

[Billing Codes: 4810-33-P; 6210-01-P; 6714-01-P]

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

Docket ID OCC-2020-0015

RIN 1557-AE87

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R-1708]

RIN 7100-AF82

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064-AF46

Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses

Methodology for Allowances

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; correction.

DATE: *Effective Date:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Applicability date:* March 31, 2020.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation published an interim final rule in the *Federal Register* on March 31, 2020, that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (CECL). This final rule corrects errors in and clarifies the March 31, 2020, interim final rule.

FOR FURTHER INFORMATION CONTACT:

OCC: Joanne Phillips, Counsel, or Kevin Korzeniewski, Counsel, Chief Counsel’s Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Benjamin W. McDonough, Assistant General Counsel, (202) 452-2036; David W. Alexander, Senior Counsel, (202) 452-2877; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Michael Phillips, Counsel, mphilips@fdic.gov, (202) 898-3581; Catherine Wood, Counsel, cawood@fdic.gov; Francis Kuo, Counsel, fkuo@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:

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies)

published an interim final rule in the *Federal Register* on March 31, 2020 (85 FR 17723), that delayed the estimated impact on regulatory capital arising from the implementation of Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (interim final rule). This final rule corrects errors and clarifies the interim final rule, including rules affecting 12 CFR 3.301, 12 CFR 217.301, and 12 CFR 324.301 of the agencies’ capital rules (capital rules). Specifically, the agencies are replacing the term “U.S. GAAP” with the term “GAAP,” which is the defined term in the capital rules, and making certain other minor technical corrections.

The agencies also are correcting the unintentional omission of “Category III” banking organizations from the supplementary leverage ratio provision in paragraphs (c)(2) and (d)(2)(ii) of section 301 of the capital rules, to clarify that changes to the calculation of the supplementary leverage ratio apply to all banking organizations that must comply with the supplementary leverage ratio requirement. When section 301 of the agencies’ regulatory capital rules was originally adopted (CECL transition rule) in February 2019, the term “advanced approaches” banking organizations referred to all banking organizations that were subject to the supplementary leverage ratio. However, a separate final rule, “Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements”¹ that became effective on December 31, 2019, redefined “advanced approaches.” Under that rule, advanced approaches banking organizations now include a smaller group of banking organizations (i.e., Category I and II banking organizations), while certain banking organizations are no longer defined as advanced approaches but remain subject to the supplementary leverage ratio requirements (i.e., Category III banking organizations). The agencies did not intend to change the applicability of the CECL

¹ 84 FR 59230 (Nov. 1, 2019).

transition rule for banking organizations that calculate the supplementary leverage ratio, and are now clarifying that the supplementary leverage ratio provisions in the CECL transition rule and the interim final rule continue to be available to Category III banking organizations.

The Supplementary Information to the interim final rule states that a banking organization must calculate transitional amounts for the following items: retained earnings, temporary difference deferred tax assets (DTAs), and credit loss allowances eligible for inclusion in regulatory capital. For each of these items, “the transitional amount is equal to the difference between the electing banking organization's closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount) and its balance sheet amount as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount).” The Supplementary Information further explains that “the CECL transitional amount is equal to the difference between an electing banking organization's pre-CECL and post-CECL amounts of retained earnings at adoption. The adjusted allowances for credit losses (AACL) transitional amount is equal to the difference between an electing banking organization's pre-CECL amount of ALLL and its post-CECL amount of AACL at adoption. The DTA transitional amount is the difference between an electing banking organization's pre-CECL amount and post-CECL amount of DTAs at adoption due to temporary differences.”

The interim final rule modified section 301 of the capital rule to permit use of the CECL transitional amount under the five-year transition by banking organizations that did not record a reduction in retained earnings due to the adoption of CECL. Given this broadening of the capital rule's eligibility requirements, the day-one “difference” in retained earnings for banking organizations electing the interim final rule's transition provision can result in an increase rather than a decrease for purposes of the CECL transitional amount. Similarly, the day-one

“difference” in DTAs and credit loss allowances can result in a decrease rather than an increase. The agencies are therefore clarifying that an electing banking organization would reflect the actual day-one changes to the CECL transitional amount, DTA transitional amount, and AACL transitional amount, including when calculating the modified CECL transitional amount and modified AACL transitional amount. While the definitions of these terms may suggest that retained earnings could only decrease and DTAs and credit loss allowances could only increase (consistent with the 2019 CECL rule), the agencies are further clarifying that to the extent there is a day-one change for these items, an electing banking organization would calculate each transitional amount as a positive or negative number. For example, an electing banking organization with an increase in retained earnings upon adopting CECL would treat these amounts as negative values when calculating its modified CECL transitional amount for purposes of the 2020 CECL transition.

A. Administrative Procedure Act

The agencies are issuing this final rule correction without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).² 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

² 5 U.S.C. 553.

therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”³

The agencies believe that the public interest is best served by implementing the final rule as soon as possible. As discussed above, recent events have suddenly and significantly affected global economic activity. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain.

The interim final rule was adopted by the agencies to address concerns that despite adequate capital planning, uncertainty about the economic environment at the time of CECL adoption could result in higher-than-anticipated increases in credit loss allowances. Because of recent economic dislocations and disruptions in financial markets, banking organizations may face higher-than-anticipated increases in credit loss allowances. This will allow banking organizations to better focus on supporting lending to creditworthy households and businesses.

This final rule makes additional technical and conforming amendments to requirements related to CECL. In addition, this final rule corrects paragraph (c)(2) of section 301 of the capital rules, as provided in the interim final rule, to more clearly provide that changes to the calculation of the supplementary leverage ratio apply to all banking organizations that must comply with the supplementary leverage ratio requirement. Initially, the supplementary leverage ratio applied only to banking organizations characterized as “advanced approaches” banking organizations. However, with the implementation of the final rule, “Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements” that became effective on December 31, 2019, supplementary leverage ratio requirements now apply to a smaller group of advanced approaches banking organizations and Category III banking organizations. The

³ 5 U.S.C. 553(b)(B).

agencies are amending the CECL transition rule and the interim final rule to ensure that all elements of that transition continue to be available to Category III banking organizations, as intended.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which 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.⁴ Because the final rule relieves a restriction, the final rule is exempt from the APA's delayed effective date requirement.⁵ Additionally, the agencies find good cause to publish the final rule correction with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.⁶ 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.⁷

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,

⁴ 5 U.S.C. 553(d).

⁵ 5 U.S.C. 553(d)(1).

⁶ 5 U.S.C. 801 et seq.

⁷ 5 U.S.C. 801(a)(3).

investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁸

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act 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.⁹ In light of current market uncertainty, the agencies believe that delaying the effective date of this interim final rule would be contrary to the public interest.

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.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. This final rule correction does not contain any information collection requirements therefore no submissions will be made by the agencies to OMB in connection with this final rule.

D. Regulatory Flexibility Act

⁸ 5 U.S.C. 804(2).

⁹ 5 U.S.C. 808.

The Regulatory Flexibility Act (RFA)¹⁰ requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.¹¹ 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 impracticable and contrary to the public's interest, 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.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),¹² in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such 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

¹⁰ 5 U.S.C. 601 *et seq.*

¹¹ 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.

¹² 12 U.S.C. 4802(a).

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, with certain exceptions, including for good cause.¹³ For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁴ 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.

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 et seq., requires the preparation of a budgetary impact statement before promulgating a rule that 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. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects in 12 CFR

12 CFR Part 3

¹³ 12 U.S.C. 4802.

¹⁴ 12 U.S.C. 4809.

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

12 CFR Part 217

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

12 CFR Part 324

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

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC 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. No. 116-136, 134 Stat. 281.

§ 3.301 [Amended]

2. Amend § 3.301 by:

a. In paragraphs (b)(1) and (d), remove the phrase “U.S. GAAP” and add in its place the word “GAAP”;

b. In paragraph (c)(2) introductory text, add the phrase “or Category III” after the phrase “an advanced approaches” and add the phrase “its applicable” after the words “its calculation of”;
and

c. In paragraph (d)(2)(ii), add the phrase “or Category III” after the phrase “An advanced approaches” and add the phrase “its applicable” after the phrase “its calculation of”.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board amends chapter II of Title 12 of the Code of Federal Regulations as follows:

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

3. 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–l, 1831w, 1835, 1844(b), 1851, 3904, 3906-3909, 4808, 5365, 5368, 5371 and 5371 note; Pub. L. 116-136, 134 Stat. 281.

§ 217.301 [Amended]

4. Amend § 217.301 by:

a. In paragraphs (b)(1) and (d), remove “U.S. GAAP” and add in its place “GAAP”; and

b. In paragraph (c)(2), add “or Category III” after the phrase “An advanced approaches” and “its applicable” after the words “its calculation of”;

c. In paragraph (d)(2)(i), remove the phrase “in a first” and add in its place “in its first”;

d. In paragraph (d)(2)(ii), add “or Category III” after the phrase “An advanced approaches”; and “its applicable” after the words “its calculation of”.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

5. 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 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; Pub. L. No. 116-136, 134 Stat. 281.

§ 324.301 [Amended]

6. Amend § 324.301 as follows:

- a. In paragraph (b)(2), remove the phrase “FDIC-supervised’s adoption” and add in its place “FDIC-supervised institution’s adoption”;
- b. In paragraph (c)(2), add “or Category III” after the phrase “An advanced approaches” and “its applicable” after the words “its calculation of”;
- c. In paragraph (d)(2)(i), remove the phrase “in its a first” and add in its place “in its first”;
- d. In paragraph (d)(2)(ii), add “or Category III” after the phrase “An advanced approaches” and “its applicable” after the words “its calculation of” and remove the phrase “for the fiscal year that begins during the 2020 calendar year” and add in its place “during 2020”;

e. In paragraph (d)(2)(i)(C), remove the phrase “fifty percent of its AACL transitional amount” and add in its place “fifty percent of its modified AACL transitional amount” and remove the phrase “twenty-five percent of its AACL transitional amount” and add in its place “twenty-five percent of its modified AACL transitional amount”; and

f. In paragraph (d)(2)(ii)(A), remove the phrase “fifty percent of its CECL transitional amount” and add in its place the phrase “fifty percent of its modified CECL transitional amount” and remove the phrase “twenty-five percent of its CECL transitional amount” and add in its place “twenty-five percent of its modified CECL transitional amount”.

7. Amend paragraphs (b)(1) and the introductory paragraph of (d) of § 324.301 as follows:

(b) * * *

(1) *Transition period* means the three-year period, beginning the first day of the fiscal year in which an FDIC-supervised institution adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 transition under paragraph (d) of this section, the five-year period beginning on the earlier of the date an FDIC-supervised institution was required to adopt CECL for accounting purposes under GAAP (as in effect on January 1, 2020), or the first day of the quarter in which the FDIC-supervised institution files regulatory reports that include CECL.

* * * * *

(d) *Calculation of the five-year CECL transition provision.* An FDIC-supervised institution that was required to adopt CECL for accounting purposes under GAAP (as in effect January 1, 2020) as of the first day of a fiscal year that begins during the 2020 calendar year, and that makes the election described in paragraph (a)(1) of this section, may use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020

CECL transition calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which an FDIC-supervised institution uses CECL for purposes of its Call Report. An FDIC supervised-institution that did not make the election described in paragraph (a)(1) of this section because it did not record a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopted CECL may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020 and makes the election in the Call Report filed for the same quarter.

* * * * *

Brian Brooks,
First Deputy Comptroller,
Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Ann Misback,
Secretary of the Board.

Federal Deposit Insurance Corporation.
Dated at Washington, DC, on April 13, 2020.

Robert E. Feldman,
Executive Secretary.