DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Part 3
Docket ID: OCC-2008-0016
RIN 1557-AD18

FEDERAL RESERVE SYSTEM
12 CFR Parts 208 and 225
Regulations H and Y; Docket No. R-1335

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 325
RIN 3064-AD34

DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Part 567
No. OTS-2008-0014
RIN 1550-AC24

Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: On September 7, 2008, the U.S. Department of Treasury (Treasury) entered into senior preferred stock purchase agreements (the Agreement or Agreements) with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), which effectively provide protection to the holders of senior debt, subordinated debt, and mortgage-backed securities (MBS) issued or guaranteed by these entities. In light of the financial support provided under the Agreements, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are proposing to adopt a 10 percent risk weight for claims on, and the portion of claims guaranteed by, Fannie Mae or Freddie Mac. The 10 percent risk weight would apply so long as an Agreement remains in effect with the respective entity.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], 2008.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "**Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Treatment of Certain Claims on, or Guaranteed by, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)**" 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, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select OCC-2008-0016 to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW, Mail Stop 1-5, Washington, DC 20219.
- **Fax:** (202) 874-4448.
- **Hand Delivery/Courier:** 250 E Street, SW, Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket Number OCC-2008-0016" 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 notice of proposed rulemaking by any of the following methods:

- **Viewing Comments Electronically:** Go to http://www.regulations.gov, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0016" to view public comments for this rulemaking action.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E 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) 874-5043. Upon arrival, visitors will be required to present valid

government-issued photo identification and submit to 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: You may submit comments, identified by Docket No. R-1335, by any of the following methods:

- **Agency Web Site:** http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

- **Federal eRulemaking Portal:** http://www.regulations.gov. Follow the instructions for submitting comments.

- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Jennifer J. Johnson, 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 website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your 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 MP-500 of the Board's Martin Building (20th and C Street, NW) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit by any of the following methods:

- **Federal eRulemaking Portal:** http://www.regulations.gov. Follow the instructions for submitting comments.

- **Agency Web site:** http://www.FDIC.gov/regulations/laws/federal/propose.html.

- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

- **Hand Delivered/Courier:** 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.

- **E-mail:** comments@FDIC.gov.

Instructions: Comments submitted must include "FDIC" and "RIN # 3064-AD34. Comments received will be posted without change to http://www.FDIC.gov/regulations/laws/federal/propose.html, including any personal information provided.

OTS: You may submit comments, identified by OTS–2008–0014, by any of the following methods:

● **Federal eRulemaking Portal-** ''Regulations.gov'': Go to http://www.regulations.gov, under the ''more Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Office of Thrift Supervision'' from the agency dropdown menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OTS-2008-0014' to submit or view public comments and to view supporting and related materials for this proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

● **Mail:** Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0014.

● **Facsimile:** (202) 906–6518.

● **Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2008–0014.

● **Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received 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.

● **Viewing Comments Electronically:** Go to http://www.regulations.gov, select ''Office of Thrift Supervision'' from the agency drop-down menu, then click ''Submit.'' Select Docket ID ''OTS-2008-0014" to view public comments for this notice of proposed rulemaking.

● **Viewing Comments On-Site:** You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Amrit Sekhon, Director, Capital Policy, (202) 874-5070, or David Elkes, Risk Expert, (202) 874 3846, or Carl Kaminski, Attorney, or Ron Shimabukuro, Senior Counsel,

Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Barbara J. Bouchard, Associate Director, (202) 452-3072; or Anna Lee Hewko, Senior Project Manager, (202) 530-6260, Division of Banking Supervision and Regulation; or Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263; or Benjamin W. McDonough, Senior Attorney, (202) 452-2036. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

FDIC: Bobby R. Bean, Policy Section, Chief, (202) 898-3575, or Nancy Hunt, Senior Policy Analyst, (202) 898-6643, Capital Markets Branch, Division of Consumer Protection; or Mark Handzlik, Senior Attorney, (202) 898-3990, or Michael Phillips, Counsel, (202) 898-3581, Supervision Branch, Legal Division.

OTS: Michael Solomon, Director, Capital Risk, (202) 906-5654, Teresa A. Scott, Senior Policy Analyst, (202) 906-6478, Capital Risk, Marvin Shaw, Senior Attorney, (202) 906-6639, Legislation and Regulation Division Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

On September 7, 2008, Treasury announced the establishment of the Government-Sponsored Enterprise Credit Facility to ensure credit availability to Fannie Mae and Freddie Mac. Treasury also entered into senior preferred stock purchase agreements, which ensure that each entity maintains a positive net worth and effectively support the holders of debt and MBS issued or guaranteed by Fannie Mae and Freddie Mac. The Agreements enhance market stability by providing additional security to debt holders – senior and subordinated – and improve mortgage affordability by providing additional confidence to investors in MBS guaranteed by Fannie Mae and Freddie Mac. Treasury indicated that these actions were necessary because ambiguities in the Congressional charters of Fannie Mae and Freddie Mac created a market perception of government backing.[1]

Under the agencies' general risk-based capital rules, claims on, and the portion of claims guaranteed by, U.S. government-sponsored agencies receive a 20 percent risk weight.[2] In light of the additional financial support Treasury has committed to provide under the Agreements, the agencies believe that a reduced risk weight is appropriate for claims on, or guaranteed by, Fannie Mae or Freddie Mac.

Specifically, the agencies are proposing to amend their respective general risk-based capital rules to permit banks, bank holding companies, and savings associations to assign a 10

[1] U.S. Department of Treasury Office of Public Affairs, "Fact Sheet: Treasury Senior Preferred Stock Purchase Agreement," September 7, 2008. Available at http://www.treas.gov/press/releases/reports/pspa_factsheet_090708%20hp1128.pdf.

[2] See 12 CFR part 3, Appendix A, section 3(a)(2) (OCC); 12 CFR part 208, Appendix A, section III.C.2.b. and 12 CFR part 225, Appendix A section III.C.2.b. (Board); 12 CFR part 325, Appendix A, section II.C. (FDIC); and 12 CFR 567.6(a)(ii) (OTS).

percent risk weight to claims on, or guaranteed by, Fannie Mae or Freddie Mac. Claims include all credit exposures, such as senior and subordinated debt and counterparty credit risk exposures, but do not include preferred or common stock. This risk weight could be applied to credit exposures created on, before, or after September 7, 2008. The 10 percent risk weight, which would reflect the reduced credit risk of Fannie Mae and Freddie Mac in light of the Agreements, would apply to these exposures so long as an Agreement remains in effect with the respective entity. This proposal would not affect the calculation of the leverage ratio with respect to these exposures.

The Board is also proposing a technical amendment to the advanced approaches capital rule[3] to conform a cross reference affected by the proposed change to the general risk-based capital rule. The Board, FDIC, and OTS are proposing technical revisions to the general risk-based capital rules that update references to the risk-weight categories to reflect this proposal.

The agencies seek comment on all aspects of this notice of proposed rulemaking. In particular, the agencies request comment on the potential effects of this proposal on other banking organization claims on GSEs, such as Federal Home Loan Bank debt.

Regulatory Analysis

Executive Order 12866

Executive Order 12866 requires federal agencies to prepare a regulatory impact analysis for agency actions that are found to be "significant regulatory actions." Significant regulatory actions include, among other things, rulemakings that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities."[4] Regulatory actions that satisfy one or more of these criteria are referred to as "economically significant regulatory actions."

The OCC and OTS have each determined that this notice of proposed rulemaking likely would be an economically significant regulatory action for purposes of Executive Order 12866. However, in light of the exigent market circumstances resulting from the immediate need to recognize the support provided by the U.S. Treasury Department's senior preferred stock purchase agreements with Fannie Mae and Freddie Mac, and to reduce strain on the capital positions of banking organizations that are holding securities issued by or guaranteed by Fannie Mae and Freddie Mac, the issuance of this notice of proposed rulemaking is subject to the procedures set forth in Section 6(a)(3)(D) of Executive Order 12866.

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[3] 12 CFR part 208, Appendix F (for state member banks) and 12 CFR part 225, Appendix G (for bank holding companies).

[4] Executive Order 12866 (September 30, 1993), 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (February 28, 2002) and by Executive Order 13422, 72 FR 2763 (January 23, 2007). For the complete text of the definition of "significant regulatory action," see E.O. 12866 at § 3(f). A "regulatory action" is "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." E.O. 12866 at § 3(e).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (Pub.L. 96-354, Sept. 19, 1980), (RFA) 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.[5] The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[6]

Under regulations issued by the Small Business Administration,[7] a small entity includes a bank holding company, commercial bank, or savings association with assets of $175 million or less (collectively, small banking organizations). The proposed rule would permit a banking organization to assign a 10 percent risk weight to claims on, and the portion of claims guaranteed by, Fannie Mae or Freddie Mac. The 10 percent risk weight would apply as long as an Agreement remains in effect between the Treasury and the respective entity.

Pursuant to section 605(b) of the RFA, each agency certifies that this proposed rule will not have a significant economic impact on a substantial number of the small entities it supervises. Accordingly, a regulatory flexibility analysis is not required. In making this determination, each agency considered the number of small banking organizations that currently hold claims on or guaranteed by either Fannie Mae or Freddie Mac, the cost of implementing the proposed rule for those banking organizations, and the size of the impact on those banking organizations' regulatory capital levels.

The Agencies have determined that a substantial number of small banking organizations hold claims on or guaranteed by Fannie Mae or Freddie Mac.[8] However, the cost for each such a banking organization to adjust its systems to implement the proposed rule would not be significant since the only change would be a simple mathematical computation. Although reducing the risk weight for claims on or guaranteed by Fannie Mae and Freddie Mac to 10 percent would reduce required minimum regulatory capital, the agencies have determined that the average change in total risk-weighted assets, Tier 1 risk-based capital, and total risk-based capital would not be significant. Additionally, the Agencies note that the proposed rule would be elective. The proposed rule would apply only to banking organizations that choose to take advantage of the proposed 10 percent risk weight. Banking organizations not exercising this option would continue to apply the current 20 percent risk weight applicable to claims on or guaranteed by U.S. government-sponsored entities. The proposed rule does not impose any new mandatory requirements or burdens. Finally, because the proposed rule would apply to all banking organizations, the proposed rule does not have a disproportionate effect on small entities.

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[5] See 5 U.S.C. 603(a),
[6] See 5 U.S.C. 605(b).
[7] See 13 CFR 121.201.
[8] As of June 30, 2008, there were 2,636 small bank holding companies, 889 small national banks, 454 small state member banks, 3,222 small state nonmember banks, and 412 small savings associations. The agencies estimate that the proposal would have an impact on 0 small bank holding companies, 679 small national banks, 420 small state member banks, 2,903 small state nonmember banks, and 350 small savings associations.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), each agency has reviewed the proposed rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the notice of proposed rulemaking.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (UMRA) requires that an agency prepare 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 (adjusted annually for inflation) in any one year. (The inflation adjusted threshold is $133 million or more.) If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each determined that its proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $133 million or more in any one year. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Solicitation of Comments on Use of Plain Language

Section 722 of the GLBA required the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invite comment on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations 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 regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Administrative practice and procedure, Banks, Banking, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225
Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Reporting and recordkeeping requirements, Risk.

12 CFR Part 325
Administrative practice and procedure, Banks, Banking, Capital Adequacy, Reporting and recordkeeping requirements, Risk.

12 CFR Part 567
Capital, Reporting and recordkeeping requirements, Risk, Savings associations

DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Chapter I
Authority and Issuance
For the reasons stated in the common preamble, the Office of the Comptroller of the Currency proposes to amend Part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, in section 3:

a. Revise paragraphs (a)(2)(vi) and (a)(2)(vii), except footnote 10; and

b. Add a new paragraph (a)(7).

3. The revision and addition read as follows:

APPENDIX A TO PART 3–RISK-BASED CAPITAL GUIDELINES
Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items
* * * * *

(a) * * * (1) * * *

(2) * * *

(vi) Except as provided in paragraph (a)(7) of this section, securities issued by, or other direct claims on, United States Government-sponsored agencies.

(vii) Except as provided in paragraph (a)(7) of this section, that portion of assets guaranteed by United States Government-sponsored agencies.[10]
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(7) Federal Home Loan Mortgage Corporation and Federal National Mortgage Corporation. Notwithstanding paragraphs (a)(2)(vi) and (vii) of this section, claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Corporation (FNMA), may receive a risk weight of 10 percent as long as the U. S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with the respective corporations.

[10] * * *

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
12 CFR Chapter II
Authority and Issuance
For the reasons stated in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321-338a, 371d, 461, 481-486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p-1, 1831r-1, 1831w, 1831x, 1835a, 1882, 2901-2907, 3105, 3310, 3331-3351, and 3906-3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c)(5), 78q, 78q-1, and 78w, 1681s, 1681w, 6801, and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In Appendix A to part 208, amend section III.C. as set forth below:
   a. Remove the undesignated paragraph at the beginning of section III.C.;
   b. Redesignate paragraphs 2, 3, and 4 as paragraphs 3, 4, and 5, respectively;
   c. Add new paragraph 2;
   d. In newly redesignated paragraph 3, revise the heading and paragraph 3(b), except footnotes 36 and 37; and
   e. In newly redesignated paragraphs 4 and 5, revise the headings to read as follows:

APPENDIX A to PART 208–CAPITAL ADEQUACY GUIDELINES FOR STATE MEMBER BANKS: RISK-BASED MEASURE
III. * * *
C. * * *
* * * * *

2. Category 2: 10 percent. This category includes claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U. S. Department of Treasury's senior preferred stock purchase agreement, dated as of September 7, 2008, remains in effect with the respective entity. However, at its option, a bank may choose to assign claims described in this ten percent risk weight category to the twenty percent risk weight category.

3. Category 3: 20 percent.
* * * * *

b. This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that the bank has liabilities booked in that currency. In addition, except as provided in paragraph 2 of this section, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[36] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Inter-American Development Bank, the Asian

[36] * * *

Development Bank, the African Development Bank, the European Investment Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the United States or other countries of the OECD-based group are also assigned to this category.[37]

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4. Category 4: 50 percent.* * *

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5. Category 5: 100 percent.* * *

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3. In Appendix F to part 208, revise section 2, as set forth below:

APPENDIX F TO PART 208–CAPITAL ADEQUACY GUIDELINES FOR BANKS: INTERNAL-RATINGS-BASED AND ADVANCED MEASUREMENTS APPROACHES

PART I. * * *

Section 2. * * *

* * * * *

Excluded mortgage exposure means any one-to-four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 208, appendix A, section III.C.4.

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[37] * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

2. In Appendix A to part 225, amend section III.C. as set forth below:

a. Remove the undesignated paragraph at the beginning of section III.C.;

b. Redesignate paragraphs 2, 3, and 4 as paragraphs 3, 4, and 5, respectively;

c. Add new paragraph 2;

d. In newly redesignated paragraph 3, revise the heading and paragraph 3(b), except footnotes 43 and 44; and

e. In newly redesignated paragraphs 4 and 5, revise the headings to read as follows:

APPENDIX A TO PART 225–CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: RISK-BASED MEASURE

III. * * *

C. * * *

* * * * *

2. Category 2: 10 percent. This category includes claims on, and the portions of claims that are guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U. S. Department of Treasury's senior preferred stock purchase agreement, dated as of September 7, 2008, remains in effect with the respective entity. However, at its option, a bank holding company may choose to assign claims described in this ten percent risk weight category to the twenty percent risk weight category.

3. Category 3: 20 percent.

* * * * *

b. This category also includes the portions of claims that are conditionally guaranteed by OECD central governments and U.S. government agencies, as well as the portions of local currency claims that are conditionally guaranteed by non-OECD central governments, to the extent that the bank has liabilities booked in that currency. In addition, except as provided in paragraph 2 of this section, this category also includes claims on, and the portions of claims that are guaranteed by, U.S. government-sponsored[43] agencies and claims on, and the portions of claims guaranteed by, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank for Reconstruction and Development, the Nordic Investment Bank, and other multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. General obligation claims on, or portions of claims guaranteed by the full faith and credit of, states or other political subdivisions of the United States or other countries of the OECD-based group are also assigned to this category.[44]

* * * * *

4. Category 4: 50 percent.

* * * * *

5. Category 5: 100 percent.

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[43] * * *

[44] * * *

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3. In Appendix G to part 225, revise Part I, section 2 as set forth below:

APPENDIX G TO PART 225–CAPITAL ADEQUACY GUIDELINES FOR BANK HOLDING COMPANIES: INTERNAL-RATINGS-BASED AND ADVANCED MEASUREMENT APPROACHES

PART I. * * *

Section 2. * * *

* * * * *

Excluded mortgage exposure means any one-to-four-family residential pre-sold construction loan for a residence for which the purchase contract is cancelled that would receive a 100 percent risk weight under section 618(a)(2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act and under 12 CFR part 225, appendix A, section III.C.4.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation proposes to amend Part 325 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1835, 3907, 3909, 4808; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n, note); Pub. L. 102-242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In Appendix A to part 325, amend section II.A by revising paragraph 1 to read as follows:

Appendix A to Part 325 – Statement of Policy on Risk-Based Capital

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II. * * *

A. * * *

1. Under the risk-based capital framework, a bank's balance sheet assets and credit equivalent amounts of off-balance sheet items are assigned to one of six broad risk categories according to the obligor or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. The resulting weighted values from each of the six risk categories are added together and this sum is the risk-weighted assets total that, as adjusted, [10] comprises the denominator of the risk-based capital ratio.

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3. In Appendix A to part 325, amend section II.C. as follows:

a. Revise the introductory paragraph;
b. Redesignate Category 2 through Category 5 as Category 3 through Category 6, respectively;
c. Add new Category 2;

d. Revise redesignated Category 3, paragraph (b) and footnote 34; and
e. Revise the headings for redesignated Categories 3, 4, 5, and 6 to read as follows:

Appendix A to Part 325 – Statement of Policy on Risk-Based Capital

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II. * * *

C. * * *

The risk-based capital framework contains six risk weight categories--0 percent, 10 percent, 20 percent, 50 percent, 100 percent and 200 percent. In general, if a particular item can be placed in more than one risk category, it is assigned to the category that has the lowest risk weight. An explanation of the components of each category follows:

* * * * *

Category 2 – 10 Percent Risk Weight. This category includes claims on, or portions of claims guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with Freddie Mac and Fannie Mae, respectively. However, at its option, a bank may choose to assign claims described in this category to the 20 percent risk weight category.

Category 3 – 20 Percent Risk Weight.

* * * * *

b. Except as provided in the ten percent risk weight category, this category includes claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies;[34] and portions of claims (including repurchase agreements) collateralized by securities issued or guaranteed by OECD central governments, U.S. Government agencies, or U.S. Government-sponsored agencies. Also included in the 20 percent risk weight category are portions of claims that are conditionally guaranteed by OECD central governments and U.S. Government agencies, as well as portions of local currency claims that are conditionally guaranteed by non-OECD central governments to the extent that the bank has liabilities booked in that currency.

[34] For risk-based capital purposes, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. These agencies include the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, Freddie Mac, and Fannie Mae. For risk-based capital purposes, claims on U.S. Government-sponsored agencies also include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that bank.

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Category 4 – 50 Percent Risk Weight.

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Category 5 – 100 Percent Risk Weight.

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Category 6 – 200 Percent Risk Weight.

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4. In Appendix A to part 325, amend the Table II to section II.C. as follows:,

a. Redesignate Category 2 through Category 5 as Category 3 through Category 6 respectively;

b. Add new Category 2;
c. Revise redesignated Category 3, paragraph (5);
d. Revise footnote 2; and
e. Revise the headings for redesignated Categories 3, 4, 5, and 6 to read as follows:

Appendix A to Part 325 – Statement of Policy on Risk-Based Capital

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II. * * *

C. * * *

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TABLE II – SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES

* * * * *

Category 2 – 10 Percent Risk Weight. This category includes claims on, or portions of claims guaranteed by, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Corporation (Fannie Mae), so long as the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with Freddie Mac and Fannie Mae, respectively. However, at its option, a bank may choose to assign claims described in this category to the 20 percent risk weight category.

Category 3 – 20 Percent Risk Weight.

* * * * *

(5) Except as provided in the ten percent risk weight category, securities and other claims on, or portions of claims guaranteed by, U.S. Government-sponsored agencies;[2]

[2] For risk-based capital purposes, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. These agencies include the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, Freddie Mac, and Fannie Mae. For risk-based capital purposes, claims on U.S. Government-sponsored agencies also include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that bank.

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Category 4 – 50 Percent Risk Weight.* * *

* * * * *

Category 5 – 100 Percent Risk Weight.* * *

* * * * *

Category 6 – 200 Percent Risk Weight.* * *

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DEPARTMENT OF THE TREASURY
Office of Thrift Supervision
12 CFR Chapter V

For the reasons set forth in the common preamble, the Office of Thrift Supervision proposes to amend part 567 of chapter V of title 12 of the Code of Federal Regulations as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.6 is amended as set forth below:

a. Redesignate paragraphs (a)(1)(ii) through (a)(1)(iv) as paragraphs (a)(1)(iii) through (a)(1)(v), respectively;

b. Revise paragraph (a)(1) and add paragraph (a)(1)(ii);

c. Revise the headings in redesignated paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(1)(v); and

d. Revise redesignated paragraphs (a)(1)(iii)(E) and (a)(1)(iii)(F) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(1) <u>On-balance sheet assets</u>. Except as provided in paragraph (b) of this section, risk-weighted on-balance sheet assets are computed by multiplying the on-balance sheet asset amounts times the appropriate risk-weight categories. The risk-weight categories are zero percent risk weight (Category 1) at 567(a)(1)(i), 10 percent risk weight (Category 2) at 567(a)(1)(ii), 20 percent risk weight (Category 3) at 567(a)(1)(iii), 50 percent risk weight (Category 4) at 567(a)(1)(iv), and 100 percent risk weight (Category 5) at 567(a)(1)(v).

(i) Category 1 – Zero Percent Risk Weight

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(ii) Category 2 – 10 Percent Risk Weight

To the extent that the U.S. Department of Treasury's Senior Preferred Stock Purchase Agreement, dated as of September 7, 2008, remains in effect with the respective corporations, this category includes

(A) Securities (not including common stock or preferred stock) issued by, or other direct claims on, the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(B) That portion of assets guaranteed by the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(C) At its option, a savings association may choose to assign assets described in section 567 (a)(1)(ii)(A) and (B) to the twenty percent risk weight category.

(iii) Category 3 – 20 Percent Risk Weight * * *

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(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-sponsored agencies, other than the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

(F) That portion of assets guaranteed by United States Government-sponsored agencies, other than the Federal Home Loan Mortgage Corporation (Freddie Mac) or Federal National Mortgage Association (Fannie Mae).

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(iv) Category 4– 50 Percent Risk Weight

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(v) Category 5 – 100 Percent Risk Weight

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