

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

Docket No. OCC-2015-0023

RIN: 1557-AD00

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 237

Docket No. R-1415

RIN: 7100-AD74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN: 3064-AE21

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN: 3052-AC69

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN: 2590-AA45

MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

AGENCIES: Office of the Comptroller of the Currency, Treasury (“OCC”); Board of Governors of the Federal Reserve System (“Board”); Federal Deposit Insurance Corporation (“FDIC”); Farm Credit Administration (“FCA”); and the Federal Housing Finance Agency (“FHFA”).

ACTION: Interim final rule and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each an “Agency” and, collectively, the “Agencies”) are adopting and invite comment on an interim final rule that will exempt certain non-cleared swaps and non-cleared security-based swaps with certain counterparties that qualify for an exception or exemption from clearing from the initial and variation margin requirements promulgated under sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act” or the “Act”). This interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (“TRIPRA”), which exempts from the Agencies’ swap margin rules non-cleared swaps and non-cleared security-based swaps in which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act. This interim final rule is a companion rule to the final rules adopted by the Agencies to implement sections 731 and 764 of the Dodd-Frank Act.

DATES: The interim final rule is effective April 1, 2016. Comments should be received on or before January 31, 2016.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title “Margin and Capital Requirements for Covered Swap Entities” to facilitate the organization and distribution of comments among the Agencies.

Office of the Comptroller of the Currency. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “**Margin and Capital Requirements for Covered Swap Entities**” to facilitate the organization

and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“regulations.gov”:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC-2015-0023” in the Search Box and click “Search”. Results can be filtered using the filtering tools on the left side of the screen. Click on “Comment Now” to submit public comments.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Hand Delivery/Courier:** 400 7th Street, SW, Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Fax:** (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2015-0023” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC -2015-0023” in the Search box and click “Search”. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to a security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R-1415 and RIN 7100 AD74, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- **Fax:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at

<http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street N.W. (between 18th and 19th Street N.W.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN 3064-AE21, by any of the following methods:

- **Agency Web Site:** <http://www.fdic.gov/regulations/laws/federal/>.
Follow instructions for submitting comments on the Agency Web Site.
- **E-mail:** Comments@FDIC.gov. Include RIN 3064-AE21 on the subject line of the message.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, 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 Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>, including any personal information provided.

Federal Housing Finance Agency: You may submit your written comments on the interim final rulemaking, identified by regulatory information number: RIN 2590-AA45, by any of the following methods:

- **Agency Website:** www.fhfa.gov/open-for-comment-or-input.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include “RIN 2590-AA45” in the subject line of the message.
- **Hand Delivery/Courier:** The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/ RIN 2590-AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St., SW, Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

- **U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:** The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/ RIN 2590-AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St., SW, Washington, DC 20024.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA website at <http://www.fhfa.gov>.

Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649-3804.

Farm Credit Administration: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- **E-mail:** Send us an e-mail at reg-comm@fca.gov.
- **FCA Web site:** <http://www.fca.gov>. Select "Law & Regulation," then "FCA Regulations," then "Public Comments," then follow the directions for "Submitting a Comment."

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select “Law & Regulation,” then “FCA Regulations,” then “Public Comments,” and follow the directions for “Reading Submitted Public Comments.” We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

OCC: Kurt Wilhelm, Director, Financial Markets Group, (202) 649-6437, or Carl Kaminski, Special Counsel, Legislative and Regulatory Activities Division, (202) 649-5490, for persons who are deaf or hard of hearing, TTY (202) 649-5597, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219.

Board: Sean D. Campbell, Associate Director, (202) 452-3760, or Elizabeth MacDonald, Manager, Division of Banking Supervision and Regulation, (202) 475-6316; Anna M. Harrington, Counsel, (202) 452-6406, or Victoria M. Szybillo, Counsel, Legal Division, (202) 475-6325, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Markets Branch, bbean@fdic.gov, Jacob Doyle, Capital Markets Policy Analyst, jdoyle@fdic.gov, Division of Risk Management Supervision, (202) 898-6888; Thomas F. Hearn, Counsel, thohearn@fdic.gov, or Catherine Topping, Counsel, ctopping@fdic.gov, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

FCA: J.C. Floyd, Associate Director, Finance & Capital Market Team, Timothy T. Nerdahl, Senior Policy Analyst – Capital Markets, Jeremy R. Edelstein, Senior Policy Analyst, Office of Regulatory Policy, (703) 883-4414, TTY (703) 883-4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883-4020, TTY (703) 883-4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649-3196, Robert.Collender@fhfa.gov, or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649-3060, Peggy.Balsawer@fhfa.gov, Federal Housing Finance Agency, Constitution Center, 400 7th St., SW, Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background.

The Dodd-Frank Act was enacted on July 21, 2010.¹ Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as “swaps” and “security-based swaps.”² As part of this new regulatory framework, sections 731 and 764 of the Dodd-Frank Act added, respectively, a new section 4s to the Commodity Exchange Act of 1936 (the “Commodity Exchange Act”), and a new section 15F to the Securities Exchange Act of 1934 (the “Securities Exchange Act”), which require registration with the U.S. Commodity Futures Trading Commission (“CFTC”) of swap dealers and major swap participants and with the U.S. Securities and Exchange Commission (the “SEC”) of security-based swap dealers and major security-based swap participants.³ These registrants are collectively referred to in this preamble as “swap entities.”

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² “Swaps” are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity-based swaps, equity swaps and credit default swaps, and “security-based swaps” are defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

³ *See* 7 U.S.C. 6s; 15 U.S.C. 78o-10. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the CFTC, which is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. Section 764 of the Dodd-Frank Act requires security-based swap dealers and major security-based swap participants to register with the SEC, which is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the Supplementary Information accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

Sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt joint rules that apply to all swap entities for which any one of the Agencies is the prudential regulator,⁴ imposing capital requirements and initial and variation margin requirements on all swaps and security-based swaps not cleared by a registered derivatives clearing organization or clearing agency (“non-cleared swaps”).⁵ The Agencies initially proposed a joint rule to implement the capital and margin requirements of sections 731 and 764 on May 11, 2011⁶ and re-proposed the rule on September 24, 2014⁷ in light of the comments received by the Agencies on the original proposal and subsequent recommendations regarding the international framework for margin requirements on non-cleared derivatives finalized by the Basel Committee on Banking Supervisions (“BCBS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) in September 2013.⁸ In a separate action, the Agencies have adopted a joint final rule to implement these Dodd-Frank Act requirements (the “joint final rule”).

The capital and margin requirements under sections 731 and 764 of the Dodd-Frank Act apply to non-cleared swaps and complement other provisions of the Dodd-Frank Act that require the CFTC and SEC to make determinations as to whether certain swaps or security-based swaps, or a group, category, or class of such transactions, should

⁴ Section 1a(39) of the Commodity Exchange Act defines the term “prudential regulator” for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. 7 U.S.C. 1a(39).

⁵ See 7 U.S.C. 6s(e)(2)(A); 15 U.S.C. 78o-10(e)(2)(A).

⁶ 76 FR 27564 (May 11, 2011).

⁷ 79 FR 57348 (September 24, 2014).

⁸ See BCBS and IOSCO “Margin requirements for non-centrally cleared derivatives,” (September 2013), *available at <https://www.bis.org/publ/bcbs261.pdf>*.

be required to be cleared.⁹ If the CFTC or SEC has made such a determination, it is generally unlawful for any person to engage in such a swap or security-based swap unless the transaction is submitted to a derivatives clearing organization or clearing agency, as applicable, for clearing.

The clearing requirements, however, do not apply to an entity that is not a financial entity, is using a swap or security-based swap to hedge or mitigate commercial risk, and notifies the applicable Commission, in a manner set forth by that Commission, how it generally meets its financial obligations.¹⁰ Thus, a particular swap or security-based swap might be subject to the capital and margin requirements of section 731 and 764 either because it is not subject to the mandatory clearing requirement, or because one of the parties to the swap is eligible for, and elects to use, an exception or exemption from the mandatory clearing requirement. Such a swap is a “non-cleared” swap for purposes of the capital and margin requirements established under sections 731 and 764 of the Dodd-Frank Act.

Sections 731 and 764 direct the Agencies to impose initial and variation margin requirements on all swaps that are not cleared. Under the proposed rule, the Agencies distinguished among different types of counterparties on the basis of risk,¹¹ and the

⁹ 7 U.S.C. 2(h); 15 U.S.C. 78c-3. The Commodity Exchange Act and the Securities Exchange Act set out standards that the CFTC and the SEC are required to apply when making determinations about clearing, which generally address whether a swap or security-based swap is sufficiently standardized to be cleared. 7 U.S.C. 2(h)(2)(D); 15 U.S.C. 78c-3(b)(4). To date, the CFTC has determined that certain interest rate swaps and credit default swaps are required to be cleared. 17 CFR 50.4.

¹⁰ See 7 U.S.C. 2(h)(7); 15 U.S.C. 78c-3(g). Further, the CFTC has authority to exempt swaps from the clearing requirement. 7 U.S.C. 6(c)(1).

¹¹ The joint final rule takes a similar approach. In implementing this risk-based approach, the final rule distinguishes among four separate types of swap counterparties: (i) counterparties that are themselves swap entities; (ii) counterparties that are financial end

Agencies addressed swaps for certain “other counterparties” including commercial end users by providing that a covered swap entity’s collection of margin from them was subject to the judgment of the covered swap entity. In particular, a covered swap entity was not required to collect initial and variation margin from these “other counterparties” as a matter of course; a covered swap entity was allowed to collect initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate in its overall credit risk management of the swap entity’s exposure to the customer and a covered swap entity.¹²

On January 12, 2015, President Obama signed into law TRIPRA.¹³ Title III of TRIPRA, the “Business Risk Mitigation and Price Stabilization Act of 2015,” amends the statutory provisions added by the Dodd-Frank Act relating to margin requirements for non-cleared swaps and non-cleared security-based swaps. Specifically, section 302 of TRIPRA’s Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions of specified counterparties that would qualify for an exemption or exception from clearing, as explained more fully below. Non-cleared swaps and non-cleared security-based swaps that are exempt under section 302 of TRIPRA will not be subject to the Agencies’ rules implementing margin requirements. In section 303 of TRIPRA, Congress required that

users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure, and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks.

¹² See §§ __.3(d) and __.4(c) of the proposed rule.

¹³ Pub. L. 114-1, 129 Stat. 3 (2015).

the Agencies implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule.¹⁴

The Agencies are therefore promulgating this interim final rule with request for comment. The proposed rule of September 2014 would have allowed covered swap entities to collect initial or variation margin from certain “other counterparties,” at their discretion. Additionally, covered swap entities would have been required to exchange variation margin with all financial end users, and initial margin with financial end users with material swap exposure. The effect of the interim final rule is to grant an exception from the margin requirements of the joint final rule for non-cleared swaps meeting certain criteria that covered swap entities enter into with certain “other counterparties” and certain financial end users.¹⁵

As noted above, swaps may be non-cleared swaps either because (i) there is an exemption or exception from clearing available; or (ii) the CFTC or SEC, as applicable, has not determined that such swap or security-based swap is required to be cleared. The exclusions and exemptions from the joint final margin rule described below will apply to both categories of non-cleared swaps when they involve a counterparty that meets the

¹⁴ Section 303 requires that “[t]he amendments made by this title to the Commodity Exchange Act shall be implemented . . . through the promulgation of an interim final rule . . .” The Agencies are interpreting this provision to apply to the amendments made by TRIPRA to the Securities Exchange Act as well.

¹⁵ The joint final rule also contains provisions allowing a covered swap entity to continue with the current practice of collecting initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate in its overall credit risk management of the swap entity’s exposure to the customer for “other counterparties.” The TRIPRA exemptions are transaction-based, as opposed to counterparty-based. For example, if a commercial end user enters into a non-cleared swap with a covered swap entity and the transaction does not qualify for an exception or exemption as described below, then the covered swap entity would treat the swap in accordance with the “other counterparties” provisions in §§ __.3 and __.4 of the joint final rule. *See* §§ __.3(d) and __.4(c) of the joint final rule.

requirements for an exception or exemption from clearing (e.g., a non-financial end user using swaps to hedge or mitigate commercial risk).

Clearing requirements pursuant to the Commodity Exchange Act began to take effect with respect to certain interest rate and credit default swap indices swaps on March 11, 2013.¹⁶ Covered swap entities have accordingly already established methods and procedures to engage in transactions with counterparties that are eligible for the clearing exceptions or exemptions and for recording and reporting the eligibility of these transactions for the exception or exemptions as required under the statute.¹⁷ The Agencies expect these processes will function equally well as a basis for the parallel statutory exemptions from initial and variation margin requirements for non-cleared swaps implemented pursuant to this interim final rule.

II. Description of the Interim Final Rule.

This interim final rule, which adds a new section __.1(d) to the joint final rule, adopts the statutory exemptions and exceptions as required under TRIPRA. TRIPRA provides that the initial and variation margin requirements do not apply to the non-cleared swaps and non-cleared security-based swaps of three categories of counterparties. In particular, section 302 of TRIPRA amends sections 731 and 764 so that initial and variation margin requirements will not apply to a swap or security-based swap in which a counterparty (to a covered swap entity):

(1) A non-financial entity (including small financial institution and a captive finance company) that qualifies for the clearing exception under section

¹⁶ 17 CFR 50.25. *See* 77 FR 44441 (July 30, 2012)

¹⁷ *See, e.g.*, 17 CFR 50.50(b).

2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act;

(2) A cooperative entity that qualifies for an exemption from the clearing requirements issued under section 4(c)(1) of the Commodity Exchange Act; or

(3) An treasury affiliate acting as agent that satisfies the criteria for an exception from clearing in section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act.

A. *Non-financial entities*

TRIPRA provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act.¹⁸ Section 2(h)(7)(A) and section 3C(g)(1) except from clearing swaps where one of the counterparties is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the CFTC or SEC how it generally meets its financial obligations associated with entering into non-cleared swaps. A number of different types of counterparties may qualify for an exception from clearing under section 2(h)(7)(A) and section 3C(g)(1), including: non-financial end users, small banks, savings associations, Farm Credit System institutions, and credit unions. In addition, captive finance companies qualify for an exception from clearing under section 2(h)(7)(A).¹⁹

¹⁸ See 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c-3(g)(1).

¹⁹ There is no corresponding exclusion under section 3C(g)(1) of the Securities Exchange Act for captive finance companies, likely because these entities generally do not engage in security-based swaps.

Non-financial end users: A counterparty that is not a financial entity²⁰ (sometimes referred to as “non-financial end users” or “commercial end users”) that is using swaps to hedge or mitigate commercial risk generally would qualify for an exception from clearing under section 2(h)(7)(A) or section 3C(g)(1) and thus from the requirements of the joint final rule for non-cleared swaps and non-cleared security-based swaps pursuant to section __.1(d).

Small banks, savings associations, Farm Credit System institutions, and credit unions: The definition of “financial entity” in section 2(h)(7)(C)(ii) provides that the CFTC shall consider whether to exempt small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of \$10 billion or less. Pursuant to this authority, the CFTC has exempted small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of \$10 billion or less from the definition of “financial entity,” thereby permitting these institutions to avail themselves of the clearing exception when they are using swaps to hedge or mitigate risk.²¹ As a result, these small financial institutions that are using non-cleared swaps to hedge or mitigate commercial risk would also qualify for an exemption from the initial and variation margin requirements of the joint final rule pursuant to section __.1(d).

²⁰ See 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c-3(g)(1); 17 CFR 50.50. A “financial entity” is defined to mean (i) a swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940; (vii) an employee benefit plan as defined in sections 3(3) and 3(32) of the Employment Retirement Income Security Act of 1974; (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. See 7 U.S.C. 2(h)(7)(C)(i); 15 U.S.C. 78c-3(g)(3).

²¹ See 7 U.S.C. 2(h)(7)(C)(ii); 17 CFR 50.50; 77 FR 42560 (July 19, 2012); as recodified by 77 FR 74284 (Dec 13, 2012).

Similarly, section 3C(g) provides that the SEC shall consider whether to exempt small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of \$10 billion or less.²² If the SEC were to implement an exclusion for such entities from clearing, non-cleared security-based swaps with those entities would be eligible for the exemption in the Agencies' margin rules pursuant to section __.1(d) as required under TRIPRA, provided they met the other requirements for the clearing exemption.²³

Captive finance companies: Section 2(h)(7)(C) also provides that the definition of "financial entity" does not include an entity whose primary business is providing financing and uses derivatives for the purposes of hedging underlying commercial risks relating to interest rate and foreign exchange exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company ("captive finance company").²⁴ These entities can avail themselves of a clearing exception when they are using swaps to hedge or mitigate commercial risk and thus would be eligible for the exemption in the Agencies' margin rules pursuant to section __.1(d).

B. Treasury affiliates acting as agent

²² See 15 U.S.C. 78c-3(g)(3)(B).

²³ On December 21, 2010, the SEC proposed to exempt security-based swaps used by small depository institutions, small Farm Credit System institutions, and small credit unions with total assets of \$10 billion or less from clearing. See 75 FR 79992 (December 21, 2010).

²⁴ See 7 U.S.C. 2(h)(7)(C)(iii).

TRIPRA provides that the initial and variation margin requirements shall not apply to a non-cleared swap in which a counterparty satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act. These sections provide that, where a person qualifies for an exception from the clearing requirements, an affiliate of that person (including an affiliate predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception as well, but only if the affiliate is acting on behalf of the person and as an agent and uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity (“treasury affiliate acting as agent”).²⁵ A treasury affiliate acting as agent that meets the requirements for a clearing exemption would also be eligible for an exemption pursuant to section __.1(d) from the Agencies’ joint final rule.

C. Certain cooperative entities

TRIPRA provides that the initial and variation margin requirements shall not apply to a non-cleared swap in which a counterparty qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act from the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act for cooperative entities as defined in such exemption.²⁶ The CFTC, pursuant to its authority under section 4(c)(1) of the

²⁵ See 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c-3(g)(4). This exception does not apply to a person that is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) but for section 3(c)(1) or 3(c)(7) of that Act, a commodity pool, or a bank holding company with over \$50 billion in consolidated assets.

²⁶ See 7 U.S.C. 6(c)(1). The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted 17 CFR 50.51, which allows cooperative financial

Commodity Exchange Act, adopted a regulation that allows cooperatives that are financial entities to elect an exemption from mandatory clearing of swaps that: (1) they enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans to members or swaps with their members which are not financial entities or are exempt from the definition of financial entity.²⁷ The swaps of these cooperatives that would qualify for an exemption from clearing also would qualify pursuant to section __.1(d) for an exemption from the margin requirements of the joint final rule.

III. Request for Comments.

The Agencies request comment on all aspects of the interim final rule.

IV. Administrative Law Matters.

A. Administrative Procedures Act.

Pursuant to the Administrative Procedure Act (the “APA”), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” As discussed above, this interim final rule implements Title III of TRIPRA. In section 303 of TRIPRA, Congress required that the Agencies implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule. Given the statutory requirement for an interim final rule, the Agencies find that prior notice and comment in accordance

entities that meet certain qualifications to elect not to clear certain swaps that are otherwise required to be cleared pursuant to section 2(h)(1)(A) of the Commodity Exchange Act.

²⁷ See 7 U.S.C. 6(c)(1); 17 CFR 50.51.

with 5 U.S.C. 553(b) is impracticable. The Agencies are providing, however, an opportunity for comment before the effective date of the interim final rule (April 1, 2016).

B. *Solicitation of Comments on Use of Plain Language.*

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board and FDIC invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

C. *Paperwork Reduction Act Analysis.*

Certain provisions of the interim final rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the 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 number for the OCC is 1557-0251, the FDIC is 3064-0180, and the Board is 7100-0364. The information collection requirements contained in this joint notice of interim final rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR 1320). The Board reviewed the interim final rule under the authority delegated to the Board by OMB.

The interim final rule contains requirements subject to the PRA. The reporting requirements are found in § 1.1(d). The interim final rule implements statutory language that requires certain swaps of certain counterparties to qualify for a statutory exemption or exception from clearing in order to not be subject to the initial and variation margin requirements of the joint final rule.

Comments are invited on:

- (a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- (b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by facsimile to (202) 395-5806, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Margin and Capital Requirements for Covered Swap Entities.

Frequency of Response: Annual, daily, and event-generated.

Affected Public: The affected public of the OCC, FDIC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective interim final rule. Businesses or other for-profit.

Respondents:

OCC: Any national bank or a subsidiary thereof, Federal savings association or a subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Board: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Abstract: This interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (“TRIPRA”), which exempts from the Agencies’ swap margin rules non-cleared swaps and non-cleared security-based swaps in which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act. This interim final rule is a companion rule to the final rules adopted by the Agencies to implement sections 731 and 764 of the Dodd-Frank Act.

Reporting Requirements

The interim final rule implements statutory language that requires certain swaps of certain counterparties to qualify for a statutory exemption or exception from clearing in order to not be subject to the initial and variation margin requirements of the joint final rule. The reporting requirements are found in section __.1(d) pursuant to cross-references to other statutory provisions that set forth the conditions for an exemption from clearing. For example, TRIPRA provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap or non-cleared security-based swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities

Exchange Act, which includes certain reporting requirements established by the applicable Commission.²⁸ Certain other counterparties that are exempt from clearing pursuant to other provisions are also required to meet these reporting requirements to notify the respective Commissions.²⁹ Thus, in certain cases, the statutory exemption from clearing requires a notification to the CFTC or SEC. These counterparties would be required to meet the same notification requirements that are required for an exception or exemption from clearing in order to qualify for an exception or exemption pursuant to section __.1(d) from the initial and variation margin requirements established by the Agencies under sections 731 and 764 of the Dodd-Frank Act. Since this interim final rule serves to implement exemptions and exceptions by reference to existing statutory provisions, section __.1(d) imposes new reporting requirements that are required under the relevant statutory provisions.

Estimated Burden per Response:
§ __.1(d) – 1 hour.

OCC

Number of respondents: 20.

Proposed revisions only estimated annual burden: 20,000 hours.

Total estimated annual burden: 34,780 hours.

²⁸ See, e.g., 17 CFR 50.50(b).

²⁹ For example, certain exempt cooperatives must meet these reporting requirements to qualify for an exemption from clearing. See 17 CFR 50.51(c). Similarly, exempt treasury affiliates also must be an affiliate of a person that qualifies for an exception from clearing that notifies the applicable Commission how it generally meets its financial obligations associated with entering into non-cleared swaps. See 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c-3(g)(4).

*FDIC*³⁰
[TO BE ADDED BY THE FDIC]

Board
[TO BE ADDED BY THE BOARD]

FCA: TO BE ADDED BY THE FCA]

FHFA: [TO BE ADDED BY THE FHFA]

D. *Regulatory Flexibility Act Analysis.*

Board: [TO BE ADDED BY BOARD]

FDIC: [TO BE ADDED BY FDIC]

OCC: The Regulatory Flexibility Act (RFA)³¹ generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA does not apply to a rulemaking where a general notice of proposed rulemaking is not required.³² For the reasons described above in the Supplementary Information, the OCC has determined that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

³⁰ The FDIC had initially estimated that three of its institutions might register as a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant but no state non-member bank nor any state savings association has so registered, so FDIC is reducing its estimate to one as a placeholder for its information collection.

³¹ See 5 U.S.C. 601 *et seq.*

³² See 5 U.S.C. 603 and 604.

FCA: [TO BE ADDED BY FCA]

FHFA: [TO BE ADDED BY FHFA]

**Common Text of the Interim Final Rule
(All Agencies)**

The common text of the interim final rule appears below:

[Part]

MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

§__.1 Authority, purpose, scope, exemptions and compliance dates.

(a) * * *

(b) * * *

(c) * * *

(d) *Exemptions.*

(1) *Swaps.* The requirements of this [part] (except for § __.12) shall not apply to a non-cleared swap if the counterparty:

(i) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(A)) and implementing regulations;

(ii) Qualifies for an exemption from clearing under a rule, regulation, or order that the Commodity Futures Trading Commission issued pursuant to its authority under

section 4(c)(1) of the Commodity Exchange Act of 1936 (7 U.S.C. 6(c)(1)) concerning cooperative entities that would otherwise be subject to the requirements of section

2(h)(1)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(1)(A)); or

(iii) Satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) and implementing regulations.

(2) *Security-based swaps.* The requirements of this [part] (except for § __.12) shall not apply to a non-cleared security-based swap if the counterparty:

(i) Qualifies for an exception from clearing under section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(1)) and implementing regulations;

or

(ii) Satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c-3(g)(4)) and implementing regulations.

* * * *

[END OF COMMON TEXT]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends chapter I of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

1. The authority citation for Part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 et seq., 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o-10(e).

2. Part 45 is amended by:

- a. Removing “[part]” wherever it appears and adding in its place “part 45”; and

- b. Amending paragraph (d) of section 45.1 as set forth at the end of the Common

Preamble.