

**Report to the Committee on Financial Services  
of the U.S. House of Representatives**

**and to the**

**Committee on Banking, Housing, and Urban Affairs  
of the U.S. Senate**

# **Regarding Differences in Accounting and Capital Standards among the Federal Banking Agencies**

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

Office of the Comptroller of the Currency





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# Contents

Introduction .....	1
Differences in Capital Standards among the Federal Banking Agencies .....	3
Definitions .....	3
Capital Components and Eligibility Criteria for Regulatory Capital Instruments .....	3
Capital Deductions .....	4
Subsidiaries of Savings Associations .....	4
Tangible Capital Requirement .....	4
Enhanced Supplementary Leverage Ratio .....	5



# Introduction

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

In accordance with section 37(c), the agencies are submitting this joint report, which covers differences among their accounting or capital standards existing as of September 30, 2017, applicable to institutions. In recent years, the agencies have acted together to harmonize their accounting and capital standards and eliminate as many differences as possible. As of September 30, 2017, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rules for institutions (capital rules),<sup>2</sup> which harmonized the agencies' capital rules in a

comprehensive manner.<sup>3</sup> Only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally nonmaterial differences among the agencies' capital rules.

As revised in 2013, the agencies' capital rules generally have increased the quantity and quality of regulatory capital. For example, these revised capital rules include a minimum common equity tier 1 capital ratio of 4.5 percent, raise the minimum tier 1 capital ratio from 4 percent to 6 percent, and establish additional capital buffer amounts for institutions: the capital conservation buffer, and, for advanced approaches institutions,<sup>4</sup> the countercyclical capital buffer. These revised capital rules also require all institutions to meet a 4 percent minimum leverage ratio measured as an institution's tier 1 capital to average total consolidated assets (generally applicable leverage ratio) and require advanced approaches institutions to meet a 3 percent minimum supplementary leverage ratio, measured as an institution's tier 1 capital to the sum of on- and off-balance sheet exposures (supplementary leverage ratio).<sup>5</sup>

<sup>1</sup> See 12 U.S.C. 1831n(c). This report must be published in the Federal Register. See 12 U.S.C. 1831n(c)(3).

<sup>2</sup> See 78 FR 62018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 FR 55340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 FR 20754 (April 14, 2014). The agencies' respective capital rules are at 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC). These capital rules apply to institutions, as well as to certain bank holding companies, and savings and loan holding companies. 12 CFR 217.1(c).

<sup>3</sup> The capital rules reflect the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to bank holding companies, savings and loan holding companies, and state member banks, while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

<sup>4</sup> Generally, these are institutions, bank holding companies, and savings and loan holding companies that are subject to the capital rules with total consolidated assets of \$250 billion or more or total consolidated on-balance sheet foreign exposures of at least \$10 billion.

<sup>5</sup> Under the auspices of the Federal Financial Institutions Examination Council, the agencies have developed the Consolidated Reports of Condition and Income, or "Call Report," where institutions report their respective capital and leverage ratios.



# Differences in Capital Standards among the Federal Banking Agencies

Below are summaries of the technical differences remaining among the capital standards of the agencies' capital rules.<sup>6</sup>

## Definitions

The agencies' capital rules largely contain the same definitions.<sup>7</sup> The differences that exist generally serve to accommodate the different scope of jurisdiction of each agency. Set forth below are two definitional differences among the agencies.

Each agency's definitional provisions provide that a "corporate exposure is an exposure to a company that is not" one of 11 separate other types of exposures.<sup>8</sup> The Board's capital rule provides that two additional items are not corporate exposures: a policy loan and a separate account.<sup>9</sup> Unlike the OCC's and FDIC's capital rules, the Board's capital rule covers bank holding companies and savings and loan holding companies, which may engage in insurance underwriting activities<sup>10</sup> in which institutions cannot engage,<sup>11</sup> and these additional items in the Board's capital rule are relevant for insurance underwriting activities. Thus, these additional items are only relevant to bank holding companies and savings and loan holding companies under the terms of the Board's capital rule.

The agencies' capital rules also have differing definitions of a pre-sold construction loan. All three agencies provide that a pre-sold construction loan means any "one-to-four family residential construction loan to a builder that meets the requirements of sec-

tion 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n), and, in addition to other criteria, the purchaser has not terminated the contract."<sup>12</sup> The Board's definition provides further clarification that, if a purchaser has terminated the contract, the institution must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Call Report.<sup>13</sup> Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rules would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

## Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rules generally provide uniform eligibility criteria for regulatory capital instruments, there are two textual differences among the agencies' capital rules. First, the OCC's and FDIC's capital rules require that additional tier 1 capital instruments not be subject to a "limit" imposed by the contractual terms governing the instrument, while the Board's capital rule does not include this requirement.<sup>14</sup> Second, only the Board's capital rule states that "[s]tate member banks are subject to certain other legal restrictions on reductions in capital resulting from cash dividends, including out of the capital surplus account, under 12 U.S.C. 324 and 12 CFR 208.5."<sup>15</sup> The Board's capital rule also

<sup>6</sup> Certain minor differences, such as terminology specific to each agency for the institutions that they supervise, are not included in this report.

<sup>7</sup> See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

<sup>8</sup> Id.

<sup>9</sup> 12 CFR 217.2. The Board's rule separately defines policy loan and separate account. Id.

<sup>10</sup> 78 FR 62127 (October 11, 2013).

<sup>11</sup> See 12 U.S.C. 1831a.

<sup>12</sup> 12 CFR 3.2 (OCC), 12 CFR 217.2 (Board), 12 CFR 324.2 (FDIC).

<sup>13</sup> 12 CFR 217.2.

<sup>14</sup> 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

<sup>15</sup> 12 CFR 217.20.

includes similar language relating to distributions on additional tier 1 capital instruments.<sup>16</sup> However, the agencies apply the criteria for determining eligibility of regulatory capital instruments to ensure consistent outcomes.

## Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rules with regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct identified losses from common equity tier 1 capital elements, to the extent that the institution's common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.<sup>17</sup> Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

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

## Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in

activities that are not permissible for national banks.<sup>18</sup> When subsidiaries of a savings association are engaged in activities that are not permissible for national banks,<sup>19</sup> the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association. If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.<sup>20</sup> As the appropriate federal banking agencies for federal and state savings associations, respectively, the OCC and the FDIC apply this capital treatment to those types of institutions. The Board's regulatory capital framework does not apply to savings associations and therefore does not include this requirement.

## Tangible Capital Requirement

Federal statutory law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.<sup>21</sup> The capital rules of the OCC and the FDIC include a requirement that covered savings associations maintain a tangible capital ratio of 1.5 percent.<sup>22</sup> This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of total assets.<sup>23</sup> Generally speaking, the appropriate federal banking agency must appoint a

<sup>16</sup> Id.

<sup>17</sup> 12 CFR 324.22(a)(9).

<sup>18</sup> See 12 U.S.C. 1464(t)(5).

<sup>19</sup> Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

<sup>20</sup> A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.

<sup>21</sup> See 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

<sup>22</sup> See 12 CFR 3.10(a)(6) (OCC); 12 CFR 324.10(a)(6) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

<sup>23</sup> See 12 U.S.C. 1831o(c)(3); see also 12 CFR 6.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 324.403 (FDIC).

receiver within 90 days after an institution becomes critically undercapitalized.<sup>24</sup>

## Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that take effect beginning on January 1, 2018.<sup>25</sup> These standards require certain bank holding companies to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these bank holding companies to meet a 6 percent supplementary leverage ratio to be considered “well capitalized” under the PCA framework.<sup>26</sup> The rule text establishing the scope of application for the

enhanced supplementary leverage ratio differs among the agencies. However, the distinction is of little practical consequence at this time because the rules of each agency apply the enhanced supplementary leverage ratio to the same set of bank holding companies. The Board applies the enhanced supplementary leverage ratio standards to bank holding companies identified as global systemically important bank holding companies as defined in 12 CFR 217.2 and those bank holding companies’ Board-supervised, institution subsidiaries.<sup>27</sup> The OCC and the FDIC apply enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier bank holding company that has more than \$700 billion in total assets or more than \$10 trillion in assets under custody.<sup>28</sup>

<sup>24</sup> 12 U.S.C. 1831o(h)(3)(A).

<sup>25</sup> See 79 FR 24528 (May 1, 2014).

<sup>26</sup> See 12 CFR 6.4(c)(1)(iv)(B) (OCC); 12 CFR 208.43(b)(1)(iv)(B) (Board); 12 CFR 324.403(b)(1)(v) (FDIC).

<sup>27</sup> See 80 FR 49082 (August 14, 2015).

<sup>28</sup> See 12 CFR 6.4(c)(1)(iv)(B) (OCC); 12 CFR 324.403(b)(1)(v) (FDIC).



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