

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

**Docket ID OCC-2021-0002**

**RIN 1557-AF09**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 217**

**Regulation Q; Docket No. R-1741**

**RIN 7100-AG11**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 324**

**RIN 3064-AF73**

**AMENDMENT TO THE CAPITAL RULE TO FACILITATE THE EMERGENCY  
CAPITAL INVESTMENT PROGRAM**

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

**ACTION:** Interim final rule; request for public comment.

**SUMMARY:** In order to support and facilitate the timely implementation and acceptance of the Congressionally authorized Emergency Capital Investment Program (ECIP) for the Department of the Treasury to make capital investments in low- and moderate-income community financial institutions, the OCC, Board, and FDIC (together, the agencies) are issuing an interim final rule that provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies' capital rule.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

**OCC:** Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please use the title “Amendments to the Capital Rule to Facilitate the Emergency Capital Investment Program” to facilitate the organization and distribution of the comments.

You may submit comments by any of the following methods:

**Federal eRulemaking Portal:**

Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2021-0002” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “View Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

**Mail:** Chief Counsel’s Office, Attn: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

**Hand Delivery/Courier:** 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2021-0002” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone

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

You may review comments and other related materials that pertain to this action by the following method:

Go to <https://www.regulations.gov/>. Enter “Docket ID OCC-2021-0002” in the Search box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Browse Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Documents Results” options on the left side of the screen. For assistance with the *Regulations.gov* site, please call (877) 378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or e-mail [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**Board:** You may submit comments, identified by Docket No. R-1741 and RIN No. 7100-AG11, by any of the following methods:

**Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

**E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number and RIN in the subject line of the message.

**Fax:** (202) 452-3819 or (202) 452-3102

**Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street, NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments using any of the following methods:

**Agency Website:** <https://www.fdic.gov/regulations/laws/federal>. Follow the instructions for submitting comments on the agency website.

**Email:** [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064-AF73 on the subject line of the message.

**Mail:** James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064-AF73, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street) on business days between 7 a.m. and 5 p.m.

**Public Inspection:** All comments received, including any personal information provided, will be posted generally without change to <https://www.fdic.gov/regulations/laws/federal>.

**FOR FURTHER INFORMATION CONTACT:**

**OCC:** Margot Schwadron, Director, or Andrew Tschirhart, Risk Expert, Capital Policy, (202) 649-6370; or Carl Kaminski, Special Counsel, or Daniel Perez, Counsel, Chief Counsel's Office,

(202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

**Board:** Constance Horsley, Deputy Associate Director, (202) 452-5239, Naima Jefferson, Lead Financial Institution Policy Analyst, (202) 912-4613, Senait Kahsay, Senior Financial Institution Policy Analyst II, (202) 245-4209, Eusebius Luk, Senior Financial Institution Policy Analyst I, (202) 452-2874, Division of Supervision and Regulation; Benjamin McDonough, Associate General Counsel, (202) 452-2036, Mark Buresh, Senior Counsel, (202) 452-5270, Mary Watkins, Counsel, (202) 452-3722, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

**FDIC:** Benedetto Bosco, Chief, Capital Policy Section, [bbosco@fdic.gov](mailto:bbosco@fdic.gov); Noah Cuttler, Senior Policy Analyst, [ncuttler@fdic.gov](mailto:ncuttler@fdic.gov); [regulatorycapital@fdic.gov](mailto:regulatorycapital@fdic.gov); Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Gregory Feder, Counsel, [gfeder@fdic.gov](mailto:gfeder@fdic.gov); Suzanne Dawley, Counsel, [sudawley@fdic.gov](mailto:sudawley@fdic.gov); Francis Kuo, Counsel, [fkuo@fdic.gov](mailto:fkuo@fdic.gov); Amanda Ledig, Attorney, [aledig@fdic.gov](mailto:aledig@fdic.gov); Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925-4618.

## **SUPPLEMENTARY INFORMATION:**

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## **I. Background**

On December 27, 2020, the Consolidated Appropriations Act, 2021,<sup>1</sup> was signed into law and added a new Section 104A to the Community Development Banking and Financial Institutions Act of 1994 (the Act). Section 104A of the Act authorizes the Secretary of the Treasury to establish the Emergency Capital Investment Program (ECIP or Program) through which the Department of the Treasury (Treasury) can make capital investments in certain low- and moderate-income community financial institutions. The Act states that the purpose of these capital investments is to support the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers in low-income and underserved communities, including persistent poverty counties, which may be disproportionately impacted by the economic effects of the Coronavirus 2019 (COVID-19) event.<sup>2</sup> Treasury's authority to make

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<sup>1</sup> Pub. L. 116-260.

<sup>2</sup> Id.

capital investments under ECIP is time limited. The Program will end six months after the date on which the national emergency concerning the COVID–19 outbreak terminates.<sup>3</sup>

Under ECIP, a financial institution is generally eligible to receive capital investments from Treasury if it is a low- and moderate-income community financial institution, which is defined by the Act to include any financial institution that is (1) a community development financial institution or minority depository institution,<sup>4</sup> and (2) an insured depository institution, bank holding company, savings and loan holding company, or federally insured credit union (collectively, eligible banking organizations).

Under ECIP, Treasury can acquire senior preferred stock from eligible banking organizations (Senior Preferred Stock). Additionally, if the Secretary of the Treasury determines that an eligible banking organization cannot feasibly issue preferred stock, such as a bank organized as an S corporation<sup>5</sup> or mutual banking organization, Treasury can acquire subordinated debt instruments (Subordinated Debt) from such an eligible banking organization.<sup>6</sup> Under the Act, Treasury is required to seek to establish the terms of preferred stock issued under ECIP to enable such instruments to qualify as tier 1 capital under the respective capital rule of the OCC, Board, and FDIC (together, the agencies).<sup>7</sup>

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<sup>3</sup> Id.

<sup>4</sup> The terms “Community Development Financial Institution” and “Minority Depository Institution” are defined in section 104A of the Act.

<sup>5</sup> An S corporation is corporation that has elected Subchapter S corporation status under the Internal Revenue Code.

<sup>6</sup> Section 104A(d)(5)(B) of the Act.

<sup>7</sup> Section 104A(f) of the Act.

On March 4, 2021, Treasury published the terms of the Senior Preferred Stock and Subordinated Debt.<sup>8</sup> As described in the terms published by Treasury, Senior Preferred Stock issued under ECIP will be noncumulative, perpetual preferred stock that is senior to the issuer's common stock and *pari passu* with (or, in some cases, senior to) the issuer's most senior class of existing preferred stock. Subordinated Debt issued under ECIP will be unsecured subordinated debt. The Subordinated Debt will rank junior to all other debt of the issuer except that it will rank senior to mutual capital certificates or similar instruments issued by a mutual banking organization and to any equity instruments issued by an S corporation.

Under the terms of Senior Preferred Stock, participating eligible banking organizations will not be required to pay dividends until two years after issuance of the Senior Preferred Stock, and then will be subject to a noncumulative dividend with a rate not to exceed 2 percent that may fluctuate based on certain lending growth criteria applied to the issuer. A participating eligible banking organization is prohibited from paying dividends under certain circumstances, including if the participating eligible banking organization determines that the payment would be detrimental to the financial health of the institution. Under the terms of the Subordinated Debt, interest payments on the Subordinated Debt would be subject to determinants and constraints similar to those described above, but the interest payments would be cumulative and deferrable.

The Act requires Treasury to establish restrictions on executive compensation, share buybacks, and dividend payments for issuers of capital instruments issued under ECIP, as well as restrictions on conflicts of interest.<sup>9</sup> The Act permits Treasury to establish other terms and

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<sup>8</sup> The term sheets for the Senior Preferred Stock and Subordinated Debt may be found on Treasury's website. For a complete description of the terms of the instruments, see <https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-program>.

<sup>9</sup> Section 104A(h) of the Act.

conditions for participation in ECIP. On March 4, 2021, Treasury issued an interim final rule that established restrictions on executive compensation, capital distributions, and luxury expenditures for ECIP.<sup>10</sup>

## **II. Discussion**

The Senior Preferred Stock and Subordinated Debt will feature characteristics that are similar to those of instruments that qualify under the agencies' capital rule as additional tier 1 capital and tier 2 capital, respectively. As discussed above, the Act directs the Secretary of the Treasury to seek to establish the terms of the Senior Preferred Stock to enable these instruments to receive "Tier 1" capital treatment. Further, the establishment of ECIP and the capital investments being made thereunder help support the efforts of low- and moderate-income community financial institutions to provide financial intermediary services in low-income and underserved communities. To facilitate implementation of ECIP, the agencies are revising the capital rule to provide that the Senior Preferred Stock will qualify as additional tier 1 capital and Subordinated Debt will qualify as tier 2 capital.<sup>11, 12</sup> These revisions are based on the terms and conditions of the Senior Preferred Stock and Subordinated Debt provided in the Senior Preferred Stock term sheet and the Subordinated Debt term sheet published by the U.S. Department of the

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<sup>10</sup> See Emergency Capital Investment Program – Restrictions on Executive Compensation, Share Buybacks, and Dividends, <https://home.treasury.gov/system/files/136/ECIP-interim-final-rule.pdf>.

<sup>11</sup> See 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

<sup>12</sup> Certain small bank holding companies and savings and loan holdings companies are subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, app. C) rather than the Board's capital rule. The Policy Statement requires subject companies to maintain specified debt-to-equity ratios and specifies how certain types of debt instruments and preferred stock instruments are to be included for purposes of the debt-to-equity ratios. For purposes of the Policy Statement, Senior Preferred Stock issued under ECIP is redeemable preferred stock, which is subject to certain limitations under the Policy Statement, and Subordinated Debt issued under ECIP is debt.

Treasury on March 4, 2021. If the terms and conditions for the Senior Preferred Stock or Subordinated Debt are modified in the future such that they differ materially from the terms and conditions provided in the term sheets, the agencies may reevaluate whether such capital treatment remains appropriate.

In addition, the OCC is adding language to its licensing rule, which sets forth certain requirements applicable to subordinated debt issued by a national bank. Paragraph (d)(2) of section 5.47 prohibits a national bank from including in a subordinated debt note any provision or covenant that unduly restricts or otherwise acts to unduly limit the authority of a national bank or interferes with the OCC's supervision of the national bank. To facilitate the ability of a national bank to issue subordinated debt through ECIP, the OCC is adding new paragraph (j) to section 5.47. This new paragraph clarifies that provisions and covenants added to a subordinated debt document pursuant to requirements imposed by the Treasury Department for purposes of ECIP will not be considered, under paragraph (d)(2) of section 5.47, to unduly restrict or otherwise act to unduly limit the authority of a national bank or interfere with the OCC's supervision of the national bank.

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

The agencies seek comment on all aspects of this interim final rule. In particular, the agencies seek comment on the regulatory capital treatment of the Senior Preferred Stock and Subordinated Debt issued under ECIP and on the following specific question:

*Question: For banking organizations subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement, what are the advantages and disadvantages of including Senior Preferred Stock as equity and Subordinated Debt as debt for purposes of meeting the debt-to-equity ratio? What are the advantages and disadvantages of*

*including Senior Preferred Stock subject to the limits described in the Policy Statement as redeemable preferred stock? What are the advantages and disadvantages of excluding Subordinated Debt from debt for purposes of the debt-to-equity ratio?*

#### **IV. Administrative Law Matters**

##### **A. Administrative Procedure Act**

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>13</sup> Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>14</sup>

As discussed above, the purpose of capital investments made under ECIP is to support the efforts of low- and moderate-income community financial institutions and the communities they serve, which may be disproportionately impacted by the economic effects of the COVID–19 event. The Act also requires Treasury to seek to establish the terms of senior preferred stock instruments issued under the Program such that these instruments would be considered additional tier 1 capital under the agencies’ capital rule.

The agencies believe that the public interest is best served by implementing the interim final rule immediately upon publication in the *Federal Register*. The interim final rule will facilitate implementation of ECIP by providing certainty that the Senior Preferred Stock may be

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<sup>13</sup> 5 U.S.C. 553.

<sup>14</sup> 5 U.S.C. 553(b)(B).

included in additional tier 1 capital and Subordinated Debt may be included in tier 2 capital under the capital rule. As noted above, Treasury’s authority to make new capital investments in ECIP will end six months after the date on which the national emergency concerning the COVID–19 outbreak declared by the President on March 13, 2020, under the National Emergencies Act terminates.<sup>15</sup> For these reasons, the agencies find that there is good cause consistent with the public interest to issue the rule without advance notice and comment.<sup>16</sup>

The APA also requires a 30-day delayed effective date, except for (1) substantive rules that grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.<sup>17</sup> Because the interim final rule relieves a restriction, the interim final rule is exempt from the APA’s delayed effective date requirement.<sup>18</sup>

In addition, the agencies find good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA. While the agencies believe that there is good cause to issue the interim final rule without advance notice and comment and with an immediate effective date, as noted, the agencies are interested in the views of the public on all aspects of the interim final rule.

## **B. Congressional Review Act**

For purposes of Congressional Review Act (CRA), the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule.<sup>19</sup> If a

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<sup>15</sup> Pub. L. 116-260.

<sup>16</sup> 5 U.S.C. 553(b)(B).

<sup>17</sup> 5 U.S.C. 553(d).

<sup>18</sup> 5 U.S.C. 553(d)(1).

<sup>19</sup> 5 U.S.C. 801 *et seq.*

rule is deemed a “major rule” by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.<sup>20</sup>

The CRA 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.

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the CRA. The delayed effective date required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.<sup>21</sup>

As required by the CRA, the agencies will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

### **C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays

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<sup>20</sup> 5 U.S.C. 801(a)(3).

<sup>21</sup> 5 U.S.C. 808.

a currently valid OMB control number.<sup>22</sup> The agencies have reviewed this interim final rule and have determined that this interim final rule does not introduce any new information collections or revise any existing information collections pursuant to the PRA for the agencies. In addition, the Board has reviewed this interim final rule pursuant to authority delegated by OMB. Therefore, no submissions will be made by the agencies to OMB for review.

#### **D. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA)<sup>23</sup> requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.<sup>24</sup> The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

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<sup>22</sup> 44 U.S.C. 3501-3521.

<sup>23</sup> 5 U.S.C. 601 *et seq.*

<sup>24</sup> Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of \$600 million or less and trust companies with total assets of \$41.5 million or less. See 13 CFR 121.201.

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

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)<sup>25</sup> requires that each federal banking agency, 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 principles of safety and soundness and the public interest, any administrative burdens that regulations would place on depository institutions, including small depository 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 insured depository institutions 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>26</sup> The agencies have determined that the final rule would not impose additional reporting, disclosure, or other requirements; therefore, the requirements of the RCDRIA do not apply.

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

The OCC analyzes proposed rules for the factors listed in Section 202 of the Unfunded Mandates Reform Act of 1995 before promulgating a final rule for which a general notice of

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<sup>25</sup> 12 U.S.C. 4802(a).

<sup>26</sup> 12 U.S.C. 4802.

proposed rulemaking was published.<sup>27</sup> As discussed above, the OCC has determined that publication of a general notice of proposed rulemaking is not in the public interest.

### **G. Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act<sup>28</sup> requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- *Is the material organized to suit your needs? If not, how could the agencies present the interim final rule more clearly?*
- *Are the requirements in the interim final rule clearly stated? If not, how could the interim final rule be more clearly stated?*
- *Does the interim final rule contain technical language or jargon that is not clear? If so, which language requires clarification?*
- *Would a different format (grouping and order of sections, use of headings, paragraphing) make the interim final rule easier to understand? If so, what changes would achieve that?*
- *Is this section format adequate? If not, which of the sections should be changed and how?*
- *What other changes can the agencies incorporate to make the interim final rule easier to understand?*

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<sup>27</sup> 2 U.S.C. 1532.

<sup>28</sup> Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809.

## **List of Subjects**

### **12 CFR Part 3**

Administrative practice and procedure, Capital, National banks, Risk.

### **12 CFR Part 5**

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

### **12 CFR Part 217**

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies.

### **12 CFR Part 324**

Administrative practice and procedure, Banks, banking, Confidential business information, Investments, Reporting and recordkeeping requirements, Savings associations.

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **Authority and Issuance**

For the reasons stated in the joint preamble, the Office of the Comptroller of the Currency amends chapter I of Title 12 of the Code of Federal Regulations as follows:

#### **PART 3 – CAPITAL ADEQUACY STANDARDS**

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

**Authority:** 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, 5412(b)(2)(B), and Pub. L. 116-136, 134 Stat. 281.

2. Section 3.20 is amended by:

- a. Redesignating footnotes 11 through 15 as footnotes 1 through 5, footnote 16 as footnote 7, and footnotes 17 through 20 as footnotes 8 through 11, respectively;
- b. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
- c. Adding a new paragraph (c)(3)(ii);
- d. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
- e. Adding a new paragraph (d)(4)(ii).

The additions and revisions read as follows:

**§3.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(ii) Any preferred stock instruments issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>6</sup>

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) Any debt instruments issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>12</sup>

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<sup>6</sup> Pub. L. 116-260.

<sup>12</sup> Pub. L. 116-260.

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**PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES**

3. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

4. Section 5.47 is amended by adding new paragraph (j):

**§5.47 Subordinated debt issued by a national bank.**

\* \* \* \* \*

(j) *Subordinated debt issued under the Emergency Capital Investment Program.* A provision or covenant included in a subordinated debt document does not unduly restrict or otherwise act to unduly limit the authority of a national bank or interfere with the OCC's supervision of the national bank, for purposes of paragraph (d)(2) of this section, if the provision or covenant is included pursuant to requirements imposed by the U.S. Department of the Treasury and the subordinated debt is issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.

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

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

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

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

**Authority:** 12 U.S.C. 248(a), 321-338a, 481-486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p-1, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371 5371 note, and sec. 4012, Pub. L. 116-136, 134 Stat. 281.

6. Section 217.20 is amended by:

- a. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
- b. Adding a new paragraph (c)(3)(ii);
- c. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
- d. Adding a new paragraph (d)(4)(ii).

The additions and revisions read as follows:

**§217.20 Capital components and eligibility criteria for regulatory capital**

**instruments.**

*	*	*	*	*
(c)	*	*	*	*
(3)	*	*	*	*

(ii) Any preferred stock instrument issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>16</sup>

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) Any debt instrument issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>21</sup>

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## **Federal Deposit Insurance Corporation**

### **12 CFR Chapter III**

#### **Authority and Issuance**

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends chapter III of Title 12 of the Code of Federal Regulations as follows:

#### **PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS**

7. The authority citation for part 324 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105

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<sup>16</sup> Pub. L. 116-260.

<sup>21</sup> Pub. L. 116-260.

Stat. 2236, 2355, as amended by Pub. L. 103-325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102-242, 105 Stat. 2236, 2386, as amended by Pub. L. 102-550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111-203, 124 Stat. 1376, 1887 (15 U.S.C. 78o-7 note); Pub. L. No. 115-174; section 4014 §201, Pub. L. No. 116-136, 134 Stat. 281 (15 U.S.C. 9052).

8. Amend § 324.20 by:

- a. Redesignating footnotes 17 through 21 as footnotes 18 through 22;
- b. Redesignating paragraph (c)(3) as paragraph (c)(3)(i);
- c. Adding a new paragraph (c)(3)(ii);
- d. Redesignating paragraph (d)(4) as paragraph (d)(4)(i); and
- e. Adding a new paragraph (d)(4)(ii).

The additions and revisions read as follows:

**§324.20 Capital components and eligibility criteria for regulatory capital instruments.**

\* \* \* \* \*  
(c) \* \* \*  
(3) \* \* \*

(ii) Any preferred stock instruments issued under the U.S. Department of the Treasury’s Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>17</sup>

\* \* \* \* \*  
(d) \* \* \*

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<sup>17</sup> Pub. L. 116-260.

(4) \* \* \*

(ii) Any debt instruments issued under the U.S. Department of the Treasury's Emergency Capital Investment Program pursuant to section 104A of the Community Development Banking and Financial Institutions Act of 1994, added by the Consolidated Appropriations Act, 2021.<sup>23</sup>

\* \* \* \* \*

**Blake J. Paulson,**  
*Acting Comptroller of the Currency.*

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

**Ann Misback,**  
*Secretary of the Board.*

Federal Deposit Insurance Corporation.  
By order of the Board of Directors.  
Dated at Washington, DC, on or about March 5, 2021.

**James P. Sheesley,**  
*Assistant Executive Secretary.*

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<sup>23</sup> Pub. L. 116-260.