI.B of this Supplementary Information, standardized liquidity requirements would have applied only to depository institutions with \$10 billion or more in total consolidated assets that are subsidiaries of banking organizations subject to Category I, II, or III standards.

Commenters on the domestic proposal generally supported the application of consistent requirements for U.S. depository institution holding companies and their depository institution subsidiaries. This treatment aligns with the agencies' longstanding policy of applying similar standards to holding companies and their depository institution subsidiaries. For example, since 2007 the agencies generally have required depository institutions to apply the advanced approaches capital requirements if their parent holding company is identified as an advanced approaches banking organization.

Accordingly, the final rule maintains the application of regulatory capital and LCR requirements to depository institution subsidiaries as proposed.

*G. Specific aspects of the foreign bank proposal*

*1. Liquidity standards based on combined U.S. operations*

The foreign bank proposal would have determined the category of liquidity standards applicable to a foreign banking organization with respect to its U.S. intermediate holding company based on the risk profile of its combined U.S. operations, in recognition of the agencies' observation that liquidity needs may arise suddenly and manifest across all segments of a foreign banking organization's U.S. operations.<sup>71</sup>

Some commenters supported the proposal to calibrate liquidity standards applicable to foreign banking organizations based on the risk profile of their combined U.S. operations. Most commenters objected to this aspect of the foreign bank proposal, however, and argued that the agencies instead should determine the applicability and calibration of liquidity standards based on the risk profile of a foreign banking organization's U.S. intermediate holding company. These commenters argued the U.S. intermediate holding company is a separate legal entity from the foreign banking organization's U.S. branches and agencies, with separate activities and risks. Commenters also asserted that the proposed approach does not recognize the potential capacity of the parent foreign banking organization to serve as a source of support for its U.S. operations. Other commenters asserted that certain requirements, such as capital planning requirements, stress testing, and internal liquidity stress testing-based buffer requirements could help to insulate a U.S. intermediate holding company from risks at other parts of the foreign banking organization. Some commenters also argued the proposed approach would have resulted in a framework that is overly complex.

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<sup>71</sup> Combined U.S. operations consist of the foreign banking organizations U.S. subsidiaries, including any intermediate holding company, and U.S. branch and agency operations.

In addition, commenters stated that the proposed approach could create a competitive disadvantage for U.S. intermediate holding companies relative to U.S. banking organizations that the commenters viewed as similarly situated, because the foreign bank proposal would have considered risks and activities outside of the consolidated U.S. intermediate holding company to determine the applicability and calibration of standardized liquidity requirements. These commenters stated that such an approach is inconsistent with the principle of national treatment and equality of competitive opportunity. Some commenters also asserted that the proposed approach would have inappropriately required a foreign banking organization to hold liquid assets at its U.S. intermediate holding company to meet outflows at the foreign banking organization's U.S. branches and require HQLA of a U.S. intermediate holding company to be controlled by the international bank rather than the U.S. intermediate holding company. One commenter suggested that the agencies should provide data in support of assertions that requirements based on the combined U.S. operations would reduce the incentives for a foreign banking organization to migrate risky activities to the branches and agencies.

The final rule determines the applicability of liquidity standards with respect to a U.S. intermediate holding company based on the risk profile of the U.S. intermediate holding company, rather than the combined U.S. operations of the foreign banking organization. Specifically, the final rule applies a full LCR or reduced LCR requirement to a U.S. intermediate holding company under the risk-based categories based on measures of the U.S. intermediate holding company's size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. The agencies believe this approach helps to enhance the focus and efficiency of standardized liquidity requirements relative to the proposal, because liquidity requirements that apply to a U.S. intermediate holding company will be based

on the U.S. intermediate holding company's own risk profile. As discussed in the foreign bank proposal and in section VI.B.10 of this Supplementary Information, the Board may develop and propose a standardized liquidity requirement for the U.S. branches and agencies of a foreign banking organization. As part of that process, the agencies intend to further consider how to most appropriately address concerns regarding the liquidity risk profiles of foreign banking organizations' U.S. operations, including through the use of existing supervisory processes, other relevant regulations and international coordination, as well as developments in the U.S. activities and liquidity risk-management practices of foreign banking organizations.

## *2. The treatment of inter-affiliate transactions*

Except for cross-jurisdictional activity, which would have excluded liabilities and certain collateralized claims on non-U.S. affiliates, the proposed risk-based indicators would have included transactions between a foreign banking organization's combined U.S. operations and non-U.S. affiliates. Similarly, and as noted above, except for cross-jurisdictional activity, a U.S. intermediate holding company would have included transactions with affiliates outside the U.S. intermediate holding company when reporting its risk-based indicators.

Most commenters on the foreign bank proposal supported the proposed exclusion of certain inter-affiliate transactions in the cross-jurisdictional activity indicator, and argued further that all risk-based indicators should exclude transactions with affiliates. These commenters asserted that including inter-affiliate transactions disadvantaged foreign banking organizations relative to U.S. peers and argued that the rationale for excluding certain inter-affiliate claims from the cross-jurisdictional activity measure applied equally to all other risk-based indicators. A number of commenters argued that including inter-affiliate transactions would overstate the risks to a foreign banking organization's U.S. operations or U.S. intermediate holding company

because inter-affiliate transactions may be used to manage risks of the foreign bank's global operations. Similarly, some commenters asserted that the inclusion of inter-affiliate transactions would be inconsistent with the risks that the risk-based indicators are intended to capture. Other commenters argued that any risks associated with inter-affiliate transactions would be appropriately managed through the supervisory process and existing requirements, and expressed concern that including inter-affiliate transactions could encourage ring fencing in other jurisdictions. Some commenters suggested that, if inter-affiliate transactions are not excluded entirely, the agencies should assign inter-affiliate transactions a weight at no more than 50 percent. By contrast, one commenter argued that inter-affiliate transactions should be included in the risk-based indicators, arguing that the purpose of the Board's U.S. intermediate holding company framework is that resources located outside the organization may not be reliably available during periods of financial stress.

Tailoring standards based on the risk profile of the U.S. intermediate holding company, or combined U.S. operations of a foreign banking organization as under the Board-only final rule, requires measurement of risk-based indicators at a level below that of the global consolidated foreign banking organization. As a result, the calculation of the risk-based indicators must distinguish between a foreign banking organization's U.S. operations or U.S. intermediate holding company, as applicable, and affiliates outside of the United States, including by providing a treatment for inter-affiliate transactions that would otherwise be eliminated in consolidation at the global parent. Including inter-affiliate transactions in the calculation of risk-based indicators would mirror, as closely as possible, the risk profile of a U.S. intermediate holding company or combined U.S. operations if each were consolidated in the United States.

Including inter-affiliate transactions in the calculation of risk-based indicators is consistent with the agencies' approach to measuring and applying standards at a sub-consolidated level in other contexts. For example, existing thresholds and requirements in the Board's Regulation YY are based on measures of a foreign banking organization's size in the United States that includes inter-affiliate transactions.<sup>72</sup> Similarly, the total consolidated assets of a U.S. intermediate holding company or depository institution include transactions with affiliates outside of the consolidated U.S. intermediate holding company.<sup>73</sup> Capital and liquidity requirements applied to U.S. intermediate holding companies and depository institutions generally do not distinguish between exposures with affiliates and third parties.<sup>74</sup> For example, the LCR rule assigns inflow rates to funding according to the characteristics of the source of funding, but generally does not distinguish between funding provided by an affiliate or third party. Excluding inter-affiliate transactions from off-balance sheet exposure, size, and short-term wholesale funding indicators would be inconsistent with the treatment of these exposures under the capital and liquidity rules.

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<sup>72</sup> Combined U.S. assets are calculated as the average of the total combined assets of U.S. operations for the four most recent consecutive quarters as reported by the foreign banking organization on the Capital and Asset Report for Foreign Banking Organizations Form (FR Y-7Q), or, if the foreign banking organization has not reported this information on the FR Y-7Q for each of the four most recent consecutive quarters, the average of the combined U.S. assets for the most recent quarter or consecutive quarters as reported on the FR Y-7Q. Combined U.S. assets are measured on the as-of date of the most recent FR Y-7Q used in the calculation of the average. *See e.g.* 12 CFR 252.15(b)(1).

<sup>73</sup> *See* Call Report instructions, FR Y-9C.

<sup>74</sup> For example, the LCR rule differentiates unsecured wholesale funding provided by financial sector entities and by non-financial sector entities, but does not differentiate between financial sector entities that are affiliates and those that are not affiliates. *See* 12 CFR 50.32(h) (OCC), 12 CFR 249.32(h) (Board), 12 CFR 329.32(h) (FDIC). The LCR rule differentiates between affiliates and third parties under limited circumstances. *See e.g.*, 12 CFR 50.32(g)(7) (OCC), 12 CFR 249.32(g)(7) (Board), 12 CFR 329.32((g)(7) (FDIC).

In some cases, the exclusion of inter-affiliate transactions would not align with the full scope of risks intended to be measured by an indicator. Inter-affiliate positions can represent sources of risk—for example, claims on the resources of a foreign banking organization’s U.S. operations. As another example, short-term wholesale funding provided to a U.S. intermediate holding company by its parent foreign bank represents funding that the parent could withdraw quickly, which could leave fewer assets available for U.S. counterparties of the U.S. intermediate holding company.<sup>75</sup> By including inter-affiliate transactions in weighted short-term wholesale funding while excluding these positions from cross-jurisdictional liabilities, the framework provides a more risk-sensitive measure of funding risk from foreign affiliates as it takes into consideration the maturity and other risk characteristics of the funding for purposes of the weighted short-term wholesale funding measure. Additionally, because long-term affiliate funding (such as instruments used to meet total loss absorbing capacity requirements) would not be captured in weighted short-term wholesale funding, the indicator is designed to avoid discouraging a foreign parent from providing support to its U.S. operations.

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<sup>75</sup> See e.g., Robert H. Gertner, David S. Scharfstein & Jeremy C. Stein, “Internal Versus External Capital Markets,” 109 Q.J. ECON. 1211 (1994) (discussing allocation of resources within a consolidated organization through internal capital markets); Nicola Cetorelli & Linda S. Goldberg, “Global Banks and International Shock Transmission: Evidence from the Crisis,” 59 IMF ECON. REV. 41 (2011) (discussing the role of internal capital markets as a mechanism for transmission of stress in the financial system); and Nicola Cetorelli & Linda Goldberg, “Liquidity Management of U.S. Global Banks: Internal Capital Markets in the Great Recession” (Fed. Reserve Bank of N. Y. Staff Report No. 511, 2012), available at: [http://www.newyorkfed.org/research/staff\\_reports/sr511.pdf](http://www.newyorkfed.org/research/staff_reports/sr511.pdf) (finding that foreign affiliates were both recipients and providers of funds to the parent between March 2006 and December 2010). See also, Ralph de Haas and Iman Van Lelyvelt, “Internal Capital Markets and Lending by Multinational Bank Subsidiaries (2008) (discussing substitution effect in lending across several countries as a parent bank expand its business in those countries where economic conditions improve and decrease its activities where economic circumstance worsen), available at: <https://www.ebrd.com/downloads/research/economics/workingpapers/wp0105.pdf>.

Similarly, with respect to off-balance sheet exposure, an exclusion for inter-affiliate transactions would not account for the risks associated with any funding commitments provided by the U.S. operations of a foreign banking organization to non-U.S. affiliates. Accordingly, the agencies believe it would be inappropriate to exclude inter-affiliate transactions from the measure of off-balance sheet exposure.

For purposes of the nonbank assets indicator, the proposals would have treated inter-affiliate transactions similarly for foreign and domestic banking organizations. For foreign banking organizations, the proposals would have measured nonbank assets as the sum of assets in consolidated U.S. nonbank subsidiaries together with investments in unconsolidated U.S. nonbank companies that are controlled by the foreign banking organization.<sup>76</sup> Both foreign and domestic banking organizations would have included in nonbank assets inter-affiliate transactions between the nonbank company and other parts of the organization.<sup>77</sup>

Accordingly, for purposes of the risk-based indicators, the final rule adopts the treatment of inter-affiliate transactions as proposed.

#### *H. Determination of applicable category of standards*

Under the proposals, a banking organization would have determined its category of standards based on the average levels of each indicator at the top-tier banking organization, reported over the preceding four calendar quarters. If the banking organization had not reported risk-based indicator levels for each of the preceding four calendar quarters, the category would

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<sup>76</sup> See FR Y-9LP, Schedule PC-B, line item 17.

<sup>77</sup> See FR Y-9LP Instructions for Preparation of Parent Company Only Financial Statements for Large Holding Companies (September 2018)  
[https://www.federalreserve.gov/reportforms/forms/FR\\_Y-9LP20190630\\_i.pdf](https://www.federalreserve.gov/reportforms/forms/FR_Y-9LP20190630_i.pdf).

have been based on the risk-based indicator level for the quarter, or average levels over the quarters, that the banking organization has reported.

For a change to a more stringent category (for example, from Category IV to Category III), the change would have been based on an increase in the average value of its risk-based indicators over the prior four quarters of a calendar year. In contrast, for a banking organization to change to a less stringent category (for example, Category II to Category III), the banking organization would have been required to report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. Changes in a banking organization's requirements that result from a change in category generally would have taken effect on the first day of the second quarter following the change in the banking organization's category.

The agencies received several comments on the process for determining the applicable category of standards under the proposal and on the amount of time provided to comply with the requirements of a new category. In particular, several commenters suggested providing banking organizations with at least 18 months to comply with a more stringent category of standards. Several commenters recommended that the agencies retain discretion to address a temporary increase in an activity, such as to help a banking organization avoid a sudden change in the categorization of applicable standards. These commenters suggested that any adjustments of thresholds could consider both qualitative information and supervisory judgment. Commenters also requested that the agencies clarify the calculation of certain risk-based indicators. For example, by providing references to specific line items in the relevant reporting forms. One commenter also suggested that the agencies revise the reporting forms used to report risk-based

indicator levels so that they apply to a depository institution that is not part of a bank or savings and loan holding company structure.

The final rule maintains the process for determining the category of standards applicable to a banking organization as proposed. To move into a category of standards or to determine the category of standards that would apply for the first time, a banking organization would rely on an average of the previous four quarters or, if the banking organization has not reported in each of the prior four quarters, the category would be based on the risk-based indicator level for the quarter, or average levels over the quarter or quarters that the banking organization has reported. Use of a four-quarter average would capture significant changes in a banking organization's risk profile, rather than temporary fluctuations, while maintaining incentives for a banking organization to reduce its risk profile relative to a longer period of measurement.

To move to a less stringent category of standards, a banking organization must report risk-based indicator levels below any applicable threshold for the more stringent category in each of the four preceding calendar quarters. This approach is consistent with the existing applicability and cessation requirements of the Board's enhanced prudential standards rule.<sup>78</sup>

The final rule does not provide for discretionary adjustments of thresholds on a case-by-case basis, because such an approach would diminish the transparency and predictability of the framework and could reduce incentives for banking organizations to engage in long-term management of their risks.<sup>79</sup>

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<sup>78</sup> See e.g., 12 CFR 252.43.

<sup>79</sup> The agencies retain general authority under their capital and liquidity rules to increase or adjust requirements as necessary on a case-by-case basis. See 12 CFR 217.1(d) and 249.2 (Board); 12 CFR 324.1(d) and 329.2 (FDIC); 12 CFR 3.1(d) and 50.2 (OCC). The discussion of transitions specific to the LCR rule are addressed below in section VI of this Supplementary Information.

Each risk-based indicator will generally be calculated in accordance with the instructions to the FR Y-15, FR Y-9LP, FR Y-7Q, or FR Y-9C, as applicable. The risk-based indicators must be reported for the top-tier banking organization on a quarterly basis.<sup>80</sup> U.S. banking organizations currently report the information necessary to determine their applicable category of standards based on a four-quarter average.<sup>81</sup> In response to concerns raised by commenters, the Board also is revising its reporting forms to specify the line items used in determining the risk-based indicators.<sup>82</sup> With respect to the commenters' concern regarding the applicability of these reporting forms to depository institutions that are not a consolidated subsidiary of a U.S. depository institution holding company, the agencies note that no such depository institution would be subject to the final rule based on first quarter 2019 data. The agencies will monitor the implementation of the final rule and make any such adjustments to reporting forms, as needed, to require such a depository institution to report risk-based indicator levels.

Some commenters asserted that banking organizations could adjust their exposures to avoid thresholds, including by making temporary adjustments to lower risk-based indicator levels reported. The agencies will continue to monitor risk-based indicator amounts reported and information collected through supervisory processes to ensure that the risk-based indicators are reflective of a banking organization's overall risk profile, and would consider changes to

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<sup>80</sup> A foreign banking organization must also report risk-based indicators with respect to its combined U.S. operations as applicable under the final rule.

<sup>81</sup> The Board-only final rule includes information on changes to Federal Reserve reporting forms and discussion of the specific line items that will be used to calculate risk-based indicators. Although U.S. intermediate holding companies currently report the FR Y-15, the revised form would reflect the cross-jurisdictional activity indicator adopted in the final rule.

<sup>82</sup> Section XV of the Supplementary Information in the Board-only final rule discusses changes to reporting requirements, and identifies the specific line items that will be used to calculate risk-based indicators. Although U.S. intermediate holding companies currently report the FR Y-15, the revised form reflects the cross-jurisdictional activity indicator adopted in the final rule.

reporting forms, as needed. In particular, the agencies will monitor weighted short-term wholesale funding levels reported at quarter-end, relative to levels observed during the reporting period.

## **VI. Capital and Liquidity Requirements for Large U.S. and Foreign Banking Organizations**

### *A. Capital requirements that apply under each category*

As discussed below, the final rule adopts the capital requirements applicable to large banking organizations under the risk-based category framework as proposed. Under the final rule, Category I capital requirements apply to U.S. GSIBs, whereas capital requirements under Categories II through IV apply to large U.S. banking organizations and U.S. intermediate holding companies based on measures of a top-tier banking organization's size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. Consistent with the principle of national treatment and equality of competitive opportunity, as well as agreements reached by the BCBS,<sup>83</sup> the capital requirements applicable to U.S. intermediate holding companies under this final rule are generally consistent with those applicable to U.S. bank holding companies and savings and loan holding companies of a similar size and risk profile.

#### *1. Category I capital requirements*

The domestic proposal would not have changed the capital requirements applicable to U.S. GSIBs and their depository institution subsidiaries. Therefore, such banking organizations

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<sup>83</sup> See e.g., BCBS, "International Convergence of Capital Measurement and Capital Standards," Sec. 781 (June 2006).

would have remained subject to the most stringent capital requirements, including requirements based on standards that reflect agreements reached by the BCBS.

One commenter supported the proposal to maintain the most stringent capital requirements for U.S. GSIBs under Category I. Some commenters specifically supported retaining the requirement to recognize elements of AOCI in regulatory capital, and expressed the view that it serves as an early warning signal for credit deterioration. However, a few other commenters requested that the agencies permit all banking organizations to make an election to opt out of this requirement.

Following the financial crisis, the agencies adopted heightened capital requirements for U.S. GSIBs to support the resiliency of these banking organizations and reduce risks to U.S. financial stability. These requirements are tailored to the systemic risk profile of U.S. GSIBs, and have contributed to the significant improvements in the capital positions and risk-management practices of these banking organizations since the financial crisis. The requirement to recognize elements of AOCI in regulatory capital, in particular, has helped to improve the transparency of regulatory capital ratios, as it better reflects banking organizations' actual risk at a specific point in time. The agencies previously have observed that AOCI is an important indicator that market participants use to evaluate the capital strength of a banking organization, and thus is particularly important for the largest, most systemically significant banking organizations.

The final rule maintains the capital requirements applicable to U.S. GSIBs and their depository institution subsidiaries. These requirements generally reflect agreements reached by the BCBS. U.S. GSIBs and their depository institution subsidiaries must calculate risk-based capital ratios using both the advanced approaches and the standardized approach and are subject

to the U.S. leverage ratio. Such banking organizations are also subject to the requirement to recognize elements of AOCI in regulatory capital; the requirement to expand the capital conservation buffer by the amount of the countercyclical capital buffer, if applicable; and enhanced supplementary leverage ratio standards. In addition, U.S. GSIBs are subject to the GSIB surcharge. Application of these Category I capital requirements will continue to strengthen the capital positions of U.S. GSIBs and reduce risks to financial stability.

## *2. Category II capital requirements*

The proposals generally would have maintained the capital requirements applicable to banking organizations of a very large size or that engage in significant cross-jurisdictional activity under Category II. Similar to Category I, capital requirements under Category II would have been based on standards that reflect agreements reached by the BCBS and included the requirement to recognize elements of AOCI in regulatory capital and to expand the capital conservation buffer by the amount of the countercyclical capital buffer, if applicable. Banking organizations subject to Category II capital requirements also would have been required to comply with the advanced approaches capital requirements, generally applicable risk-based capital requirements, and the supplementary leverage ratio. Consistent with the prior treatment of U.S. intermediate holding companies with \$250 billion or more in total consolidated assets or \$10 billion or more in on-balance sheet foreign exposure, U.S. intermediate holding companies subject to Category II capital requirements would not have been required to calculate risk-based capital requirements using the advanced approaches under the capital rule. These banking organizations would instead have used the generally applicable capital requirements for

calculating risk-weighted assets due to the compliance burden of applying the advanced approaches in both the U.S. and the home-country jurisdiction.<sup>84</sup>

Several commenters argued that capital requirements under Category II would not be appropriately aligned to the scoping criteria for this category. In particular, some commenters asserted that the cross-jurisdictional activity indicator is designed to identify activities that could give rise to liquidity risks in foreign jurisdictions and that would not need to be supported by more stringent capital requirements. Therefore, commenters suggested a banking organization scoped into Category II as a result of its cross-jurisdictional activity should be subject to the same capital requirements that would apply to banking organizations under Category III. In particular, commenters opposed the application of advanced approaches capital requirements and the requirement to recognize elements of AOCI in regulatory capital. Some commenters argued that the proposals did not establish the purpose of the requirement to reflect elements of AOCI in regulatory capital for banking organizations with significant cross-jurisdictional activity.

Relative to banking organizations subject to Category III capital requirements, banking organizations of a very large size or with significant cross-jurisdictional activity pose heightened risks to U.S. financial stability and present increased complexity due to their operational scale or global presence. The heightened capital requirements under Category II, including the requirement to recognize elements of AOCI in regulatory capital, serve to address these risks by supporting the transparency of the capital strength of these banking organizations, and promote consistency in the capital regulations across all jurisdictions in which they operate. In view of

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<sup>84</sup> After adoption of the enhanced prudential standards rule, and its general exemption for U.S. intermediate holding companies from calculating risk-weighted assets under the advanced approaches, depository institution subsidiaries of U.S. intermediate holding companies were similarly exempted by order from calculating risk-weighted assets under the advanced approaches.

the operational and managerial sophistication required for a banking organization of a very large size or global scale, banking organizations subject to Category II capital standards are appropriately positioned to manage the interest rate risk and regulatory capital volatility that may result from this requirement.

More generally, with respect to the agencies' regulatory capital requirements, the BCBS recently completed revisions to its capital standards, including the methodologies for credit risk, operational risk, and market risk. The agencies are considering how most appropriately to implement these standards in the United States, including potentially replacing the advanced approaches with risk-based capital requirements based on the revised Basel standardized approaches for credit risk and operational risk. Any such changes to applicable risk-based capital requirements would be subject to notice and comment through a future rulemaking process.

Some commenters argued that U.S. intermediate holding companies subject to Category II capital requirements should not be subject to the countercyclical capital buffer or the supplementary leverage ratio.<sup>85</sup> Commenters argued that application of these requirements to foreign banking organizations on both a global consolidated basis and at the local subsidiary level in a host jurisdiction could lead to fragmentation of capital.

The countercyclical capital buffer is an important element of the capital framework that aims to enhance the resilience of the banking system and reduce systemic vulnerabilities. The benefits from additional resiliency created by this requirement are more pronounced when it is

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<sup>85</sup> These commenters also stated that U.S. intermediate holding companies subject to Category III capital requirements should not be subject to the countercyclical capital buffer and supplementary leverage ratio. For the reasons stated above, and in the following section regarding Category III capital requirements, the final rule maintains these requirements as proposed.

applied to all banking organizations of a large size or global scale because they are interconnected with other market participants. Further, application of the U.S. countercyclical capital buffer to all such banking organizations with large U.S. operations adds to the desired countercyclical effect relative to incomplete activation of the buffer across comparable banking organizations. Application of the supplementary leverage ratio to U.S. intermediate holding companies subject to Category II capital standards also supports the resilience of these banking organizations and promotes consistency in the capital requirements across all jurisdictions in which they operate. As noted above, aligning the capital requirements for U.S. intermediate holding companies formed by foreign banking organizations and U.S. bank holding companies is consistent with longstanding international capital agreements that provide flexibility to host jurisdictions to establish capital requirements on a national treatment basis for local subsidiaries of foreign banking organizations. The overall consistency of the capital requirements under Category II with BCBS capital standards acts to mitigate concerns regarding capital fragmentation.

The failure or distress of banking organizations subject to Category II requirements could impose significant costs on the U.S. financial system and economy, although they generally do not present the same degree of risk as U.S. GSIBs. The application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers and competitors, and to reduce opportunities for regulatory arbitrage, while applying standards that appropriately reflect the risk profiles of banking organizations in this category. Thus, the agencies are finalizing Category II capital requirements as proposed.

### *3. Category III capital requirements*

Under the proposals, Category III capital requirements would have included the generally applicable risk-based capital requirements, supplementary leverage ratio, and the countercyclical capital buffer. The advanced approaches risk-based capital requirements would not have applied under Category III, and banking organizations subject to this category would have been permitted to make an election to opt out of the requirement to recognize elements of AOCI in regulatory capital. The proposals sought comment on various elements of Category III capital requirements, including the advantages and disadvantages of retaining the supplementary leverage ratio and countercyclical capital buffer, and the optional recognition of AOCI in regulatory capital.

Some commenters supported the application of the supplementary leverage ratio and countercyclical capital buffer to banking organizations subject to Category III capital requirements. Commenters asserted that the supplementary leverage ratio is a critical leverage measure that offers significant benefits to financial stability relative to risk-based capital measures, and that it is particularly important for banking organizations subject to Category III to maintain tier 1 capital for on- and off-balance sheet exposures because of their risk profile. In addition, some commenters asserted that the countercyclical capital buffer is a macro-prudential tool that supports the capital strength of the banking system more broadly, and noted that the consequence of not applying it to banking organizations subject to Category III would be to remove a substantial amount of assets from the potential activation of the buffer. Commenters added that retaining these requirements would not increase the complexity of the capital rule, as they currently apply to certain banking organizations that would be subject to Category III capital requirements.

In view of the scale at which they provide financial intermediation in the United States, banking organizations subject to Category III have a footprint substantial enough to merit an expansion of their regulatory capital base through application of the countercyclical capital buffer. These banking organizations also may have elevated levels of off-balance sheet exposure that is not accounted for in the U.S. leverage ratio. The supplementary leverage ratio helps to constrain the build-up of this exposure and mitigate any attendant risk to the financial stability and safety and soundness of these banking organizations. More broadly, the countercyclical capital buffer and supplementary leverage ratio are important elements of the post-crisis framework that support the agencies' objective to establish capital and other prudential requirements at a level that not only promotes resilience at a banking organization and protects financial stability, but also maximizes long-term through-the-cycle credit availability and economic growth. In addition, as noted above, application of these requirements to U.S. intermediate holding companies is consistent with international practice.

Consistent with the proposals, Category III capital requirements under the final rule include generally applicable risk-based capital requirements, the U.S. leverage ratio, and for the reasons described above, the supplementary leverage ratio and the countercyclical capital buffer. The final rule clarifies that the public disclosure requirements related to the supplementary leverage ratio also apply under Category III. Banking organizations subject to Category III requirements are not required to apply advanced approaches capital requirements. The models for applying these requirements are costly to build and maintain, and the agencies do not expect that removal of these requirements would materially change the amount of capital that these banking organizations would be required to hold. Relative to capital requirements under the advanced approaches, the standardized approach currently represents the binding risk-based

capital constraint for the current population of banking organizations that are estimated to be subject to Category III capital requirements.

In addition, the proposals would have removed the mandatory application of the requirement to recognize elements of AOCI in regulatory capital for certain banking organizations subject to Category III capital requirements. Such banking organizations subject to this requirement currently would have been provided an opportunity to make a one-time opt-out election in the first regulatory report filed after the effective date of the final rule. A banking organization that is currently subject to this requirement and that does not make such an opt-out election would have continued to include all AOCI components in regulatory capital, except accumulated net gains and losses on cash flow hedges related to items that are not recognized at fair value.

Some commenters objected to the proposed regulatory capital treatment of AOCI under Category III. Commenters argued that mandatory application of the requirement to recognize elements of AOCI in regulatory capital would support investor confidence in banking organizations during stress, when gains and losses on securities holdings can result in significant volatility in regulatory capital levels. Commenters added that the agencies did not provide sufficient justification for allowing banking organizations subject to Category III capital standards to make an election to opt out of the requirement to recognize elements of AOCI in regulatory capital. In contrast, other commenters supported this aspect of the proposal.

Recognizing elements of AOCI in regulatory capital could introduce substantial volatility to a banking organization's regulatory capital levels, particularly during times of stress, and present significant challenges to asset-liability and capital management. Generally, the agencies' view has been that this volatility is justified for the largest, most internationally active banking

organizations in order to provide a transparent, comparable measure of their capital. However, relative to banking organizations subject to Category I and Category II capital requirements, banking organizations subject to Category III present different risk profiles. Further, several of the banking organizations that would be subject to Category III or Category IV capital requirements currently are not subject to the mandatory recognition of AOCI in regulatory capital, and the agencies do not believe that the benefits mandatory recognition would provide to market participants sufficiently outweigh the associated burden and compliance costs. Therefore, consistent with the proposals, the final rule provides banking organizations subject to Category III capital requirements an opportunity to make a one-time election to opt out of the requirement to recognize elements of AOCI in regulatory capital.<sup>86</sup>

In July 2019, the agencies adopted the capital simplifications rule.<sup>87</sup> The capital simplifications rule established simpler capital requirements for mortgage servicing assets, certain deferred tax assets arising from temporary differences, and investments in the capital of unconsolidated financial institutions relative to those that previously applied to non-advanced approaches banking organizations. The capital simplifications rule also adopted a simplified treatment for the amount of capital issued by a consolidated subsidiary and held by third parties (sometimes referred to as a minority interest) that is includable in regulatory capital. This final

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<sup>86</sup> Banking organizations that were previously advanced approaches banking organizations, but under the final rule will be subject to Category III capital requirements, can make a one-time election to become subject to AOCI-related adjustments as described in section 22(b)(2) of the agencies' regulatory capital rules. *See* 12 CFR 3.22(b)(2) (OCC); 12 CFR 217.22(b)(2) (Board); 12 CFR 324.22(b)(2) (FDIC). Banking organizations must make this election on the organization's Call Report or FR Y-9C report, as applicable, filed on the first reporting date after this final rule is effective.

<sup>87</sup> *See supra* note 26.

rule extends the applicability of the capital simplifications rule to all banking organizations subject to Category III capital requirements.

The agencies separately have proposed to adopt the standardized approach for counterparty credit risk for derivatives exposures (SA-CCR) and to require advanced approaches banking organizations (banking organizations subject to Category I or II standards under this final rule) to use SA-CCR for calculating their risk-based capital ratios and a modified version of SA-CCR for calculating total leverage exposure under the supplementary leverage ratio. If that proposed approach were to be adopted, the agencies would allow a Category III banking organization to elect to use SA-CCR for calculating derivatives exposure in connection with its risk-based capital ratios, consistent with the SA-CCR proposal. Furthermore, the agencies intend to allow a banking organization subject to Category III standards to elect to use SA-CCR or continue to use the current exposure method for calculating its total leverage exposure for purposes of its the supplementary leverage ratio.<sup>88</sup>

#### *4. Category IV capital requirements*

Under the proposals, Category IV capital requirements would have included the generally applicable risk-based capital requirements and the U.S. leverage ratio. The proposals would not have applied the countercyclical capital buffer and the supplementary leverage ratio to Category IV banking organizations. In this manner, the requirements applicable to banking organizations subject to Category IV capital requirements would maintain the risk sensitivity of the current capital regime and resiliency of these banking organizations' capital positions, and would recognize that these banking organizations, while large, have lower risk-based indicator

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<sup>88</sup> Banking organizations would be required to use the same approach, SA-CCR or the current exposure method, for calculating both its risk-based capital and its total leverage exposure. *See* 83 FR 64660 (December 17, 2018).

levels relative to their larger peers, as set forth in the proposals. As a result, and as noted above, banking organizations subject to Category IV capital requirements would have been subject to the same generally applicable risk-based and leverage capital requirements as banking organizations with less than \$100 billion in total consolidated assets.

The agencies did not receive any comments specific to the capital requirements that would apply to banking organizations subject to Category IV standards. Similar to certain aspects of the current capital requirements, the final rule allows banking organizations to choose to apply the more stringent requirements of another category (e.g., a banking organization subject to Category III standards could choose to comply with the more stringent Category II standards to minimize compliance costs across multiple jurisdictions).

#### *5. Capital requirements transitions*

Under the final rule, a banking organization that changes from one category of applicable standards to another category must generally comply with the new requirements no later than on the first day of the second quarter following the change in category. Transition provisions provided for certain requirements, such as increases to the GSIB surcharge and the parallel run process for internal models, continue to apply.

In addition, the agencies are amending the cessation provisions for calculating risk-based capital requirements under the advanced approaches. Previously, a banking organization that was required to calculate its risk-based capital ratios using both the advanced approaches and standardized approaches would have been required to calculate its risk-based capital ratios using both the advanced approaches and the standardized approaches until the appropriate Federal banking agency determined that application of the requirement would not be appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations.

The new framework makes this cessation provision unnecessary. Accordingly, a banking organization that no longer meets the relevant criteria for being subject to Category I or II standards will not be required to calculate its risk-based capital ratios using both approaches.

*B. Liquidity requirements applicable to each category*

*1. Background on LCR rule*

The LCR rule requires a banking organization to calculate and maintain an amount of HQLA sufficient to cover its total net cash outflows in a 30-day stress, as calculated under the LCR rule. A banking organization's LCR is the ratio of its HQLA amount (LCR numerator) divided by its total net cash outflows (LCR denominator). Previously under the LCR rule, a banking organization, including a U.S. intermediate holding company with a depository institution subsidiary, with \$250 billion in total consolidated assets or \$10 billion in on-balance sheet foreign exposure, and any depository institution subsidiary with \$10 billion or more in total consolidated assets, was required to calculate and maintain an LCR of at least 100 percent each business day. To ensure the HQLA amount can be used to cover relevant cash outflows in a period of stress, the LCR rule places certain requirements on the control and location of eligible HQLA within a banking organization. The total net cash outflow amount includes an amount that reflects the timing of certain outflows and inflows (maturity mismatch add-on) within the LCR's 30-day horizon to ensure the LCR denominator represents the potential cash needs of these banking organizations.<sup>89</sup> All banking organizations subject to the LCR rule are required to make certain public disclosures on a quarterly basis.

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<sup>89</sup> Section 30 of the LCR rule requires a banking organization, as applicable, to include in its total net cash outflow amount a maturity mismatch add-on, which is calculated as the difference (if greater than zero) between the banking organization's largest net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date and the net day 30

The Board previously applied a modified LCR requirement to certain depository institution holding companies with \$50 billion or more in total consolidated assets, but less than \$250 billion in total consolidated assets and less than \$10 billion in on-balance sheet foreign exposure.<sup>90</sup> The Board's former modified LCR minimum requirement was calibrated at a level equivalent to 70 percent of the full requirement. In addition, under the modified LCR requirement, depository institution holding companies were not required to calculate a maturity mismatch add-on as a component of their total net cash outflow amounts.<sup>91</sup>

The proposals would have applied standardized liquidity and funding requirements for U.S. and foreign banking organizations based on the risk-based indicators and thresholds described above. Specifically, the proposals would have applied one of four categories of liquidity and funding requirements to a banking organization: Category I, II, III, or IV. Under the proposals, a full LCR requirement would have been applied to banking organizations subject to Category I and II standards. For banking organizations subject to Category III or Category IV standards, the proposals would have reduced the LCR requirement based on the weighted short-term wholesale funding of the U.S. banking organization or the combined U.S. operations of the foreign banking organization. A banking organization subject to Category III standards with \$75 billion or more in weighted short-term wholesale funding would have been subject to the full LCR requirement. A banking organization subject to Category III standards with less than \$75 billion in weighted short-term wholesale funding or to Category IV standards with

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cumulative maturity outflow amount. *See* 12 CFR 50.30 (OCC); 12 CFR 249.30 (Board); and 12 CFR 329.30 (FDIC).

<sup>90</sup> *See* 12 CFR part 249, subpart G (2018), which has been repealed as part of this final rule.

<sup>91</sup> Separately, certain U.S. and foreign banking organizations are required to submit data related to their liquidity positions under the Board's FR 2052a.

\$50 billion or more in weighted short-term wholesale funding would have been required to comply with a reduced LCR requirement.<sup>92</sup> Banking organizations subject to Category IV standards with less than \$50 billion in weighted short-term wholesale funding would not have been subject to an LCR requirement.

Under the proposals, the agencies sought comment on the calibration of the reduced LCR requirement under Category III and Category IV, at a level within a range of between 70 percent and 85 percent of the full LCR requirement applicable under Category I and Category II. In addition, the proposals would have required all banking organizations subject to an LCR requirement to include a maturity mismatch add-on and would have retained the LCR rule's treatment of HQLA held at a banking organization's consolidated subsidiaries.<sup>93</sup>

In general, the agencies received comments on the application of a standardized liquidity requirement to certain categories of banking organizations, the calibration of the reduced LCR requirement, and the application of elements of the Board's former modified LCR requirement to banking organizations that would be subject to the reduced LCR requirement.<sup>94</sup> These comments are discussed below.

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<sup>92</sup> The proposals would have removed the Board's modified LCR because the agencies believed that the reduced LCR would be better designed for assessing liquidity risks for banking organizations that meet the thresholds for Categories III and IV.

<sup>93</sup> The proposals would have permitted a top-tier banking organization to include in its HQLA amount the eligible HQLA of a consolidated subsidiary up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the LCR requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available to the top-tier banking organization during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

<sup>94</sup> Comments regarding the NSFR proposal will be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies.

## *2. Category I liquidity requirements*

As proposed, U.S. GSIBs would have been subject to Category I standards because they pose the highest risks to U.S. financial stability and safety and soundness. The domestic proposal did not propose to change the full LCR requirement applicable to U.S. GSIBs. Under the domestic proposal, U.S. GSIBs would also have been included in the scope of application of the full set of requirements described in the proposed NSFR rule. In addition, consistent with current requirements, a U.S. GSIB's depository institution subsidiary with \$10 billion or more in total consolidated assets would have remained subject to the full LCR requirement under the proposal.

The agencies did not receive comments on the application of standardized liquidity requirements to U.S. GSIBs or their depository institution subsidiaries and are finalizing the application of the full LCR requirement to banking organizations subject to Category I as proposed. Under the final rule, a banking organization subject to Category I standards will continue to be required to hold an amount of HQLA equal to at least 100 percent of its total net cash outflows as calculated under the LCR rule each business day.

## *3. Category II liquidity requirements*

The proposals would have applied the full LCR requirement to banking organizations subject to Category II standards. Consistent with existing requirements, the proposals would also have applied the full LCR requirement to their depository institution subsidiaries with total consolidated assets of \$10 billion or more. Under the proposals, banking organizations subject to Category II standards would also have been included in the scope of application of the full requirement of the proposed NSFR rule.

Some commenters argued that Category II standards should include reduced, rather than the full LCR requirement because banking organizations subject to Category II standards have lower risk relative to U.S. GSIBs. In addition, commenters argued that custody activities present lower risks due to their use of operational deposits, which the commenters viewed as stable. Other commenters argued that U.S. intermediate holding companies should not be subject to an LCR requirement at all, or alternatively, that they should be subject to the Board's former modified LCR requirement if the top-tier foreign parent is subject to an LCR requirement.

The failure or distress of banking organizations that would be subject to Category II standards could impose significant costs on the U.S. financial system and economy. While these banking organizations generally do not present the same degree of systemic risk as U.S. GSIBs, the very large size or the cross-jurisdictional activity of these banking organizations present risks that make it appropriate to apply the most stringent liquidity standards. Size and cross-jurisdictional activity can present particularly heightened challenges in the case of a liquidity stress, and the nature of custody business does not substantially mitigate these risks. Any very large or global banking organization that engages in asset fire sales to meet short-term liquidity needs, including one that has a significant custody business, is likely to transmit distress on a broader scale because of the greater volume of assets it may sell and its multiple counterparties across multiple jurisdictions. Similarly, a banking organization with significant international activity, regardless of the level of custody business, is more exposed to the risk of ring-fencing of liquidity resources by one or more jurisdictions. Such ring-fencing would constrain the movement of liquid assets across jurisdictions to meet outflows. More generally, the overall size of a banking organization's operations, material transactions in foreign jurisdictions, and use of overseas funding sources add complexity to the management of its liquidity risk profile.

Additionally, a U.S. intermediate holding company may pose risks in the United States similar to other banking organizations of similar size and risk profile, regardless of whether the foreign banking organization is subject to an LCR requirement in its home jurisdiction.<sup>95</sup> In light of these concerns, the agencies are adopting the full LCR requirement as a Category II requirement as proposed.

#### *4. Category III liquidity requirements*

Under the proposals, Category III liquidity requirements would have reflected the elevated risk profile of banking organizations subject to this category relative to smaller and less complex banking organizations subject to Category IV. Within Category III, the proposals would have differentiated liquidity requirements based on the level of weighted short-term wholesale funding of a banking organization or, for foreign banking organizations, its U.S. operations. Specifically, a banking organization subject to Category III with weighted short-term wholesale funding of \$75 billion or more would have been subject to the full set of LCR and proposed NSFR requirements applicable under Categories I and II. The banking organization would also have been included in the amended scope of application of the proposed NSFR rule. A banking organization subject to Category III with less than \$75 billion in weighted short-term wholesale funding would have been subject to reduced LCR and proposed NSFR requirements. The level of the LCR and proposed NSFR requirements applicable to a depository institution subsidiary with total consolidated assets of \$10 billion or more of a banking organization subject

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<sup>95</sup> Consistent with agreements that reflect BCBS standards, other jurisdictions impose liquidity requirements on local subsidiaries of consolidated banking organizations that are not domiciled within that jurisdiction.

to Category III standards would have been the same as the level that would apply to the parent banking organization.<sup>96</sup>

A banking organization subject to the reduced LCR requirement would have been required to hold a lower minimum amount of HQLA to address applicable net cash outflows, relative to a banking organization subject to the full LCR. All other requirements under the LCR rule would have remained the same, relative to a banking organization subject to the full LCR requirement. For example, these banking organizations would have been required to calculate an applicable LCR on each business day and include the maturity mismatch add-on in their calculations. The agencies requested comment on the calibration of the reduced LCR requirement under Category III, at a level between 70 and 85 percent of the full LCR requirement. The proposals additionally included a description of a potential reduced NSFR requirement for such banking organizations under the proposed NSFR rule that would have applied a similar adjustment factor to the banking organization's required stable funding amount.

Under the proposals, a banking organization subject to Category III liquidity requirements would not have been permitted to include in its HQLA amount eligible HQLA of a consolidated subsidiary except up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to

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<sup>96</sup> For example, a depository institution subsidiary with \$10 billion in total consolidated assets of a banking organization subject to the reduced LCR requirement under Category III standards would also be subject to the reduced LCR requirement. In the case of a depository institution that is domiciled in the United States and is not a consolidated subsidiary of a U.S. depository institution holding company that would have been subject to Category I, II, or III standards, the applicable category of standards would have depended on the risk-based indicators of the depository institution. For example, if the depository institution meets the criteria for Category III standards but has weighted short-term wholesale funding of less than \$75 billion, the depository institution would have been subject to the proposed reduced LCR requirement.

the top-tier banking organization during times of stress without statutory, regulatory, contractual, or supervisory restrictions. For the purpose of this requirement, a banking organization subject to reduced LCR requirements under the proposals would have reduced the net cash outflows of that subsidiary by the appropriate outflow adjustment percentage.

Some commenters recommended that the proposals should not reduce the LCR requirement applicable to banking organizations subject to Category III with weighted short-term wholesale funding of less than \$75 billion. However, other commenters expressed support for the reduced LCR requirement asserting that the proposals appropriately recognize the liquidity risk profiles of these banking organizations. The commenters that opposed reducing LCR requirements argued that requirements under the LCR rule are already adjusted to account for a banking organization's size and risk profile. Further, these commenters asserted that banking organizations that would be subject to the reduced LCR requirement under Category III had received substantial governmental support during the financial crisis, and that the proposals did not provide a sufficient economic justification for a reduced LCR requirement nor describe the benefit of the reduction relative to its impact on the resilience of such banking organizations. Other commenters recommended that the agencies adopt a 70 percent outflow adjustment percentage for the reduced LCR requirement under Category III, consistent with the calibration of the Board's former modified LCR.

As noted by commenters, the LCR rule differentiates between banking organizations by requiring a banking organization to hold a minimum amount of HQLA based on its liquidity risk over a 30-day time horizon.<sup>97</sup> Banking organizations that have lower liquidity risk have lower

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<sup>97</sup> 12 CFR 249.10(a). The LCR rule prescribes the minimum amount of HQLA that the banking organization must hold both by reference to its total net cash outflow amount and the minimum required ratio level, each as prescribed under the rule.

minimum requirements under the rule. To improve the calibration of a banking organization's minimum HQLA amount relative to its risk profile and its potential risk to U.S. financial stability, the final rule differentiates between banking organizations based on their category of standards and their degree of reliance on short-term wholesale funding. Accordingly, under the final rule, a banking organization subject to Category III standards with weighted short-term wholesale funding of \$75 billion or more is subject to the full LCR requirement. A banking organization subject to Category III standards with weighted short-term wholesale funding of less than \$75 billion is subject to a reduced LCR requirement calibrated at 85 percent of the full LCR requirement. The agencies believe an 85 percent calibration is appropriate for these banking organizations because they are less likely to contribute to a systemic event relative to similarly sized banking organizations that have a greater reliance on short-term wholesale funding and, therefore, are more complex and more likely to have greater systemic impact. The 85 percent calibration reflects the expectation that these less complex banking organizations should be able to address their liquidity needs under a stress scenario in a shorter period of time than other larger or more complex banking organizations that are subject to the full LCR requirement.

Several commenters argued that, in addition to the lower minimum HQLA amount described above, the reduced LCR requirements should be further reduced to align with those of the Board's former modified LCR requirement. Commenters also requested that the reduced LCR requirement should permit the automatic inclusion of a subsidiary's HQLA up to 100 percent of that subsidiary's outflows, rather than limiting the amount based on reduced outflows, because the subsidiary's HQLA is available to meet its outflow needs and this approach would be consistent with the Board's former modified LCR treatment.

As a general matter, the broad alignment of the reduced LCR with the Board's former modified LCR would not be appropriate because each of these requirements was designed to address different risk profiles. The Board designed the former modified LCR for smaller U.S. holding companies with less complex business models and more limited potential impact on U.S. financial stability compared to banking organizations that would be subject to the reduced LCR requirement.<sup>98</sup> While a lower minimum HQLA amount improves the alignment of the LCR requirement with the systemic risks posed by certain banking organizations subject to Category III, additional approaches to reducing the stringency of the requirements may reduce the effectiveness of the LCR.

As discussed in section VI.B.6. of this Supplementary Information, the final rule requires large depository institution subsidiaries of banking organizations subject to Category III standards to calculate and maintain an LCR because large subsidiary depository institutions have a significant role in a consolidated banking organization's funding structure, and in the operation of the payments system.

In addition, consistent with previous restrictions under the LCR rule, the final rule retains the proposal's limitation on the amount of a subsidiary's HQLA that is automatically includable in the top-tier banking organization's HQLA amount. The agencies believe that it is important that banking organizations consider potential liquidity needs across the consolidated entity for which the LCR calculation is required. Accordingly, banking organizations must consider the extent to which assets held at a subsidiary are transferable across the organization and ensure that

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<sup>98</sup> The Board's former modified LCR applied to depository institution holding companies with between \$50 billion and less than \$250 billion in total assets whereas the proposal would have applied Category III to banking organizations that either have \$250 billion or more in total assets or have \$100 billion or more in total assets as well as heightened levels of off-balance sheet exposure, nonbank assets, or weighted short-term wholesale funding.

a minimum level of HQLA is positioned or freely available to transfer to meet outflows at the subsidiary where they would be expected to occur. Although HQLA at a subsidiary in excess of its adjusted net outflows may be available to support that subsidiary in a period of stress, permitting the automatic inclusion of such HQLA up to 100 percent of that subsidiary's outflows, as requested by commenters, without appropriate consideration of transfer restrictions, may make the consolidated asset coverage requirement less effective. Therefore, under the final rule, the agencies are only permitting an automatic inclusion of HQLA held at a subsidiary up to the reduced amount of the subsidiary's outflows.

#### *5. Category IV liquidity requirements*

The foreign bank proposal would have required certain depository institution holding companies and foreign banking organizations that meet the criteria for Category IV and that have weighted short-term wholesale funding of \$50 billion or more to comply with a reduced LCR requirement. The proposals would not have applied Category IV liquidity requirements to standalone depository institutions or to depository institution holding companies or foreign banking organizations with less than \$50 billion in weighted short-term wholesale funding, or their subsidiary depository institutions. The agencies requested comment on the calibration of the reduced LCR requirement under Category IV, at a level between 70-85 percent of the full LCR requirement.

Some commenters argued that all banking organizations subject to Category IV should be subject to some form of standardized liquidity requirements, rather than none, and that such requirements could be modified or simplified for these organizations, as appropriate. These commenters argued that, in absence of macroeconomic evidence that current requirements have harmed credit intermediation, any decrease in liquidity requirements for these organizations is

difficult to support. In contrast, certain commenters argued for the removal of any LCR requirement for all banking organizations subject to Category IV.

Banking organizations subject to Category IV have smaller systemic footprints, more limited size, and present less risk and complexity relative to banking organizations subject to a more stringent category. However, banking organizations subject to Category IV that are substantially reliant on short-term wholesale funding are vulnerable to the liquidity risks addressed by the reduced LCR requirement. Weighted short-term wholesale funding of \$50 billion or more is substantial relative to the size of banking organizations subject to Category IV. Banking organizations with such funding dependencies are more likely to have higher risk of near-term outflows in a stress. The application of the LCR requirement is therefore appropriate for these banking organizations, albeit at a reduced level, given their lower potential systemic impact. The agencies are calibrating the minimum reduced LCR for banking organizations subject to Category IV at a level equivalent to 70 percent of the minimum level required under Category I and II. The difference between the 85 percent reduced LCR calibration in Category III and the 70 percent reduced LCR calibration in Category IV reflects the differences in the risk profiles of banking organizations subject to each respective requirement. The 70 percent calibration recognizes that these banking organizations are less complex and smaller than other banking organizations subject to more stringent liquidity requirements under the LCR rule and would likely have more modest systemic impact than larger, more complex banking organizations if they experienced liquidity stress. Under the final rule, banking organizations that are subject to Category IV liquidity standards and have weighted short-term wholesale funding of \$50 billion or more apply an outflow adjustment factor of 70 percent to their total net cash outflow amount. Moreover, for the same reasons as discussed

above, the final rule retains the proposed limitation on the amount of subsidiary's HQLA that is automatically includable in the top-tier banking organization's HQLA amount, equal to an amount up to the amount of the subsidiary's net cash outflows (as adjusted by the top-tier banking organization's 70 percent outflow adjustment factor). Banking organizations subject to Category IV that have weighted short-term wholesale funding of less than \$50 billion are not subject to an LCR requirement under the final rule.<sup>99</sup>

*6. Application of Liquidity Requirements to Depository Institution Subsidiaries*

The proposals generally would have applied the same category of liquidity standards to depository institution holding companies, including U.S. intermediate holding companies, and their depository institution subsidiaries with \$10 billion or more in total consolidated assets. As discussed above, standardized liquidity requirements would not have applied at the depository institution subsidiary level or to a depository institution domiciled in the United States that is not a consolidated subsidiary of a U.S. depository institution holding company under Category IV. Commenters argued that the application of liquidity requirements to depository institution subsidiaries is unnecessary and could limit the flexibility of a U.S. intermediate holding company and its foreign parent to respond in a period of stress by trapping liquidity at depository institution subsidiaries. One commenter argued that the calibration of the LCR requirement should reflect the size of the depository institution subsidiary, as the bulk of the line items reported in the Board's FR 2052a are applicable to, and driven by, the calculation of the depository institution subsidiary's profile.

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<sup>99</sup> Banking organizations subject to Category IV remain subject to the internal liquidity stress testing requirements under the Board's regulations, which include 30-day and 1-year planning horizons, and additionally FR 2052a reporting requirements. The Board-only final rule provides further discussion of liquidity standards that apply under the Board's regulations to banking organizations subject to Category IV.

Large depository institution subsidiaries play a significant role in a banking organization's funding structure and in the operation of the payments system. To reduce the potential systemic impact of a liquidity stress event at such large subsidiaries, the agencies believe that such entities should have sufficient amounts of HQLA to meet their own net cash outflows rather than be overly reliant on their parents or affiliates for liquidity in times of stress. Accordingly, the final rule maintains the application of the LCR requirement to certain depository institution subsidiaries as proposed.

#### *7. Maturity Mismatch Add-On Requirement for Reduced LCR*

As discussed above, the proposals would have required all banking organizations subject to an LCR requirement—full or reduced—to include a maturity mismatch add-on in their LCR calculations. When finalizing the LCR rule in 2014, the agencies required the maturity mismatch add-on for all banking organizations subject to the full LCR requirement. The agencies determined that the maturity mismatch add-on, based only on certain categories of outflows and inflows, is necessary to address a material risk to the safety and soundness of banking organizations subject to the requirement.

Several commenters argued that no maturity mismatch add-on should apply in the reduced LCR calculation. Commenters asserted that the maturity mismatch add-on would create competitive disparities for banking organizations because of different business models and observed that the mismatch was not included in the Board's former modified LCR requirement. One commenter stated that the maturity mismatch add-on should not apply to LCR calculations with respect to a U.S. intermediate holding company because, in the commenter's view, it represents a significant departure from the Basel LCR standard and the commenter argued that

the U.S. operations of a foreign banking organization should not be subject to a materially different standard relative to its consolidated requirements.

The final rule provides that all banking organizations subject to an LCR requirement must include a maturity-mismatch add on when calculating the LCR and address the timing of potential outflows and inflows within the LCR's 30-day time horizon. The maturity mismatch add-on is appropriately risk sensitive because banking organizations that are engaged primarily in deposit gathering and traditional lending generally would have a smaller maturity mismatch add-on, while banking organizations that are engaged in activities that create timing mismatches inside the LCR rule's 30-day horizon may be subject to a higher mismatch add-on. The agencies acknowledge that contractual maturity mismatch is not a quantitative component of the Basel III LCR standard, but believe that is an important component of addressing the liquidity risks of banking organizations subject to the LCR rule. In addition, under the final rule, a U.S. intermediate holding company subject to an LCR requirement would only be required to assess its own mismatches, consistent with the calculation for other banking organizations, and without regard to business model. In response to comments that the Board's former modified LCR requirement did not require a maturity-mismatch add on calculation, as noted above, the modified LCR was designed for smaller, less systemic and less complex depository institution holding companies compared to banking organizations that are subject to a reduced LCR requirement under the final rule.

#### *8. Timing of LCR Calculations and Public Disclosure Requirements*

The proposal would have required banking organizations subject to Category I, Category II, or Category III standards to calculate an LCR on each business day. Banking organizations subject to Category IV standards with \$50 billion or more in weighted short-term wholesale

funding would have been required to calculate a monthly LCR. To reduce compliance costs for banking organizations subject to Category IV standards and to reflect these organizations' smaller systemic footprint, the agencies proposed to require the calculation of the LCR on the last business day of the applicable month rather than each business day.

Commenters requested that Category III standards require a monthly calculation frequency for banking organizations required to calculate a reduced LCR or, alternatively, the rule could require daily monitoring of the LCR by banking organizations but with monthly compliance requirements. A commenter also argued for LCR public disclosures based on the average month-end values to align with certain banking organizations' FR 2052a reporting obligations. A commenter also recommended that the public disclosure of LCR information be required with a two-year lag. Commenters also requested that the Board immediately eliminate the LCR public disclosure requirements for banking organizations that would be subject to Category IV.

Banking organizations subject to Category III standards are larger and generally have more complex risk profiles and business models than banking organizations subject to Category IV standards (or the depository institution holding companies that were previously subject to the Board's modified LCR requirement). The size and complexity of banking organizations subject to Category III standards warrant LCR calculations that are the same as those used under Category I and II standards, except for the 85 percent outflow adjustment factor for such banking organizations with less than \$75 billion of weighted short-term wholesale funding.

The size and greater potential impact on U.S. financial stability of these organizations also warrant daily calculation and compliance requirements. Meaningful public disclosure by

banking organizations supports market discipline and encourages sound risk-management practices. The current requirement that LCR public disclosures be made quarterly is consistent with the frequency of other quarterly disclosures of financial information, which should help market participants assess the liquidity risk profiles of banking organizations. Timely public disclosures based on the average of each required calculation under the LCR rule provide market participants and other stakeholders with more comprehensive information relative to only averaging month-end calculations. Therefore, for banking organizations whose LCR calculations are required each business day, the averages of these calculations should be used for public disclosure even in cases where the banking organizations are required only to provide more detailed FR 2052a reporting on a monthly basis. Similarly, if a banking organization subject to Category IV standards is required to calculate an LCR on a monthly basis, the public disclosure of averages of such calculations is also useful to market participants and other stakeholders and, therefore, the agencies are declining to remove public disclosure requirements from such banking organizations.<sup>100</sup> Accordingly, the agencies are finalizing the frequency of LCR calculations and the disclosure requirements as proposed.

#### *9. Comments on refinements to the current LCR rule*

Under the proposals, the agencies did not propose to amend other definitions, calculation elements, or public disclosure requirements in the LCR rule beyond those related to the categories of standards discussed above. One commenter, however, expressed concern regarding a statement in the foreign bank proposal that the agencies expect HQLA to be “continually available” for use by the foreign banking organization’s liquidity management function to be

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<sup>100</sup> Subject to the transitions under the final rule, banking organizations subject to Category IV standards with weighted short-term wholesale funding of less than \$50 billion are not subject to LCR public disclosures under the final rule.

considered eligible HQLA. The commenter characterized this statement as creating an intraday utilization requirement, which it asserted would be a new requirement that would require an amendment to the LCR rule, following the APA's notice-and-comment procedures. Although the LCR rule requires a banking organization to calculate its LCR as of the same time on each business day (the elected calculation time), the LCR rule also contains explicit requirements for assets to be eligible for inclusion in the company's HQLA amount. Section 22(a)(2) of the LCR rule provides that the banking organization must implement policies that require eligible HQLA to be under the control of the management function in the banking organization that is charged with managing liquidity risk (liquidity management function). Section 22(a)(2) specifies that the liquidity management function must evidence its control over the HQLA by either: (i) segregating the HQLA from other assets, with the sole intent to use the HQLA as a source of liquidity, or (ii) demonstrating the ability to monetize the assets and making the proceeds available to the liquidity management function without conflicting with a business or risk-management strategy of the banking organization. In response to the comment, the agencies are confirming that the LCR rule does not limit the requirements of section 22(a)(2) to the elected calculation time. To so limit the application of these requirements would be inconsistent with the purpose of the requirements, which is to ensure that a central function of a banking organization has the authority and capability to liquidate HQLA to meet its obligations in times of stress. In order for a liquidity management function to demonstrate that it has the ability to monetize the HQLA in a way that does not conflict with the banking organization's business or risk-management strategy, the banking organization should be able to demonstrate its ability to monetize the assets and make the proceeds continuously available to the liquidity management function. Accordingly, HQLA that is only available to the liquidity management function of a

banking organization at the elected calculation time would not meet the requirements of section 22(a)(2).

One commenter provided a broad range of suggested technical amendments to the existing LCR rule. These included adjustments to the determination of the LCR numerator, such as expanding the types of assets that qualify as level 1 and level 2 liquid assets and making technical refinements to the definition of “liquid and readily marketable” under the rule. The suggested amendments also included changes to the determination of the total net cash outflow amount under the current LCR rule, such as changes in the calculation of the retail deposit and retail brokered deposit outflow amounts, a change to the definition of operational deposits and recognition of potential forward-dated collateral substitution under the LCR rule. The commenter further suggested amendments to the public disclosure requirements under the LCR rule and proposed NSFR rule.

The agencies assess the effectiveness of existing rules on a regular basis and take into account insights received from industry and public comments. As noted above, the agencies did not propose amendments to the LCR rule or proposed NSFR rule beyond those described above and are not amending other elements of the LCR rule or proposed NSFR rule at this time.

*10. Comments regarding the potential application of standardized liquidity requirements with respect to U.S. branches and agencies*

In the foreign bank proposal, the Board requested comment on whether and how it should apply standardized liquidity requirements, such as an LCR-based requirement, to foreign banking organizations with respect to their U.S. branch and agency networks. As stated in the proposal, the goal of such a requirement would be to strengthen the overall resilience of a foreign banking organization’s U.S. operations to liquidity risks and help prevent transmission of risks

between various segments of the foreign banking organization. The foreign bank proposal clarified that if the Board were to consider application of standardized requirements with respect to the U.S. branches and agencies of foreign banking organizations, the proposed requirements would be subject to a separate notice-and-comment rulemaking process.

Commenters generally opposed development or issuance of a proposal that would apply standardized liquidity requirements to the U.S. branch and agency network of a foreign banking organization. Some of these commenters argued that the Board should defer to compliance with the standardized liquidity requirements that apply to foreign banking organizations in their home country, in recognition of the fact that branches and agencies are the same legal entity as the parent foreign banking organization. In the view of these commenters, the combination of home-country standardized requirements and existing regulation and supervision of U.S. branches and agencies would sufficiently address liquidity risk at these entities. Commenters also noted that a standardized requirement for U.S. branches and agencies could limit the ability of foreign banking organizations to deploy funds as needed, including during times of stress.

Certain commenters also argued that implementing liquidity requirements for branches and agencies in the United States could lead other jurisdictions to implement similar requirements for the branches and agencies of U.S. banking organizations abroad, which could lead to market fragmentation. Many of these commenters suggested that concerns regarding liquidity risk at branches and agencies should be further discussed and evaluated at the global level by international regulatory groups before any actions are taken at the national level.

In contrast, some commenters supported the application of standardized liquidity requirements with respect to the U.S. branches and agencies of foreign banking organizations in order to account more fully for liquidity risks of the U.S. operations of these entities. To support

this position, one commenter noted that the role of foreign banking organizations, including their branches and agencies, as providers of liquidity was a critical driver of systemic risks during the financial crisis.

The Board is still considering whether to develop and propose for implementation a standardized liquidity requirement with respect to the U.S. branches and agencies of foreign banking organizations. As part of this process, the Board intends to further evaluate commenters' observations regarding the liquidity risk profiles of the U.S. operations of foreign banking organizations, consider potential interactions with existing regulations and supervisory processes, and engage in further discussion and evaluation of the issue at an international level. As mentioned above, any such requirement would be subject to notice and comment as part of a separate rulemaking process.

*11. LCR rule transition periods; cessation of applicability*

*a. Initial transitions for banking organizations subject to an LCR requirement on the effective date*

The domestic proposal did not include initial transition periods for banking organizations already subject to the LCR rule. The foreign bank proposal would have required compliance on the effective date for a foreign banking organization with respect to its U.S. intermediate holding company if that U.S. intermediate holding company was already subject to the full LCR requirement. Under this final rule, a U.S. banking organization or U.S. intermediate holding company that was subject to the LCR rule immediately prior to the effective date is required to comply with its applicable LCR requirement (full or reduced) beginning on the effective date.

In addition, the foreign bank proposal provided a transition period for a foreign banking organization that was not previously subject to an LCR requirement with respect to its U.S.

intermediate holding company, including certain depository institution subsidiaries of such foreign banking organizations. Some commenters requested longer initial transitions. Consistent with the final framework and the proposed transitions for foreign banking organizations, under the final rule, a U.S. intermediate holding company that meets the applicability criteria for the LCR rule on the effective date of the final rule, but was not subject to an LCR requirement immediately prior to the effective date, must comply with the applicable LCR requirement one year following the effective date of the final rule.

**Table II: Transitions for banking organizations subject to LCR rule on the effective date**

<b>LCR requirement prior to effective date of the final rule</b>	<b>LCR requirement as of the effective date of the final rule</b>	<b>Mandatory compliance date</b>
Full LCR requirement	LCR (full or reduced) or no requirement	Effective Date
No requirement	Full LCR requirement or Category III Reduced LCR requirement	First day of the fifth full calendar quarter following the effective date
	Category IV LCR requirement	Last business day of the first month for the fifth full calendar quarter following the effective date

*b. Initial transitions for banking organizations that become subject to LCR rule after the effective date*

Under the proposals, a banking organization that would have become subject to the LCR rule after the effective date of the final rule would have been required to comply with the LCR rule on the first day of the second quarter after the banking organization became subject it (newly covered banking organizations), consistent with the amount of time previously provided under the LCR rule. In addition, the proposals would have maintained the transition period under the LCR rule for the daily calculation requirement, which provides a newly covered banking

organization three quarters to calculate its LCR on a monthly basis before it must conduct daily LCR calculations.

Some commenters requested additional time to comply with the LCR rule. The final rule provides an additional quarter to comply with the LCR rule, such that a newly covered banking organization will be required to comply with these requirements on the first day of the third quarter after becoming subject to these requirements. In addition, a newly covered banking organization that is required to calculate its LCR daily has two quarters to calculate its LCR on a monthly basis before transitioning to daily calculations.

**Table III: Example of a banking organization that becomes subject to a daily LCR requirement after the effective date**

Example:	First compliance date	LCR calculation frequency
Banking organization becomes subject as of December 31, 2023 to an LCR requirement (full or reduced) that includes daily calculation	July 1, 2024	Monthly calculation: From July 2024 through December 2024.  Daily calculation: Begins January 1, 2025.

*c. Transitions for changes to an LCR requirement*

Under the proposals, a banking organization subject to the LCR rule that becomes subject to a higher outflow adjustment percentage would have been able to continue using a lower calibration for one quarter. A banking organization that becomes subject to a lower outflow adjustment percentage at a quarter end would have been able to use the lower percentage immediately, as of the first day of the subsequent quarter. Some commenters requested longer transitions before a banking organization is required to meet an increased LCR requirement. The final rule allows a banking organization an additional quarter to continue using a lower outflow adjustment percentage after becoming subject to a higher outflow adjustment percentage. The

agencies are finalizing the transition period for a banking organization that transitions to a lower outflow adjustment percentage as proposed.

The final rule also provides a banking organization that moves from Category IV into another category one year to begin complying with daily LCR calculation requirements. A depository institution subsidiary with \$10 billion or more in total consolidated assets must begin complying on the same dates as its top-tier banking organization.<sup>101</sup>

**Table IV: Example Dates for Changes to an LCR Requirement**

<b>Example 1:</b>	<b>Continue to apply prior outflow adjustment percentage</b>	<b>Apply new outflow adjustment percentage</b>
Banking organization that is subject to a daily LCR calculation requirement becomes subject to a higher outflow adjustment percentage as of December 31, 2023, as a result of having an average weighted-short-term wholesale funding level of greater than \$75 billion based on the four prior calendar quarters	1 <sup>st</sup> and 2 <sup>nd</sup> quarter of 2024	Beginning July 1, 2024
<b>Example 2:</b>	<b>Continue to apply prior requirement (i.e., lower outflow adjustment percentage and monthly calculation)</b>	<b>Apply new requirements</b>
Banking organization subject to a reduced LCR requirement under Category IV moves to Category I, II, or III as of December 31, 2023.	Lower outflow adjustment percentage: 1 <sup>st</sup> and 2 <sup>nd</sup> quarter of 2024  Monthly calculation: January 2024-December 2024	Higher outflow adjustment percentage begins 3 <sup>rd</sup> quarter of 2024  Daily calculation begins January 1, 2025

<sup>101</sup> See, *supra* note 3.

<b>Example 3:</b>	<b>Continue to apply prior requirement (i.e., lower outflow adjustment percentage and monthly calculation)</b>	<b>Apply new requirements</b>
Covered subsidiary depository institution of banking organization that moves from Category IV to another category as of December 31, 2023	No prior requirement	Comply with outflow adjustment percentage applicable to new category from 3 <sup>rd</sup> quarter of 2024, calculating monthly  Daily calculation begins January 1, 2025.

*d. Reservation of Authority to extend transitions*

The final rule includes a reservation of authority that provides the agencies with the flexibility to extend transitions for banking organizations where warranted by events and circumstances. There may be limited circumstances where a banking organization needs a longer transition period. For example, an extension may be appropriate when unusual or unforeseen circumstances cause a banking organization to become subject to an LCR requirement for the first time, such as a merger with another entity that results in a banking organization becoming subject to the LCR rule. However, the agencies expect that this authority would be exercised in limited situations, consistent with prior practice.

*e. Cessation of Applicability*

Under the proposal, once a banking organization became subject to an LCR requirement, it would have remained subject to the rule until the appropriate Federal banking agency determined that application of the rule would not be appropriate in light of the foreign banking organization’s asset size, level of complexity, risk profile, or scope of operations. The agencies are repealing this provision in the LCR rule because the new framework makes this cessation

provision unnecessary. A banking organization that no longer meets the relevant criteria for being subject to the LCR rule will not be required to comply with the LCR rule.

## **VII. Impact analysis**

The Board assessed the potential impact of the tailoring final rule, considering potential benefits and costs, taking into account current levels of capital and holdings of HQLA at affected domestic and foreign banking organizations.<sup>102</sup> Potential benefits to banking organizations include increased net interest margins from holding higher yielding assets, reduced compliance costs as well as better tailoring of regulatory requirements to banking organizations. Potential costs to banking organizations and financial stability include increased risk during a period of elevated economic stress or market volatility.<sup>103</sup>

Capital requirements will not change for banking organizations subject to Category I or II standards. The Board expects the final rule to slightly lower capital requirements by about \$8 billion and \$3.5 billion for domestic and foreign banking organizations subject to Category III and IV standards, respectively, or about 60 basis points of total risk-weighted assets for these banking organizations. The impact on capital levels could vary under different economic and market conditions. For example, from 2001 to 2018, the total AOCI of affected banking organizations that included AOCI in capital ranged from a decrease of approximately 140 basis points of total risk-weighted assets to an increase of about 50 basis points of total risk-weighted

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<sup>102</sup> The Board assessed the impact of the tailoring rulemaking for domestic and foreign banking organizations that would be subject to Category III or Category IV standards based on the data submitted on the FR 2052a and FR Y-9C by banking organizations for the 2019:Q1 reporting period.

<sup>103</sup> The OCC also considered the potential costs of the tailoring rulemaking for the purpose of the Unfunded Mandates Reform Act of 1996 (2 U.S.C. 1532), the Regulatory Flexibility Act, and the Congressional Review Act.

assets for domestic banking organizations and a decrease of about 70 basis points of total risk-weighted assets to an increase of about 70 basis points of total risk-weighted assets for foreign banking organizations. In addition to no longer being required to reflect all changes in AOCI into regulatory capital, some of these banking organizations would receive a higher threshold for certain capital deductions as outlined in the capital simplification rule.<sup>104</sup> The Board also expects the final rule to reduce compliance costs as a result of certain banking organizations no longer being subject to the advanced approaches capital requirements and as a result of LCR and certain capital requirements no longer applying to banking organizations with total consolidated assets of between \$50 billion and \$100 billion.

The Board assessed the impact of the final rule on liquidity standards, focusing on the potential changes in the applicability and the stringency of the LCR requirement and taking into account the internal liquidity stress test (ILST) requirements of banking organizations, whose applicability remains unchanged.<sup>105</sup> The Board estimated that, under the final rule, total HQLA requirements would decrease by \$48 billion and \$5 billion for domestic and foreign banking organizations, respectively. The decrease would represent about a 2 percent reduction in the liquidity requirements for both domestic and foreign banking organizations with greater than \$100 billion in assets. The decrease in the liquidity requirements of banking organizations subject to Category III standards accounts for the majority of the total liquidity requirement reduction, both among domestic and foreign banking organizations. For banking organizations

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<sup>104</sup> See *supra* note 26.

<sup>105</sup> The Board-only proposal would continue to require large domestic and foreign banking organizations to conduct internal liquidity stress tests and hold highly liquid assets sufficient to meet projected 30-day net stressed cash-flow needs under internal stress scenarios. See 12 CFR 252.

in Category III, the decrease would represent an approximately 8 percent reduction in liquidity requirements.

The Board also estimated the impact of the final rule on the HQLA holdings of affected banking organizations. For the impact estimation, the Board assumed that banking organizations would adjust their liquid asset holdings so that they maintain the excess HQLA percentage that they held above the greater of their LCR and ILST requirements in the first quarter of 2019. According to the Board's estimates, total HQLA holdings are expected to decrease by about \$56 billion and \$6 billion at domestic and foreign banking organizations, respectively. The decrease would represent an approximately 2 percent reduction in the HQLA holdings for both domestic and foreign banking organizations with greater than \$100 billion in total assets. The estimated impact on HQLA holdings is about equally distributed across Category III and Category IV banking organizations and would represent an approximately 8 percent reduction in the HQLA holdings of these organizations.

In addition to assessing the potential impact on liquid asset requirements and HQLA holdings, the Board investigated the broader benefits and costs associated with the final rule. Regarding domestic banking organizations, the Board analyzed how the final rule would affect the net interest margin, loan growth, and the likelihood of default or the need for external support during times of financial stress.<sup>106</sup> The analysis was implemented by using linear and nonlinear regression models for these outcome variables and calculating indirect impact estimates based on the tailoring rulemaking's direct impact on HQLA holdings discussed above. Regarding foreign banking organizations, the Board analyzed how the tailoring rulemaking would affect the

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<sup>106</sup> The analysis assessed banking organizations' probability of default or need for external support during the 2007–2008 financial crisis. In the analysis, external support reflected participation in the Troubled Asset Relief Program, implemented in 2008 by the U.S. Treasury.

participation in global dollar markets and their reliance on Federal Reserve liquidity facilities in the event of a financial crisis. The Board estimated the impact of the tailoring final rule on foreign banking organizations' reliance on Federal Reserve liquidity facilities by analyzing the relationship between liquid asset holdings and the usage of the discount window and the Term Auction Facility during the financial crisis.

The Board estimated that the final rule would lead to a modest increase in the net interest margin and have a negligible impact on the loan growth of affected domestic banking organizations. The final rule would modestly increase the likelihood that affected domestic banking organizations experience liquidity pressure under stress. With regard to foreign banking organizations, as the estimated impact of the tailoring final rule on the HQLA holdings of these banking organizations is relatively small, the anticipated effect on global dollar markets and the safety and soundness of these banking organizations is likely to be mild. The Board will continue to assess the safety and soundness of both domestic and foreign banking organizations through the normal course of supervision, including the conduct of internal liquidity stress tests.

## **VIII. Administrative law matters**

### *A. Paperwork Reduction Act*

Certain provisions of the final rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for the agencies' respective LCR rules are OCC (1557-0323), Board (7100-0367), and FDIC (3064-0197). The OMB control numbers for the agencies' respective regulatory capital rules are OCC

(1557-0318), Board (7100-0313), and FDIC (3064-0153). These information collections will be extended for three years, with revision. The information collection requirements contained in this final rule have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The OCC and the FDIC submitted the information collection requirements to OMB at the proposed rule stage. OMB filed comments requesting that the agencies examine public comment in response to the proposal and describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporate the commenter's recommendations. The agencies received no comments on the information collection requirements.

*LCR Rule*

*Current Actions:* The final rule revise sections \_\_.1, \_\_.3, \_\_.10, \_\_.30, and \_\_.50 of each of the agencies' respective LCR rules and \_\_.90 and \_\_.91 of the Board's LCR rule to require certain depository institution subsidiaries of large domestic banking organizations and U.S. intermediate holding companies of foreign banking organizations to calculate an LCR. For more detail on sections \_\_.90 and \_\_.91, please see "Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements," 81 FR 94922 (Dec. 27, 2016).

*Information Collections Proposed to be Revised:*

**OCC:**

*OMB control number:* 1557-0323

*Title of Information Collection:* Reporting and Recordkeeping Requirements

Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring.

*Frequency:* Event generated, monthly, quarterly, annually.

*Affected Public:* National banks and federal savings associations.

*Estimated average hours per response:*

**50.40(a)** (19 respondents)

Reporting (ongoing monthly) – .50

**50.40(b)** (19 respondents)

Reporting (ongoing) – .50

**50.40(b)(3)(iv)** (19 respondents)

Reporting (quarterly) – .50

**50.22(a)(2) & (a)(5)** (19 respondents)

Recordkeeping (ongoing) – 40

**50.40(b)** (19 respondents)

Recordkeeping (ongoing) – 200

Estimated annual burden hours: 4,722

**Board:**

*OMB control number:* 7100-0367

*Title of Information Collection:* Reporting, Recordkeeping, and Disclosure Requirements

Associated with the Regulation WW.

*Frequency:* Event generated, monthly, quarterly, annually.

*Affected Public:* Insured state member banks, bank holding companies, and savings and loan holding companies, and foreign banking organizations.

*Estimated average hours per response:*

**249.40(a)** (3 respondents)

Reporting (ongoing monthly) – .50

**249.40(b)** (3 respondents)

Reporting (ongoing) – .50

**249.40(b)(3)(iv)** (3 respondents)

Reporting (quarterly) – .50

**249.22(a)(2) & (a)(5)** (23 respondents)

Recordkeeping (ongoing) – 40

**249.40(b)** (3 respondents)

Recordkeeping (ongoing) – 200

**249.90, 249.91** (19 respondents)

Disclosure (quarterly) – 24

Estimated annual burden hours: 3,370

**FDIC:**

*OMB control number:* 3064-0197

*Title of Information Collection:* Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR).

*Frequency:* Event generated, monthly, quarterly, annually.

*Affected Public:* State nonmember banks and state savings associations.

*Estimated average hours per response:*

*329.40(a) (2 respondents)*

Reporting (ongoing monthly) – .50

*329.40(b) (2 respondents)*

Reporting (ongoing) – .50

*329.40(b)(3)(iv) (2 respondents)*

Reporting (quarterly) – .50

*329.22(a)(2) & (a)(5) (2 respondents)*

Recordkeeping (ongoing) – 40

*329.40(b) (2 respondents)*

Recordkeeping (ongoing) – 200

Estimated annual burden hours: 497

Disclosure Burden – Advanced Approaches Banking Organizations

*Current Actions*

The final rule requires banking organizations subject to Category III standards to maintain a minimum supplementary leverage ratio of 3 percent given its size and risk profile. As a result, these intermediate holding companies would no longer be identified as “advanced approaches banking organizations” for purposes of the advanced approach disclosure respondent count.

*Information Collections Proposed to be Revised:*

**OCC:**

*Title of Information Collection:* Risk-Based Capital Standards: Advanced Capital Adequacy Framework.

*Frequency:* Quarterly, annual.

*Affected Public:* Businesses or other for-profit.

*Respondents:* National banks, state member banks, state nonmember banks, and state and federal savings associations.

*OMB control number:* 1557-0318.

*Estimated number of respondents:* 1,365 (of which 18 are advanced approaches institutions).

*Estimated average hours per response:*

***Minimum Capital Ratios***

Recordkeeping (Ongoing) – 16.

***Standardized Approach***

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

***Advanced Approach***

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 328.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 41.

*Estimated annual burden hours:* 1,136 hours initial setup, 64,945 hours for ongoing.

**Board:**

*Title of Information Collection:* Recordkeeping and Disclosure Requirements Associated with Regulation Q.

*Frequency:* Quarterly, annual.

*Affected Public:* Businesses or other for-profit.

*Respondents:* State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (GSIBs).

*Current actions:* This proposal would amend the definition of advanced approaches Board-regulated institution to include, as relevant here, a depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR §252.5 or 12 CFR §238.10, and a U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR §252.5. Category III Board-regulated institutions would not be considered advanced approaches Board-regulated institutions. As a result, the Board estimates that 1 institution will no longer be an advanced approaches Board-regulated institution under the proposal.

*Legal authorization and confidentiality:* This information collection is authorized by section 38(o) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(c)), section 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907(a)(1)), section 9(6) of the Federal Reserve Act (12 U.S.C. 324), and section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The obligation to respond to this information collection is mandatory. If a respondent considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act (5 U.S.C.

552(b)(4)). Additionally, to the extent that such information may be contained in an examination report such information could also be withheld from the public (5 U.S.C. 552 (b)(8)).

*Agency form number:* FR Q.

*OMB control number:* 7100-0313.

*Estimated number of respondents:* 1,431 (of which 19 are advanced approaches institutions).

*Estimated average hours per response:*

***Minimum Capital Ratios***

Recordkeeping (Ongoing) – 16.

***Standardized Approach***

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

***Advanced Approach***

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 328.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 41.

Disclosure (Table 13 quarterly) – 5.

***Risk-based Capital Surcharge for GSIBs***

Recordkeeping (Ongoing) – 0.5.

*Current estimated annual burden hours:* 1,136 hours initial setup, 78,591 hours for ongoing.

*Proposed revisions estimated annual burden:* 1,582 hours.

*Total estimated annual burden:* 1,136 hours initial setup, 80,173 hours for ongoing.

**FDIC:**

*Title of Information Collection:* Regulatory Capital Rule.

*Frequency:* Quarterly, annual.

*Affected Public:* Businesses or other for-profit.

*Respondents:* State nonmember banks, state savings associations, and certain subsidiaries of those entities.

*OMB control number:* 3064-0153.

*Estimated number of respondents:* 3,489 (of which 1 is an advanced approaches institution).

*Estimated average hours per response:*

***Minimum Capital Ratios***

Recordkeeping (Ongoing) – 16.

***Standardized Approach***

Recordkeeping (Initial setup) – 122.

Recordkeeping (Ongoing) – 20.

Disclosure (Initial setup) – 226.25.

Disclosure (Ongoing quarterly) – 131.25.

***Advanced Approach***

Recordkeeping (Initial setup) – 460.

Recordkeeping (Ongoing) – 540.77.

Recordkeeping (Ongoing quarterly) – 20.

Disclosure (Initial setup) – 328.

Disclosure (Ongoing) – 5.78.

Disclosure (Ongoing quarterly) – 41.

*Estimated annual burden hours:* 1,136 hours initial setup, 126,920 hours for ongoing.

#### *Reporting Burden – FFIEC and Board Forms*

##### *Current Actions*

The final rule requires changes to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557-0081 (OCC), 7100-0036 (Board), and 3064-0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557-0239 (OCC), 7100-0319 (Board), and 3064-0159 (FDIC)), which will be addressed in a separate *Federal Register* notice.

##### *B. Regulatory Flexibility Act*

*OCC:* The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (“RFA”), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the final rule on small entities (defined by the Small Business Administration (“SBA”) for purposes of the RFA to include banking entities with total assets of \$600 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 755 small entities.<sup>107</sup> Because the final rule only applies to banking organizations with total consolidated assets of \$100 billion or more, it will not impact any OCC-supervised small entities. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*Board:* The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.<sup>108</sup> However, a final regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million that are independently owned and operated or owned by a holding company with less than or equal to \$600 million in total assets.<sup>109</sup> For the reasons described below and under section 605(b) of the RFA, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. As of

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<sup>107</sup> The OCC bases its estimate of the number of small entities on the SBA’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$600 million and \$41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2018, to determine size because 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 of the U.S. Small Business Administration’s *Table of Size Standards*.

<sup>108</sup> 5 U.S.C. 601 *et seq.*

<sup>109</sup> *See* 13 CFR 121.201. Effective August 19, 2019, the Small Business Administration revised the size standards for banking organizations to \$600 million in assets from \$550 million in assets. *See* 84 FR 34261 (July 18, 2019). Consistent with the General Principles of Affiliation in 13 CFR § 121.103, the Board counts the assets of all domestic and foreign affiliates when determining if the Board should classify a Board-supervised institution as a small entity.

June 30, 2019, there were 2,976 bank holding companies, 133 savings and loan holding companies, and 537 state member banks that would fit the SBA’s current definition of “small entity” for purposes of the RFA.

The Board is finalizing amendments to Regulations Q<sup>110</sup> and WW<sup>111</sup> that would affect the regulatory requirements that apply to state member banks, U.S. bank holding companies, U.S. covered savings and loan holding companies, and U.S. intermediate holding companies with \$50 billion or more in total consolidated assets. These changes are consistent with EGRRCPA, which amended section 165 of the Dodd-Frank Act. The reasons and justification for the final rule are described above in more detail in this **SUPPLEMENTARY INFORMATION**.

The assets of institutions subject to this final rule substantially exceed the \$600 million asset threshold under which a banking organization is considered a “small entity” under SBA regulations. Because the final rule is not likely to apply to any depository institution or company with assets of \$600 million or less, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities supervised.

*FDIC:* The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities.<sup>112</sup> However, a regulatory flexibility analysis is not required if the agency certifies

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<sup>110</sup> 12 CFR part 217.

<sup>111</sup> 12 CFR part 249.

<sup>112</sup> 5 U.S.C. 601 et seq.

that the final rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million that are independently owned and operated or owned by a holding company with less than or equal to \$600 million in total assets.<sup>113</sup> Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As of June 30, 2019, the FDIC supervised 3,424 institutions, of which 2,665 are considered small entities for the purposes of RFA.<sup>114</sup>

As discussed in Section I, the final rule establishes four risk-based categories for determining the regulatory capital and liquidity requirements applicable to large U.S. banking organizations and the U.S. intermediate holding companies of foreign banking organizations. The final rule applies to banking organizations with greater than \$100 billion in assets. The final

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<sup>113</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where an organization's “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the “SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity’s affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

<sup>114</sup> Consolidated Reports of Condition and Income for the quarter ending June 30, 2019.

rule also affects certain banking organizations with greater than \$50 billion in assets that were subject to the modified LCR requirement.<sup>115</sup>

Small banking organizations, as defined by the SBA, must have less than \$600 million in total assets amongst its affiliates. Thus, no small banking organizations meet the minimum asset thresholds of banking organizations affected by the final rule. Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

### *C. Plain Language*

Section 722 of the Gramm-Leach-Bliley Act<sup>116</sup> 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 final rule in a simple and straightforward manner, and did not receive any comments on the use of plain language.

### *D. Riegle Community Development and Regulatory Improvement Act of 1994*

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),<sup>117</sup> in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository

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<sup>115</sup> See 12 CFR 249 subpart G.

<sup>116</sup> Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999).

<sup>117</sup> 12 U.S.C. 4802(a).

institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.<sup>118</sup>

The Federal banking agencies considered the administrative burdens and benefits of the rule and its elective framework in determining its effective date and administrative compliance requirements. As such, the final rule will be effective on the first day of the first calendar quarter following [INSERT DATE 60 DAYS AFTER PUBLICATION]. In addition, any banking organization subject to the final rule may elect to adopt amendments on [INSERT DATE 60 DAYS AFTER PUBLICATION].<sup>119</sup>

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<sup>118</sup> 12 U.S.C. 4802.

<sup>119</sup> 12 U.S.C. 4802(b)(2).

#### E. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.<sup>120</sup> If a rule is deemed a “major rule” by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.<sup>121</sup>

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>122</sup> As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

#### F. *OCC Unfunded Mandates Reform Act of 1995 Determination*

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted for inflation). The OCC has determined that this rule will not result in

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<sup>120</sup> 5 U.S.C. 801 *et seq.*

<sup>121</sup> 5 U.S.C. 801(a)(3).

<sup>122</sup> 5 U.S.C. § 804(2).

expenditures by State, local, and Tribal governments, or the private sector, of \$100 million or more in any one year.<sup>123</sup> Accordingly, the OCC has not prepared a written statement to accompany this rule.

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

### **12 CFR CHAPTER II**

#### **Authority and Issuance**

For the reasons set forth in the Supplementary Information section, chapter II of title of the Code of Federal Regulations is to be amended as follows:

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

12. The authority citation for part 217 continues to read as follows:

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<sup>123</sup> The OCC identifies 29 OCC-supervised institutions that fall within the scope of the final rule. However, only 12 of these institutions will be impacted by the final rule. The remaining 17 institutions will not have any change from their current capital and liquidity requirements and thus will not be impacted by the final rule. Assuming a compensation cost of \$114 per hour, the OCC estimates that that the final rule will result in one-time administrative costs of approximately \$109,440. The OCC estimates that each institution will spend approximately 80 hours to modify policies and procedures (80 hours × \$114 per hour × 12 institutions = \$109,440). Consistent with the UMRA, the OCC review considers whether the mandates imposed by the final rule may result in an expenditure of \$100 million or more by state, local, and tribal governments, or by the private sector, in any one year, adjusted annually for inflation (currently \$154 million). The OCC interprets expenditure to mean assessment of costs (i.e., this part of the UMRA analysis assesses the costs of a rule on OCC-supervised entities, rather than the overall impact). The UMRA expenditure estimate for the final rule is approximately \$109,440.

Authority: 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371.

13. In §217.1(f), add paragraph (5) to read as follows:

\* \* \* \* \*

(f) \* \* \*

(5) A depository institution holding company, a U.S. intermediate holding company, or a state member bank that changes from one category of Board-regulated institution to another of such categories must comply with the requirements of its category, including applicable transition provisions in sections [ ], no later than on the first day of the second quarter following the change in the company's category.

[ ]. In §217.2, add the definitions of *Category II Board-regulated institution*, *Category III Board-regulated institution*, *FR Y-15*, *FR Y-9LP* and *U.S. intermediate holding company* in alphabetical order to read as follows:

**§ 217.2 Definitions.**

\* \* \* \* \*

\* \* \* \* \*

*Category II Board-regulated institution* means:

(1) A depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition; or

(4) A state member bank that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$700 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of \$100 billion or more but less than \$700 billion. If the state member bank has not filed the Call Report for each of the four most recent quarters, total consolidated assets is based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(2) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of \$75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form.

(iii) After meeting the criteria in paragraph (4)(i) of this section, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A) Has:

(1) Less than \$700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(2) Less than \$75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form; or

(B) Has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters.

*Category III Board-regulated institution* means:

(1) A depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5;

(3) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition;

(4) A depository institution that:

(i) Is not a subsidiary of a depository institution holding company;

(ii)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$250 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its

total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of \$100 billion or more but less than \$250 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based its total consolidated assets, as reported on the Call Report, for the most recent quarter or average of the most recent quarters, as applicable; and

(2) At least one of the following in paragraphs (4)(i)(B)(2)(i) through (iii) of this definition, each calculated as the average of the four most recent calendar quarters:

(i) Total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP or equivalent reporting form, equal to \$75 billion or more;

(ii) Off-balance sheet exposure equal to \$75 billion or more. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(iii) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, equal to \$75 billion or more; or

(iii) [Reserved]

(iv) After meeting the criteria in paragraph (4)(ii) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A) Has:

(1) Less than \$250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(2) Less than \$75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(3) Less than \$75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(4) Less than \$75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II Board-regulated institution.

\* \* \* \* \*

*FR Y-15* means the Systemic Risk Report.

*FR Y-9LP* means the Parent Company Only Financial Statements for Large Holding Companies.

\* \* \* \* \*

*U.S. intermediate holding company* means the company that is required to be established or designated pursuant to 12 CFR 252.153.

\* \* \* \* \*

14. In § 217.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

**§ 217.10 Minimum capital requirements.**

\* \* \* \* \*

(a)\*\*\*

(5) For advanced approaches Board-regulated institutions or, for Category III Board-regulated institutions, a supplementary leverage ratio of 3 percent.

\* \* \* \* \*

*(c) Advanced approaches and Category III capital ratio calculations.* An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to §217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in §217.100(b)(1). A Category III Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter

immediately following the quarter in which the Board-regulated institution is identified as a Category III Board-regulated institution.

\* \* \* \* \*

(4) *Supplementary leverage ratio.* (i) An advanced approaches Board-regulated institution's or a Category III Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

\* \* \* \* \*

15. In §217.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) to read as follows:

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

\* \* \* \* \*

(b) *Countercyclical capital buffer amount--(1) General.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with this paragraph (b) for purposes of determining its maximum payout ratio under Table 1 to this section.

\* \* \* \* \*

(ii) *Amount.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

\* \* \* \* \*

16. In §217.22(b), revise the introductory text to paragraph (b)(2)(ii) to read as follows:

**§ 217.22 Regulatory capital adjustments and deductions.**

\* \* \* \* \*

(ii) A Board-regulated institution that is not an advanced approaches Board-regulated institution must make its AOCI opt-out election in the Call Report, for a state member bank, FR Y-9C, for bank holding companies or savings and loan holding companies:

(A) If the Board-regulated institution is a Category III Board-regulated institution or Category IV Board-regulated institution, the first reporting period after the Board-regulated institution meets the definition of a Category III Board-regulated institution or Category IV Board-regulated institution; or

(B) If the A Board-regulated institution is not a Category III Board-regulated institution and not a Category IV Board-regulated institution, the first reporting period after the Board-regulated institution is required to comply with subpart A of this part as set forth in §217.1(f).

\* \* \* \* \*

17. In §217.100, remove paragraph (b)(2), re-designate (b)(3) as (b)(2), and revise paragraph (b)(1) to read as follows:

**§ 217.100 Purpose, applicability, and principle of conservatism.**

\* \* \* \* \*

(b) *Applicability.* (1) This subpart applies to:

(i) A top-tier bank holding company or savings and loan holding company domiciled in the United States that:

(A) Is not a consolidated subsidiary of another bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; and

(B) That:

(1) Is identified as a global systemically important BHC pursuant to § 217.402;

(2) Is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(3) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), this subpart (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements;

(ii) A state member bank that:

(A) Is a subsidiary of a global systemically important BHC;

(B) Is a Category II Board-regulated institution;

(C) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), this subpart E (Board), or 12 CFR part 324, subpart E (FDIC), to calculate its risk-based capital requirements; or

(D) Is a subsidiary of a bank holding company or savings and loan holding company that uses this subpart to calculate its risk-based capital requirements; or

(iii) Any Board-regulated institution that elects to use this subpart to calculate its risk-based capital requirements.

\* \* \* \* \*

18. In §217.172(d)(2), revise the text to read as follows:

**§ 217.172 Disclosure requirements**

\* \* \* \* \*

(d)(2) A Board-regulated that meets any of the criteria in §217.100(b)(1) on or after January 1, 2015 or a Category III Board-regulated institution must publicly disclose each quarter its supplementary leverage ratio and the components thereof (that is, tier 1 capital and total leverage exposure) as calculated under subpart B of this part beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution becomes an advanced approaches Board-regulated institution or a Category III Board-regulated institution. This disclosure requirement applies without regard to whether the Board-regulated institution has completed the parallel run process and has received notification from the Board pursuant to §217.121(d).

\* \* \* \* \*

19. In §217.173(a)(2), revise the text to read as follows:

**§ 217.173 Disclosures by certain advanced approaches Board-regulated institutions and Category III Board-regulated institutions.**

\* \* \* \* \*

(a)(2) An advanced approaches Board-regulated institution and a Category III Board-regulated institution that is required to publicly disclose its supplementary leverage ratio pursuant to §217.121(d) must make the disclosures required under Table 13 to §217.173 unless the Board-regulated institution is a consolidated subsidiary of a bank holding company, savings and loan holding company, or depository institution that is subject to these disclosure requirements or a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction.

\* \* \* \* \*

**PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)**

19. Revise the authority citation for part 249 to read as follows:

Authority: 12 U.S.C. 248(a), 321-338a, 481-486, 1467a(g)(1), 1818, 1828, 1831p-1, 1831o-1, 1844(b), 5365, 5366, 5368; 12 U.S.C. 3101 et seq.

20. Revise § 249.1 to read as follows:

**§ 249.1 Purpose and applicability.**

(a) *Purpose.* This part establishes a minimum liquidity standard for certain Board-regulated institutions on a consolidated basis, as set forth in this part.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a:

(A) Global systemically important BHC;

(B) GSIB depository institution;

(C) Category II Board-regulated institution;

(D) Category III Board-regulated institution; or

(E) Category IV Board-regulated institution with \$50 billion or more in average weighted short-term wholesale funding;

(ii) It is a covered nonbank company; or

(iii) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(3) In making a determination under paragraph (b)(1)(iii) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard and other requirements for a designated company under this part by rule or order. In establishing such standard, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company, or any other risk-related factor that the Board determines is appropriate.

21. Amend § 249.3 by:

a. Adding the definition for “Average weighted short-term wholesale funding” in alphabetical order;

b. Revising the definitions for “Board-regulated institution” and “Calculation date” in alphabetical order;

c. Adding the definitions for “Call Report”, “Category II Board-regulated institution”, “Category III Board-regulated institution”, and “Category IV Board-regulated institution” in alphabetical order;

d. Revising the definition for “Covered depository institution holding company”;

e. Adding the definitions for “FR Y-9LP”, “FR Y-15”, “Global systemically important BHC”, and “GSIB depository institution” in alphabetical order;

f. Revising the definition for “Regulated financial company”; and

g. Adding the definitions for “State” and “U.S. intermediate holding company” in alphabetical order.

The additions and revisions read as follows:

**§ 249.3 Definitions.**

\* \* \* \* \*

*Average weighted short-term wholesale funding* means the average of the weighted short-term wholesale funding for each of the four most recent calendar quarters as reported quarterly on the FR Y-15 or, if the Board-regulated institution has not filed the FR Y-15 for each of the four most recent calendar quarters, for the most recent quarter or averaged over the most recent quarters, as applicable.

\* \* \* \* \*

*Board-regulated institution* means a state member bank, covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company.

*Calculation date* means, for purposes of subparts A through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10.

*Call Report* means the Consolidated Reports of Condition and Income.

*Category II Board-regulated institution* means:

(1) A covered depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10;

(2) A U.S. intermediate holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5;

(3)(i) A state member bank that:

(A) Is a consolidated subsidiary of:

(1) A company described in paragraph (1) or (2) of this definition; or

(2) A depository institution that meets the criteria in paragraph (4)(ii)(A) or (B) of this definition; and

(B) That has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable. After meeting the criteria under this paragraph (3), a state member bank continues to be a Category II Board-regulated institution until the state member bank has less than \$10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraph (3)(i)(A)(1) or (2) of this definition; or

(4) A state member bank that:

(i) Is not a subsidiary of a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$700 billion or more. If the depository institution has not filed the Call

Report for each of the four most recent calendar quarters, total consolidated assets is calculated based on its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of \$100 billion or more but less than \$700 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(2) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of \$75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form.

(iii) After meeting the criteria in paragraphs (4)(i) and (ii) of this definition, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A)(1) Has less than \$700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(2) Has less than \$75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form;

(B) Has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

*Category III Board-regulated institution* means:

(1) A covered depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A U.S. intermediate holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5;

(3) (i) A state member bank that is:

(A) A consolidated subsidiary of:

(1) A company described in paragraph (1) or (2) of this definition; or

(2) A depository institution that meets the criteria in paragraph (4)(ii)(A) or (B) of this definition; and

(B) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to \$10 billion or more.

(ii) If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable.

After meeting the criteria under this paragraph (3), a state member bank continues to be a Category III Board-regulated institution until the state member bank has less than \$10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar

quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraph (3)(i)(A)(1) or (2) of this definition; or

(4) A state member bank that:

(i) Is not a depository institution holding company; and

(ii)(A) Has total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent quarters as reported on the most recent Call Report, equal to \$250 billion or more. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; or

(B) Has:

(1) Total consolidated assets, calculated based on the average of the depository institution's total consolidated assets in the four most recent calendar quarters as reported on the most recent Call Report, of \$100 billion or more but less than \$250 billion. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent quarter or the average of the most recent quarters, as applicable; and

(2) At least one of the following in paragraphs (4)(ii)(B)(2)(i) through (iii) of this definition, each measured as the average of the four most recent calendar quarters, or if the depository institution has not filed the FR Y-9LP or equivalent reporting form, Call Report, or FR Y-15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters, for the most recent quarter or the average of the most recent quarters, as applicable:

(i) Total nonbank assets, calculated in accordance with instructions to the FR Y-9LP or equivalent reporting form, equal to \$75 billion or more;

(ii) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the depository institution, as reported on the Call Report, equal to \$75 billion or more; or

(iii) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, equal to \$75 billion or more.

(iii) After meeting the criteria in paragraphs (4)(i) and (ii) of this definition, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A)(1) Has less than \$250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(2) Has less than \$75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y-9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(3) Has less than \$75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; and

(4) Has less than \$75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y-15 or equivalent reporting form, for each of the four most recent calendar quarters; or

(B) Has less than \$100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II Board-regulated institution; or

(D) Is a GSIB depository institution.

*Category IV Board-regulated institution* means:

(1) A covered depository institution holding company that is identified as a Category IV banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A U.S. intermediate holding company that is identified as a Category IV banking organization pursuant to 12 CFR 252.5.

\* \* \* \* \*

*Covered depository institution holding company* means a top-tier bank holding company or savings and loan holding company domiciled in the United States other than:

(1) A top-tier savings and loan holding company that is:

(i) A grandfathered unitary savings and loan holding company as defined in section 10(c)(9)(A) of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*); and

(ii) As of June 30 of the previous calendar year, derived 50 percent or more of its total consolidated assets or 50 percent of its total revenues on an enterprise-wide basis (as calculated under GAAP) from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k));

(2) A top-tier depository institution holding company that is an insurance underwriting company;

(3)(i) A top-tier depository institution holding company that, as of June 30 of the previous calendar year, held 25 percent or more of its total consolidated assets in subsidiaries

that are insurance underwriting companies (other than assets associated with insurance for credit risk); and

(ii) For purposes of paragraph (3)(i) of this definition, the company must calculate its total consolidated assets in accordance with GAAP, or if the company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may estimate its total consolidated assets, subject to review and adjustment by the Board of Governors of the Federal Reserve System; or

(4) A U.S. intermediate holding company.

\* \* \* \* \*

*FR Y-15* means the Systemic Risk Report.

*FR Y-9LP* means the Parent Company Only Financial Statements for Large Holding Companies.

\* \* \* \* \*

*Global systemically important BHC* means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

*GSIB depository institution* means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to \$10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or the average of the most recent calendar quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository

institution until the depository institution has less than \$10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

\* \* \* \* \*

*Regulated financial company* means:

- (1) A depository institution holding company or designated company;
- (2) A company included in the organization chart of a depository institution holding company on the Form FR Y-6, as listed in the hierarchy report of the depository institution holding company produced by the National Information Center (NIC) Web site,<sup>2</sup> provided that the top-tier depository institution holding company is subject to a minimum liquidity standard under this part;
- (3) A depository institution; foreign bank; credit union; industrial loan company, industrial bank, or other similar institution described in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); national bank, state member bank, or state non-member bank that is not a depository institution;
- (4) An insurance company;
- (5) A securities holding company as defined in section 618 of the Dodd-Frank Act (12 U.S.C. 1850a); broker or dealer registered with the SEC under section 15 of the Securities Exchange Act (15 U.S.C. 78o); futures commission merchant as defined in section 1a of the Commodity Exchange Act of 1936 (7 U.S.C. 1a); swap dealer as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or security-based swap dealer as defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c);
- (6) A designated financial market utility, as defined in section 803 of the Dodd-Frank Act (12 U.S.C. 5462);
- (7) A U.S. intermediate holding company; and

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<sup>2</sup> <http://www.ffiec.gov/nicpubweb/nicweb/NicHome.aspx>.

(8) Any company not domiciled in the United States (or a political subdivision thereof) that is supervised and regulated in a manner similar to entities described in paragraphs (1) through (7) of this definition (e.g., a foreign banking organization, foreign insurance company, foreign securities broker or dealer or foreign financial market utility).

(9) A regulated financial company does not include:

(i) U.S. government-sponsored enterprises;

(ii) Small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(iii) Entities designated as Community Development Financial Institutions (CDFIs) under 12 U.S.C. 4701 *et seq.* and 12 CFR part 1805; or

(iv) Central banks, the Bank for International Settlements, the International Monetary Fund, or multilateral development banks.

\* \* \* \* \*

*State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

\* \* \* \* \*

*U.S. intermediate holding company* means a top-tier company that is required to be established pursuant to 12 CFR 252.153.

\* \* \* \* \*

22. In § 249.10, revise paragraph (a), redesignating paragraph (b) as paragraph (c), and adding new paragraph (b) to read as follows:

**§ 249.10 Liquidity coverage ratio.**

(a) *Minimum liquidity coverage ratio requirement.* Subject to the transition provisions in subpart F of this part, a Board-regulated institution must calculate and maintain a liquidity coverage ratio that is equal to or greater than 1.0 on each business day (or, in the case of a Category IV Board-regulated institution, on the last business day of the applicable month) in accordance with this part. A Board-regulated institution must calculate its liquidity coverage ratio as of the same time on each calculation date (the elected calculation time). The Board-regulated institution must select this time by written notice to the Board prior to [effective date of the final rule]. The Board-regulated institution may not thereafter change its elected calculation time without prior written approval from the Board.

(b) *Transition from monthly calculation to daily calculation:* A Board-regulated institution that was a Category IV Board-regulated institution immediately prior to moving to a different category must begin calculating and maintaining a liquidity coverage ratio each business day beginning on the first day of the fifth quarter after becoming a Category I Board-regulated institution, Category II Board-regulated institution, or Category III Board-regulated institution.

\* \* \* \* \*

23. In § 249.30, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

**§ 249.30 Total net cash outflow amount.**

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a Board-regulated institution's total net cash outflow amount equals the Board-regulated institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

- (1) The sum of the outflow amounts calculated under § 249.32(a) through (l); minus

- (2) The lesser of:
  - (i) The sum of the inflow amounts calculated under § 249.33(b) through (g); and
  - (ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus
- (3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

\* \* \* \* \*

(c) *Outflow adjustment percentage.* A Board-regulated institution’s outflow adjustment percentage is determined pursuant to Table 1 to this section.

*Table 1 to § 249.30—Outflow adjustment percentages*

Outflow adjustment percentage	
Global systemically important BHC or GSIB depository institution	100 percent
Category II Board-regulated institution	100 percent
Category III Board-regulated institution with \$75 billion or more in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	100 percent
Category III Board-regulated institution with less than \$75 billion in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	85 percent
Category IV Board-regulated institution with \$50 billion or more in average weighted short-term wholesale funding	70 percent

(d) *Transition into a different outflow adjustment percentage.*

(i) A Board-regulated institution whose outflow adjustment percentage increases from a lower to a higher outflow adjustment percentage may continue to use its previous lower outflow adjustment percentage until the first day of the third calendar quarter after the outflow adjustment percentage increases.

(ii) A Board-regulated institution whose outflow adjustment percentage decreases from a higher to a lower outflow adjustment percentage must continue to use its previous higher outflow adjustment percentage until the first day of the first calendar quarter after the outflow adjustment percentage decreases.

24. Revise §249.50 to read as follows:

**§ 249.50 Transitions.**

(a) *No transitions for certain Board-regulated institutions.* A Board-regulated institution that is subject to the minimum liquidity standards and other requirements of this part immediately prior to [effective date] must comply with the requirements of this part as of [effective date].

(b) *Transitions for certain U.S. intermediate holding companies.* A U.S. intermediate holding company that initially becomes subject to this part on [effective date of final rule] does not need to comply with the minimum liquidity standard of § 249.10 or with the public disclosure requirements of § 249.90 until [one year after the effective date of the final rule], at which time the U.S. intermediate holding company must comply with the minimum liquidity standard of § 249.10 each business day (or, in the case of a Category IV Board-regulated institution, on the last business day of the applicable calendar month) in accordance with this part, and with the public disclosure requirements of § 249.90.

(c) *Initial application.* (1) A Board-regulated institution that initially becomes subject to the minimum liquidity standard and other requirements of this part under § 249.1(b)(1)(i) or (ii) after [effective date], must comply with the requirements of this part beginning on the first day of the third calendar quarter after which the Board-regulated institution becomes subject to this

part, except that a Board-regulated institution that is not a Category IV Board-regulated institution must:

(i) For the first two calendar quarters after the Board-regulated institution begins complying with the minimum liquidity standard and other requirements of this part, calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(ii) Beginning the first day of the fifth calendar quarter after the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part and continuing thereafter, calculate and maintain a liquidity coverage ratio on each calculation date.

(2) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under § 249.1(b)(1)(iii) must comply with the requirements of this part subject to a transition period specified by the Board.

(d) *Transition into a different outflow adjustment percentage.* (1) A Board-regulated institution whose outflow adjustment percentage changes is subject to transition periods as set forth in § 249.30(d).

(2) A Board-regulated institution that is no longer subject to the minimum liquidity standard and other requirements of this part pursuant to § 249.1(b)(1)(i) or (ii) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, instructions to the FR Y-9LP or the FR Y-15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with this part as of the first day of the first quarter after it is no longer subject to § 249.1(b).

(e) *Reservation of authority.* The Board may extend or accelerate any compliance date of this part if the Board determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with this part, and the actions the Board-regulated institution is taking to come into compliance with this part.

Subpart G – [Removed and Reserved]

25. Remove and reserve subpart G, consisting of § 249.60 through 249.64

26. In § 249.90, revise paragraphs (a) and (b) to read as follows:

**§ 249.90 Timing, method and retention of disclosures.**

(a) *Applicability.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to § 249.1 must disclose publicly all the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company subject to this subpart must provide timely public disclosures each calendar quarter of all the information required under this subpart.

(2) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to this subpart must provide the disclosures required by this subpart beginning with the first calendar quarter that includes the date that is 18 months after the covered depository institution holding company or U.S. intermediate holding company first became subject to this subpart.

\* \* \* \* \*

27. In § 249.91:

a. Revise Table 1 to § 249.91(a);

b. In paragraph (b)(1)(i)(B):

i. Remove “(c)(1), (c)(5), (c)(9), (c)(14), (c)(19), (c)(23), and (c)(28)” and add in its place “(c)(1), (5), (9), (14), (19), (23), and (28)” and

ii. Remove the semicolon at the end of the paragraph and add a period in its place.

c. Remove paragraph (b)(1)(ii) and redesignate paragraph (b)(1)(iii) as paragraph (b)(1)(ii);

d. Revise paragraphs (c)(32) and (33): and

e. Add paragraphs (c)(34) and (35).

The revisions and additions read as follows:

**§ 249.91 Disclosure requirements.**

(a) \* \* \*

**Table 1 to §249.91(a)—Disclosure Template**

<b>XX/XX/XXXX to YY/YY/YYYY</b> <b>In millions of U.S. Dollars</b>		<b>Average Unweighted Amount</b>	<b>Average Weighted Amount</b>
<b>HIGH-QUALITY LIQUID ASSETS</b>			
1	Total eligible high-quality liquid assets (HQLA), of which:		
2	Eligible level 1 liquid assets		
3	Eligible level 2A liquid assets		
4	Eligible level 2B liquid assets		
<b>CASH OUTFLOW AMOUNTS</b>			
5	Deposit outflow from retail customers and counterparties, of which:		
6	Stable retail deposit outflow		
7	Other retail funding		
8	Brokered deposit outflow		
9	Unsecured wholesale funding outflow, of which:		

10	Operational deposit outflow		
11	Non-operational funding outflow		
12	Unsecured debt outflow		
13	Secured wholesale funding and asset exchange outflow		
14	Additional outflow requirements, of which:		
15	Outflow related to derivative exposures and other collateral requirements		
16	Outflow related to credit and liquidity facilities including unconsolidated structured transactions and mortgage commitments		
17	Other contractual funding obligation outflow		
18	Other contingent funding obligations outflow		
<b>19</b>	<b>TOTAL CASH OUTFLOW</b>		
<b>CASH INFLOW AMOUNTS</b>			
20	Secured lending and asset exchange cash inflow		
21	Retail cash inflow		
22	Unsecured wholesale cash inflow		
23	Other cash inflows, of which:		
24	Net derivative cash inflow		
25	Securities cash inflow		
26	Broker-dealer segregated account inflow		
27	Other cash inflow		
<b>28</b>	<b>TOTAL CASH INFLOW</b>		
			<b>Average Amount<sup>1</sup></b>
<b>29</b>	<b>HQLA AMOUNT</b>		
<b>30</b>	<b>TOTAL NET CASH OUTFLOW AMOUNT EXCLUDING THE MATURITY MISMATCH ADD-ON</b>		
<b>31</b>	<b>MATURITY MISMATCH ADD-ON</b>		
<b>32</b>	<b>TOTAL UNADJUSTED NET CASH OUTFLOW AMOUNT</b>		
<b>33</b>	<b>OUTFLOW ADJUSTMENT PERCENTAGE</b>		
<b>34</b>	<b>TOTAL ADJUSTED NET CASH OUTFLOW AMOUNT</b>		
<b>35</b>	<b>LIQUIDITY COVERAGE RATIO (%)</b>		

<sup>1</sup> The amounts reported in this column may not equal the calculation of those amounts using component amounts reported in rows 1-28 due to technical factors such as the application of the level 2 liquid asset caps and the total inflow cap.

\* \* \* \* \*

(c) \* \* \*

(32) The average amount of the total net cash outflow amount as calculated under § 249.30 prior to the application of the applicable outflow adjustment percentage described in Table 1 to § 249.30 (row 32);

(33) The applicable outflow adjustment percentage described in Table 1 to § 249.30 (row 33);

(34) The average amount of the total net cash outflow as calculated under § 249.30 (row 34); and

(35) The average of the liquidity coverage ratios as calculated under § 249.10(b) (row 35).

\* \* \* \* \*

28. Section 249.105, as proposed to be added at 81 FR 35124 (June 1, 2016), is revised to read as follows:

**§ 249.105 [RESERVED]**

**§ 249.131 [RESERVED]**

[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE TITLED “CHANGES TO APPLICABILITY THRESHOLDS FOR REGULATORY CAPITAL AND LIQUIDITY REQUIREMENTS.”]

Dated:

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**Joseph M. Otting**  
*Comptroller of the Currency*

[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE TITLED “CHANGES TO APPLICABILITY THRESHOLDS FOR REGULATORY CAPITAL AND LIQUIDITY REQUIREMENTS.”]

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

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**Margaret McCloskey Shanks,**  
*Deputy Secretary of the Board.*

[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE TITLED “CHANGES TO APPLICABILITY THRESHOLDS FOR REGULATORY CAPITAL AND LIQUIDITY REQUIREMENTS.”]

Dated at Washington, DC, on

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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**Robert E. Feldman,**  
*Executive Secretary.*