agency decision by forwarding the decision and order to the contractor, or subcontractor, involved.

(b) An employer's failure or refusal to comply with a final agency decision and order under this regulation may result in a contracting officer's decision to disallow certain costs or terminate the contract for default. In the event of a contracting officer's decision to disallow costs or terminate a contract for default, the contractor may file a claim under the disputes procedures of the contract.

§ 708.39 Sections 6 and 7 of the Contract Disputes Act.

A final agency decision and order issued pursuant to this regulation is not considered a claim by the government against a contractor or ''a decision by the contracting officer'' under sections 6 and 7 of the Contract Disputes Act (41 U.S.C. 605 and 41 U.S.C. 606).

§ 708.40 Notice of program requirements.

Employers who are covered by this part must inform their employees about these regulations by posting notices in conspicuous places at the work site. These notices must include the name, address, telephone number, and website or email address of the DOE office where employees can file complaints under this part.

§ 708.41 Referral to another agency.

Notwithstanding the provisions of this part, the Secretary of Energy retains the right to request that a complaint filed under this part be accepted by another Federal agency for investigation and factual determinations.

§ 708.42 Extension of deadlines.

The Secretary of Energy (or the Secretary's designee) may approve the extension of any deadline established by this part, and the OHA Director may approve the extension of any deadline under § 708.22 through § 708.34 of this subpart (relating to the investigation, hearing, and OHA appeal process). Failure by the DOE to comply with timing requirements does not create a substantive right for any party to overturn a DOE decision on a complaint.

§ 708.43 Affirmative duty not to retaliate.

DOE contractors will not retaliate against any employee because the employee (or any person acting at the request of the employee) has taken an action listed in § 708.5(a) through § 708.5(c).

[FR Doc. 2019–08599 Filed 4–29–19; 8:45 am]

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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2019–0001]

RIN 1557–AE60

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket ID R–1659]

RIN 7100–AF 46

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AE81

Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio To Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities

AGENCY: The Office of the Comptroller of the Currency; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation are inviting public comment on a proposal to implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Section 402 directs these agencies to amend the supplementary leverage ratio of the regulatory capital rule to exclude certain funds of banking organizations deposited with central banks if the banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

DATES: Comments should be received on or before July 1, 2019.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Rule: Revisions to the Supplementary Leverage Ratio to Exclude Certain Central Bank Deposits of Banking Organizations Predominantly Engaged in Custody, Safekeeping and Asset Servicing Activities'' 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 *www.regulations.gov.* Enter ''Docket ID OCC–2019–0001'' in the Search Box and click ''Search.'' 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.
- *Email: 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, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0001'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2019–0001'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then 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*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington,

DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1659; RIN 7100–AF 46, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personal identifying information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE81, by any of the following methods:

- *Agency Website: http://www.fdic.gov/regulations/laws/federal*. Follow instructions for submitting comments on the Agency website.
- *Email: Comments@FDIC.gov*. Include ''RIN 3064–AE81'' on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE81, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* 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 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AE81 and will be posted without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Venus Fan, Risk Expert, or Guowei Zhang, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Patricia Dalton, Technical Expert for Credit and Market Risk, Asset Management, (202) 649–6401; or Rima Kundnani, Attorney, or Christopher Rafferty, Attorney, Chief Counsel's Office, (202) 649–5490; the Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6316; Mark Handzlik, Lead Financial Institution Policy Analyst, (202) 475–6636; or Noah Cuttler, Senior Financial Institution Policy Analyst I, (202) 912–4678; Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Counsel, (202) 452–5270; Mary Watkins, Senior Attorney, (202) 452–3722; 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, (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov*; Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov*; Dushan Gorechan, Financial Analyst, *dgorechan@fdic.gov*; Keith Bergstresser, Capital Markets Policy Analyst, *kbergstresser@fdic.gov*; or *regulatorycapital@fdic.gov*; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Michael Phillips, Counsel, *mphillips@fdic.gov*; Catherine Wood, Acting Supervisory Counsel, *cawood@fdic.gov*; or Alexander Bonander, Attorney, *abonander@fdic.gov*; Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Proposal

This proposal would implement section 402 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (section 402).[1] Section 402 directs the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (together, the agencies) to amend the capital rule [2] to exclude from the supplementary leverage ratio certain central bank deposits of custodial banks. Section 402 defines a custodial bank as any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution (IDI) subsidiary of such a holding company.[3]

Under the proposal, a depository institution holding company would be considered predominantly engaged in custody, safekeeping, and asset servicing activities if the U.S. top-tier depository institution holding company in the organization has a ratio of assets under custody (AUC)-to-total assets of at least 30:1. The proposal would define such a depository institution holding company, together with any subsidiary depository institution, as a ''custodial banking organization.'' [4] Under the proposal, a custodial banking organization would exclude deposits placed at a ''qualifying central bank'' from the denominator of the supplementary leverage ratio. For purposes of the proposal, a qualifying

[1] Public Law 115–174, 402.

[2] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC). While the agencies have codified the capital rule in different parts of title 12 of the Code of Federal Regulations, the internal structure of the sections within each agency's rule are substantially similar. All references to sections in the capital rule or the proposal are intended to refer to the corresponding sections in the capital rule of each agency.

[3] *See generally* Public Law 115–174, section 402.

[4] For purposes of this proposal, the OCC's capital rule would be revised to include a definition of ''custody bank'', defined as a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2. Similarly, the FDIC's capital rule would be revised to include a definition of ''custody bank'', defined as an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

central bank would mean a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the Organisation for Economic Co-operation and Development (OECD) [5] if the country's sovereign exposures qualify for a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years. The amount of central bank deposits that could be excluded from the denominator of the supplementary leverage ratio would be limited by the amount of deposit liabilities on the consolidated balance sheet of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts.

B. Leverage Capital Requirements

Leverage requirements under the capital rule increase in stringency based on the size and complexity of a banking organization.[6] All banking organizations must meet a minimum leverage ratio of 4 percent, measured as the ratio of tier 1 capital to average total consolidated assets.[7] Advanced approaches banking organizations [8] also must maintain a supplementary leverage ratio of 3 percent.[9] The supplementary leverage ratio measures tier 1 capital relative to total leverage exposure, which includes on-balance sheet assets (including deposits at central banks) and certain off-balance sheet exposures.[10] In addition, the largest and most interconnected U.S. bank holding companies are subject to an enhanced supplementary leverage ratio (eSLR) standard whereby they must maintain a supplementary leverage ratio above 5 percent (comprised of the 3 percent minimum supplementary leverage ratio requirement and a leverage capital buffer requirement of 2 percent) to avoid limitations on capital distributions and certain discretionary bonus payments.[11] An IDI subsidiary of a bank holding company subject to the eSLR standard must have a supplementary leverage ratio of at least 6 percent to be considered ''well capitalized'' under the agencies' prompt corrective action framework.[12]

Unlike risk-based capital requirements, leverage capital requirements do not differentiate the amount of regulatory capital that must be maintained for an exposure based on the risk it presents to a banking organization. This distinction allows a leverage ratio to serve as a complement to risk-based capital requirements by establishing a simple and transparent constraint on a banking organization's leverage and mitigating any potential underestimation of risk by either banking organizations or risk-based capital requirements.[13]

C. Overview of Custody, Safekeeping, Asset Servicing Activities and Fiduciary Accounts

Certain banking organizations engage in fiduciary, custody, safekeeping and asset servicing activities. Custody, safekeeping and asset servicing activities generally involve holding securities or other assets on behalf of clients, as well as activities such as transaction settlement, income processing, and related record keeping and operational services. A banking organization may also act as a fiduciary by, for example, acting as trustee or executor, or by having discretion over the management of client assets. Banking organizations typically provide custody, safekeeping, and asset servicing to their fiduciary accounts. While many banking organizations offer some or all of these services, certain banking organizations specialize in these activities, and often do not provide the same range or scale of traditional commercial or retail banking products as are provided by other banking organizations.[14]

Fiduciary and custody clients often maintain cash deposits at the banking organization in connection with these services. Specifically, clients typically maintain cash positions consisting of funds awaiting investment or distribution that are often in the form of deposits placed in the banking organization. These cash deposits help facilitate the administration of the custody account. Under U.S. generally accepted accounting principles (U.S. GAAP), cash deposits at a banking organization are a deposit liability and thus appear on the banking organization's balance sheet.

Cash deposits that are linked to custody and fiduciary accounts at banking organizations fluctuate depending on the activities of the banking organization's custodial clients. For example, cash deposit balances of such banking organizations generally increase during periods when clients liquidate securities, such as during times of stress. To assist in managing these cash fluctuations, banking organizations may maintain significant cash deposits at central banks. Central bank deposits can be used as an asset-liability management strategy to facilitate these banking organizations' ability to support custodial clients' cash-related needs. Under U.S. GAAP, central bank deposits placed by the banking organization are on-balance sheet assets of the banking organization.

D. Section 402 and the Supplementary Leverage Ratio Requirements

Section 402 requires the agencies to amend the supplementary leverage ratio to not take into account funds of a custodial bank that are deposited with certain central banks, provided that

[5] The OECD is an intergovernmental organization founded in 1961 to stimulate economic progress and global trade. A list of OECD member countries is available on the OECD's website, *www.oecd.org*.

[6] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States, but exclude banking organizations subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), and certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[7] 12 CFR 3.10(a)(4) & 3.10(b)(4) (OCC); 12 CFR 217.10(a)(4) & 217.10(b)(4) (Board); 12 CFR 324.10(a)(4) & 324.10(b)(4) (FDIC). On November 21, 2018, the agencies released a proposal that would simplify regulatory capital requirements for qualifying community banking organizations, as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act. The proposal would provide regulatory burden relief to qualifying community banking organizations by giving them an option to calculate a simple leverage ratio, rather than multiple measures of capital adequacy. 84 FR 3062 (February 8, 2019).

[8] Currently, an advanced approaches banking organization is defined as a depository institution holding company with total consolidated assets of at least $250 billion or at least $10 billion in foreign exposure and any of its IDI subsidiaries. The agencies recently proposed revisions to the capital rule that would amend these thresholds and would tailor the application of capital requirements based on a banking organization's risk profile. The proposal would affect the scope of application of the supplementary leverage ratio. *See* 83 FR 66024 (December 21, 2018).

[9] *See* n. 6, *supra.*

[10] 12 CFR 3.10(a)(5)), 3.10(c)(4) (OCC); 12 CFR 217.10(a)(5)), 217.10(c)(4) (Board); 12 CFR 324.10(a)(5)), 324.10(c)(4) (FDIC).

[11] *See* 79 FR 24528 (May 1, 2014). Under OCC and FDIC rules, a depository institution that is a subsidiary of a bank holding company with more than $700 billion in total consolidated assets or more than $10 trillion in assets under custody is subject to the eSLR standards. 12 CFR 6.4(c) (OCC); 12 CFR 324.403(b) (FDIC). Under the Board's rule, a bank holding company that is a global systemically important banking holding company (GSIB) is subject to the eSLR standards. *See* 12 CFR 217.11(d); 12 CFR part 217, subpart H.

[12] 12 CFR 6.4 (OCC); 12 CFR 208.42 (Board); 12 CFR 324.403 (FDIC).

[13] Risk-based and leverage capital measures contain significant information about a banking organization's condition. *See, e.g.,* Arturo Estrella, Sangkyun Park, and Stavros Peristiani (2000): ''Capital Ratios as Predictors of Bank Failure,'' Federal Reserve Bank of New York Economic Policy Review.

[14] *See* OCC Comptrollers Handbook, Custody Services (January 2002).

''any amount that exceeds the value of deposits of the custodial bank that are linked to fiduciary or custodial and safekeeping accounts shall be taken into account when calculating the supplementary leverage ratio as applied to the custodial bank.'' [15] Under section 402, central bank deposits that qualify for the exclusion include deposits of custodial banks placed with (1) the Federal Reserve System, (2) the European Central Bank, and (3) central banks of member countries of the OECD, if the member country has been assigned a zero percent risk weight under the agencies' capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[16] As noted above, section 402 defines a custodial bank as ''any depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, including any insured depository institution subsidiary of such a holding company.'' [17]

As discussed below, the proposal would implement section 402 by defining the scope of banking organizations considered to be predominantly engaged in custody, safekeeping, and asset servicing activities, and revising the supplementary leverage ratio to exclude any qualifying central bank deposits of such banking organizations from total leverage exposure, subject to the limit described in section 402(b)(2).

II. Summary of the Proposal

A. Scope of Applicability

The proposal would define a depository institution holding company predominantly engaged in custody, safekeeping, and asset servicing activities, together with any subsidiary depository institution, as a ''custodial banking organization.'' [18] The phrase ''predominantly engaged in custodial, safekeeping, and asset servicing activities'' suggests that the banking organization's business model is primarily focused on custody, safekeeping, and asset servicing activities, as compared to its other commercial lending, investment banking, or other banking activities.[19]

The agencies considered various measures that they could use to identify and define a custodial banking organization. Specifically, the agencies considered both an AUC-to-total assets measure and an income-based measure. AUC-to-total assets would provide a measure of a banking organization's custodial and safekeeping business relative to its other businesses. An income-based measure would show the percentage of a banking organization's income that it derives from custodial, safekeeping, and asset servicing activities.

Under the AUC-to-total assets measure, among The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, the *lowest* AUC-to-total assets ratio observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 52:1.[20] This means that the banking organization had approximately $52 in AUC for every $1 recognized in their total on-balance sheet assets. In comparison, among the other depository institution holding companies subject to the supplementary leverage ratio, the *highest* AUC-to-total assets ratio observed during that same period was approximately 9:1. For the income-based measure, the agencies analyzed fiduciary and custody and safekeeping income as a percentage of income.[21] This analysis also indicated a clear separation between The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation, and the other depository institution holding companies subject to the supplementary leverage ratio.[22] The agencies' analysis revealed a significant positive correlation between the AUC-to-total asset measure and the income-based measure.[23] The legislative history of section 402 suggests that members of Congress recognized the three institutions identified under either test as custodial banking organizations.[24]

The agencies propose to use the AUC-to-total assets measure to define a custodial banking organization because it provides a measure of the size of a banking organization's custodial, safekeeping, and asset servicing business as compared with its other activities, is objective and publicly reported, and is subject to review by regulators, banking organizations, and the public. In addition, because AUC is often comprised of marketable securities or other assets with widely-quoted market values, banking organizations typically exercise little or no valuation discretion when measuring AUC. A banking organization's total assets reflect the size and scope of all the businesses in which the banking organization is engaged and provides a useful point of comparison to AUC. Accordingly, AUC-to-total assets provides a measure of the extent to which a banking organization is predominantly engaged in custody, safekeeping, and asset servicing activities.

The agencies are not proposing to use an income-based measure because such an approach would increase reporting burden for banking organizations subject to the supplementary leverage ratio. Consistent with section 402, a custodial banking organization is defined with respect to its custodial, safekeeping, and asset servicing activities. Banking organizations do not currently report income from custodial, safekeeping, and asset servicing

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[15] Public Law 115–174, section 402(b)(2).

[16] Public Law 115–174, section 402(a).

[17] *Id.* at section 402(b).

[18] *See* note 4, *supra.*

[19] *See, e.g.,* 115 Cong. Rec. S1544 (Mar. 8, 2018) (statement of Sen. Corker) (''Section 402 is not intended to provide relief to an organization engaged in consumer banking, investment banking, or other businesses, and that also happens to have some custodial business or a banking subsidiary that engages in custodial activities . . . section 402 was intended as a very narrowly tailored provision, focused on true custodial banks''); *see also* H.R. Rep. No. 115–656, at 3–4 (2018) (''Banks that have a predominant amount of businesses derived from custodial services are different from banks that engage in a wide variety of banking activities'').

[20] Banking organizations report Assets under Custody on the FR Form Y–15, Schedule C, Item 3, and banking organizations report total consolidated assets on the FR Form Y–9C, Schedule HC, Item 12. Quarterly reporting of the FR Y–15 became effective starting with the June 30, 2016 as-of date.

[21] Because depository institution holding companies currently do not report income derived from custody activities separately from income derived from fiduciary activities, the agencies used a measure that includes income derived from both activities for purposes of their analysis. Specifically, the agencies analyzed an income-based measure with the numerator as income from fiduciary and custody activities, as reported on FR Y–9C, Schedule HI, Item 5.a, and the denominator as the sum of net interest income and total noninterest income, as reported on the FR Y–9C, Schedule HI, Items 3 and 5.m.

[22] Among The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation, the lowest percentage of income derived from custody and fiduciary activities observed during the period from the second quarter of 2016 through the third quarter of 2018 was approximately 54 percent. In comparison, among the other banking organizations subject to the supplementary leverage ratio, the highest observed percentage of income derived from custody and fiduciary activities during that same period was approximately 15 percent.

[23] Across depository institution holding companies subject to the supplementary leverage ratio in the third quarter of 2018, the correlation coefficient between AUC-to-total assets ratio and income derived from custody and fiduciary activities as a percentage of income was 0.948.

[24] *See, e.g.,* 115 Cong. Rec. S1714 (Mar. 14, 2018) (statement of Sen. Warner) (''Section 402 provides relief to only three banks: Bank of New York Mellon, State Street, and Northern Trust . . . This provision does not mean that, if a bank has a large custodial business, it should get relief . . . .); 115 Cong Rec. S1659 (Mar. 13, 2018) (statement of Sen. Heitkamp) (''Under the plain reading of [S.2155], the three custody banks are the only three institutions that are predominantly engaged in the custody business.'').

activities separately from income derived from fiduciary activities.[25]

The agencies also considered using absolute amount measures. The agencies do not believe that defining custodial banking organizations by reference to an absolute amount measure (such as AUC of at least a specified amount) would be consistent with section 402. Such a measure would only take the scale of a banking organization's custodial, safekeeping, and asset servicing activities into account, rather than considering the predominance of these activities relative to the banking organization's other activities.

The agencies recognize that the ratio of AUC-to-total assets may fluctuate significantly during a stress environment as client securities decline in value or as clients liquidate custodial securities and deposit the cash with the banking organization (thus increasing the banking organization's total assets). To ensure the ratio of AUC-to-total assets under this proposal is appropriately calibrated to take into consideration a range of conditions, the agencies evaluated the quarterly AUC-to-total assets ratios of advanced approaches banking organizations from the first quarter of 2004 through the third quarter of 2018.[26] This period includes the 2007–2009 financial crisis. During the observed period, the lowest AUC-to-total assets ratio among The Bank of New York Mellon Corporation, Northern Trust Corporation, and State Street Corporation was approximately 35:1. Using a four-quarter average, the lowest observed average AUC-to-average total assets ratio among those banking organizations was approximately 39:1. The highest observed AUC-to-total assets ratio for all other advanced approaches banking organizations over the same period was approximately 13:1. Consistent with the analysis described above, this analysis demonstrated a clear separation between the lowest observed AUC-to-total assets ratios of The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation under stress conditions, and the highest observed AUC-to-total asset ratio among other advanced approaches banking organizations.

In view of the agencies' analysis, the agencies are proposing a standard of AUC-to-total assets of 30:1, calculated as an average over the prior four calendar quarters, to identify banking organizations predominantly engaged in custodial, safekeeping, and asset servicing activities. An AUC-to-total assets ratio of 30:1 is approximately equal to the midpoint of the range between the minimum observed for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (52:1) and the maximum observed for the other advanced approaches banking organizations (9:1), over the period from the second quarter of 2016 through the third quarter of 2018. An AUC-to-total asset ratio of 30:1 also is less than the minimum estimated ratio for The Bank of New York Mellon, Northern Trust Corporation, and State Street Corporation (35:1) over the period from the first quarter of 2004 through the third quarter of 2018, which includes the 2007–2009 financial crisis. The use of a four-quarter average further serves to minimize the impact of volatility in a banking organization's AUC-to-total assets ratio, which is a particular concern under stress conditions. The proposed measure also would limit the potential for a banking organization that does not predominantly engage in custody, safekeeping, and asset servicing activities, as compared to its other activities, to qualify as a custodial banking organization.

Accordingly, under the proposal, a custodial banking organization would be defined as a depository institution holding company that is predominantly engaged in custody, safekeeping, and asset servicing activities, as well as any subsidiary depository institution of such a holding company, which means a U.S. top-tier depository institution holding company that has AUC that are at least 30 times the amount of the depository institution holding company's total assets, or an AUC-to-total assets ratio of least 30:1. AUC would be equal to the average of a U.S. top-tier depository institution holding company's assets under custody for the four most recent calendar quarters and total assets would be equal to the average of the U.S. top-tier depository institution holding company's total consolidated assets for the four most recent calendar quarters. A U.S. top-tier depository institution holding company that has a reported AUC-to-total assets ratio of less than 30:1 would no longer qualify as a custodial banking organization and would therefore no longer be able to exclude deposits with a qualifying central bank from the supplementary leverage ratio as of that reporting period.

Under the proposal, any subsidiary depository institution of a U.S. top-tier depository institution holding company that qualifies as a custodial banking organization would exclude from total leverage exposure all deposits with a qualifying central bank that are recognized on its consolidated balance sheet in the same manner as its parent depository institution holding company.[27] The proposal therefore would not require such a subsidiary depository institution to satisfy separately a ratio of AUC-to-total assets to be able to make this exclusion. This approach is both simple and consistent with section 402, which defines a ''custodial bank'' based on the characteristics of the holding company and provides that such a subsidiary depository institution may also exclude deposits at qualifying central banks from its supplementary leverage ratio, to the extent that these deposits do not exceed deposit liabilities of the banking organization that are linked to fiduciary or custodial and safekeeping accounts.

Question 1: What alternative standard, if any, should be used to define a custodial banking organization instead of, or in conjunction with, an AUC-to-total asset ratio? What are the advantages or disadvantages of using an income-based ratio to define a custodial banking organization? What are commenters' views on the potential increased reporting burden of requiring new regulatory reporting line items to distinguish between income derived from custodial, safekeeping, and asset servicing activities and income derived from fiduciary activities, consistent with the requirements of section 402? The agencies encourage commenters to provide an empirical analysis to support the use of a different ratio or standard.

Question 2: What alternative calculation or calibration, if any, should

[25] The agencies recognize that the FDIC has previously defined the term ''custodial bank'' for the purposes of its risk-based deposit insurance assessments. *See* 12 CFR 327.5(c). For assessment purposes, the FDIC defined a custodial bank consistent with section 331 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which required the FDIC to define a custodial bank based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody. As section 402 defines custodial bank as a ''depository institution holding company that is predominantly engaged in custody, safekeeping, and asset servicing activities,'' the agencies believe it is appropriate to develop a separate definition (*i.e.,* custodial banking organization) consistent with section 402.

[26] The agencies reviewed IDI-level data from the Consolidated Reports of Condition and Income (Call Report) to approximate the holding company-level AUC-to-total assets ratios of advanced approaches banking organizations during the financial crisis, because banking organizations began reporting FR Y–15 in 2015. Information regarding AUC was derived from Call Report, Schedule RC–T, Items 10 and 11, Columns A (managed assets) and B (non-managed assets), and was used as a proxy for AUC at the holding company level, as most custodial services are conducted out of IDI subsidiaries.

[27] This proposed rule would apply to all depository institution subsidiaries of a custodial banking organization holding company, including uninsured Federal savings associations (FSAs). However, the proposal would not apply to Federal branches and agencies supervised by the OCC.

be used in the calculation of AUC-to-total assets to account for a range of economic conditions? The agencies encourage commenters to provide an empirical analysis to support the use of a different calculation.

Question 3: Under the proposed rule, a custodial banking organization holding company and its subsidiary depository institutions would be immediately disqualified as a custodial banking organization holding company if the four quarter average of the holding company's AUC-to-total asset ratio falls below the 30:1 ratio and would no longer be permitted to adjust its supplementary leverage ratio under the proposed rule. The use of a four-quarter average of AUC-to-total assets measure should generally prevent an unforeseen disqualification of a custodial banking organization holding company and its subsidiary depository institutions. What would be the advantages and disadvantages of delaying the timing of a banking organization losing its status as a "custodial banking organization," to minimize market disruptions during a stress environment? What would be an appropriate amount of time for such a delay?

Question 4: What changes, if any, should the agencies consider with respect to the proposed definition of "custodial banking organization"?

The agencies are contemplating applying this rule to a depository institution that is not controlled by a holding company (standalone depository institution) to permit such standalone depository institution to qualify as a custodial banking organization for purposes of the proposal. Extending the application of the proposal to standalone depository institutions would be consistent with the current scope of applicability of the agencies' capital rule. While section 402 does not apply to standalone depository institutions, it does not limit the agencies' authority [28] to otherwise tailor or adjust the supplementary leverage ratio.[29] Under such an approach, a standalone depository institution would similarly be able to exclude certain deposits placed at a "qualifying central bank" from the denominator of its supplementary leverage ratio, subject to a specified limit, if the standalone depository institution has an AUC-to-total assets ratio of at least 30:1. The agencies are seeking comment on all aspects of extending the proposal to standalone depository institutions.

Question 5: Should a standalone depository institution be permitted to qualify as a custodial banking organization and why? What would be the advantages and disadvantages of allowing such a standalone depository institution that has no depository institution holding company to qualify as a custodial banking organization under this proposed rule?

Question 6: The agencies note that depository institutions currently report information related to fiduciary or custodial and safekeeping accounts under Schedule RC–T of the Call Report and do not report FR Form Y–15. The agencies also note that the information captured on Schedule RC–T and AUC reported on FR Form Y–15 is similar but not identical. What would be the advantages and disadvantages of allowing a standalone depository institution to use existing bank level data currently reported under Schedule RC–T of the Call Report to determine AUC, with a possible adjustment to reconcile Schedule RC–T and Form Y–15?

B. Mechanics of the Central Bank Deposit Exclusion

Consistent with section 402, the amount of central bank deposits eligible for exclusion from the supplementary leverage ratio would equal the average daily balance over the reporting quarter of all deposits placed with a "qualifying central bank." For purposes of the proposal, a qualifying central bank would mean a Federal Reserve Bank, the European Central Bank, or a central bank of a member country of the OECD if an exposure to the member country receives a zero percent risk weight under section 32 of the capital rule and the sovereign debt of such member country is not in default or has not been in default during the previous five years.[30]

The agencies are proposing that the exclusion amount be calculated based on the average daily balance of deposits with a qualifying central bank over the reporting quarter to align with the calculation of on-balance sheet assets in total leverage exposure.[31] All deposits placed with a Federal Reserve Bank could qualify for the central bank deposit exclusion, including deposits in a master account, deposits in a term deposit account that offers an early withdrawal feature, and deposits in an excess balance account. Any deposits with a qualifying central bank that are denominated in a foreign currency would be measured in U.S. dollars to determine the amount of the deposits that could be excluded from total leverage exposure. Central bank deposits recognized on the consolidated balance sheet of a custodial banking organization may include cash placements with a central bank made by a foreign subsidiary. Although a foreign bank subsidiary would not itself be a custodial banking organization under this proposal, any qualifying central bank deposits of the foreign bank subsidiary could be excluded from total leverage exposure of the parent organization to the extent that the central bank deposits are consolidated on the balance sheet of the parent organization, and satisfy the requirements for a qualifying central bank deposit.

Question 7: What terms, if any, should the agencies define or more specifically describe to facilitate the calculation of the amount of central bank deposits eligible for exclusion from total leverage exposure?

C. Central Bank Deposit Exclusion Limit

The proposal would limit the amount of a custodial banking organization's deposits with a qualifying central bank that could be excluded from total leverage exposure. The amount of such deposits that could be excluded could not exceed an amount equal to the on-balance-sheet deposit liabilities of the custodial banking organization that are linked to fiduciary or custody and safekeeping accounts. Specifically, a custodial banking organization would be able to exclude from its total leverage exposure the lesser of (1) the amount of central bank deposits placed at qualifying central banks by the custodial banking organization (including deposits placed by consolidated subsidiaries), and (2) the amount of on-balance sheet deposit liabilities of the custodial banking organization (including consolidated subsidiaries) that are linked to fiduciary or custodial and safekeeping accounts.[32] Consistent with the calculation of on-balance sheet assets for purposes of the supplementary leverage ratio, a

[28] *See, e.g,* 12 U.S.C. 3907 (International Lending Supervision Act) ("Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.").

[29] Public Law 115–174, section 402(c).

[30] Under section 32 of the capital rule, an exposure to a member country that qualifies for a zero percent risk weight cannot also be in default or have been in default during the previous five years. The agencies are proposing to include this latter provision, however, to preserve the intent of section 402.

[31] 12 CFR 3.10(c)(4)(i)(A) (OCC); 12 CFR 217.10(c)(4)(i)(A) (Board); 12 CFR 324.10(c)(4)(i)(A) (FDIC).

[32] The proposal would not affect the calculation of the size indicator under the Board's Banking Organization Systemic Risk Report (FR Y–15).

custodial banking organization would calculate the amount of deposit liabilities linked to a fiduciary or custody and safekeeping account as the average deposit liabilities for such accounts, calculated as of each day of the reporting quarter.

The proposal would define a fiduciary or custodial and safekeeping account as an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal and state law. The agencies anticipate that the scope of the fiduciary or custodial and safekeeping accounts under the proposal would not deviate materially from the current scope of the fiduciary and custody and safekeeping accounts reported under Schedule RC–T of the Call Report.

Consistent with section 402, a custodial banking organization would include in total leverage exposure any amount of central bank deposits with a qualifying central bank that exceeds the value of funds deposited with the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts. The fact that a client has both a deposit account and a fiduciary or custody and safekeeping account at the same custodial banking organization, or an affiliate or subsidiary of such custodial banking organization, would not alone be sufficient for those accounts to be considered ''linked'' for purposes of the proposal. A deposit account would be considered linked to a fiduciary or custodial and safekeeping account if the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account. For example, cash deposits may be used to facilitate processing transactions for the custody or fiduciary account, such as interest and dividend payments related to securities held in the custody or fiduciary account, cash transfers or distributions from the custody or fiduciary account, and the purchases and sale of securities for the account. These deposit balances correspond, and are reconciled, to the custodian's off-balance sheet books and records for each fiduciary and custody account. In times of stress when market conditions may lead to the liquidation of significant volumes of securities in a banking organization's fiduciary or custody and safekeeping accounts, these linked deposits may increase significantly. That is, during times of stress, custodial banking organizations may experience significant increases in custodial deposits. A custodial banking organization may have to hold additional capital to meet its supplementary leverage ratio requirement as a result of the increase in on balance sheet assets. Implementation of section 402 would mitigate this capital impact.

The asset exclusion limit for ''custodial banks'' provided under the FDIC's regulations for purposes of determining risk-based deposit insurance assessments (FDIC exclusion limit) also includes a concept of a ''linked'' deposit.[33] In contrast to the FDIC exclusion limit, this proposal would apply to both custodial banking organization holding companies and custodial banking organization subsidiary depository institutions, as well as foreign subsidiaries of such entities; would use a more restrictive standard to define a custodial banking organization; and would apply only to custodial banking organizations that are subject to the supplementary leverage ratio. The agencies believe that these differences are appropriate in light of the purpose served by section 402 (*i.e.,* prudential regulation of custodial banking organizations' regulatory capital) as compared to deposit insurance assessments, and because section 402 applies to a narrow set of the largest banking organizations (*i.e.,* advanced approaches banking organization that qualify as custodial banking organizations).

Question 8: What alternative definitions, if any, should the agencies consider to define a fiduciary or custodial and safekeeping account and why? The agencies note that depository institutions currently report information related to fiduciary or custodial and safekeeping accounts under Schedule RC–T of the Call Report. Should the proposed definition explicitly reference the reporting instructions for Schedule RC–T of the Call Report? What challenges would banking organizations anticipate in identifying fiduciary or custodial and safekeeping accounts under the proposed definition?

Question 9: What challenges would banking organizations face in applying the proposed standard for determining linkage between a deposit account and a fiduciary or custodial and safekeeping account; that is, that the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account? How should this standard be broadened or narrowed to include or exclude particular types of deposits? What alternative standard should the agencies consider and why? What are the advantages and disadvantages of using the FDIC exclusion limit or the reporting instructions to Schedule RC–O of the Call Report, which collects information for the FDIC exclusion limit, for purposes of determining linkage between a deposit account and a fiduciary or custody and safekeeping account?

Question 10: Under the Board's total loss-absorbing capacity rule, a GSIB is subject to requirements that, in part, rely on the GSIB's total leverage exposure.[34] *Because the Board's total loss-absorbing capacity rule relies on the definition of total leverage exposure in the Board's capital rule, the proposal could affect the amount of eligible external total loss-absorbing capacity required to be held by a GSIB that is also a custodial banking organization. What are the advantages and disadvantages of revising the definition of total leverage exposure for custodial banking organizations solely for purposes of the supplementary leverage ratio in the capital rule as compared to revising total leverage exposure for custodial banking organizations in other rules, such as in the Board's total loss-absorbing capacity rule?*

D. Regulatory Reporting Requirements

Advanced approaches banking organizations currently report their supplementary leverage ratios on FFIEC Form 101, Schedule A and Form Y–9C, Schedule HC–R. The agencies expect to propose modifications to the regulatory reporting requirements for the supplementary leverage ratio in a separate publication in the **Federal Register** to reflect the implementation of the central bank deposit exclusion described in this proposal.

III. Impact Analysis

The top-tier U.S. depository institution holding companies that would qualify as custodial banking organizations under the proposal, as well as each of their depository institution subsidiaries, would be able to exclude central bank deposits from total leverage exposure. For custodial banking organization holding companies and their lead depository institution subsidiaries, the agencies estimate that central bank deposits eligible for exclusion represent between

[33] *See* 12 CFR 327.5(c) (Assessment base for custodial banks) and FFIEC 031 and FFIEC 041 Instructions, Schedule RC–O, Item No. 11.b., Custodial bank deduction limit (''An institution that meets the definition of custodial bank is eligible to have the FDIC deduct certain assets from its assessment base, subject to a limit . . . which equals the average amount of the institution's transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custodial, or safekeeping account. . . .''), available at *www.ffiec.gov.*

[34] 12 CFR 252.61.

21 and 30 percent of these firms' total assets and between 20 and 28 percent of their total leverage exposure.[35] Based on an exclusion of this amount from each of these firms' total leverage exposure, the proposal would result in a decrease in the amount of required tier 1 capital of approximately $8 billion in aggregate across these top-tier U.S. depository institution holding companies and approximately $8 billion in aggregate across their lead depository institution subsidiaries when measuring the supplementary leverage ratio requirement without consideration of other capital requirements.[36] However, the binding capital requirement for a given firm is the capital requirement that requires the highest amount of regulatory capital.[37] Although holding companies are subject to leverage, risk-based, and post-stress capital requirements, only one of those requirements binds an individual holding company at any given time.[38] Similarly, only one of the applicable leverage and risk-based capital requirements binds a depository institution at any given time.[39] The risk profile and the capital requirements for the activities and exposures of a banking organization determine which capital requirement is binding.

Thus, the proposal would reduce the amount of tier 1 capital that must be maintained by a custodial banking organization holding company only if the supplementary leverage ratio currently serves as the binding capital requirement for the banking organization.[40] Data from the third quarter of 2018 data suggests that top-tier U.S. depository institution holding companies that would qualify as custodial banking organizations currently are bound by other post-stress capital requirements. Therefore, the proposal is not expected to decrease the amount of tier 1 capital maintained by such holding companies.

In contrast, the supplementary leverage ratio currently serves as the binding constraint for two custodial banking organization depository institution subsidiaries. Accordingly, under the proposal, the amount of tier 1 capital required of those institutions would decrease by approximately $7 billion, which represents approximately 23 percent of the total amount of tier 1 capital that must be maintained by those institutions currently.

Regulatory capital supports a depository institution subsidiary's ability to absorb unexpected losses. The capital standards and other constraints applicable at the custodial banking organization holding company level are expected to limit the amount of capital that such a holding company could distribute or allocate for other purposes, thus limiting any safety and soundness or financial stability concerns for the holding company as a whole. In addition, the agencies have regulatory and supervisory tools to constrain the ability of a depository institution to make capital distributions.

IV. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed 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 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections relate to the regulatory capital rules for each agency. However, the agencies expect that these information collections will not be affected by this proposed rule and therefore no submissions will be made under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320) for each of the agencies' regulatory capital rules.

The proposed rule, once final, may require changes to the following reports: (1) Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031); (2) Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041); (3) Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $1 Billion (FFIEC 051) (OMB Control Nos. 1557–0081 (OCC), 7100–0036 (Board), 3064–052 (FDIC)); (4) the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Control Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)); (5) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB Control Nos. 7100–0128 (Board)). Any changes to these information collections will be addressed in one or more separate **Federal Register** notices at the final rule stage.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total revenue of $38.5 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. As of December 31, 2017, the OCC supervised 886 small entities. The rule would impose requirements on 4 OCC supervised entities that are subject to the advanced approaches risk-based capital rule, which typically have assets in excess of $250 billion, and therefore would not be small entities. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The

[35] Analysis reflects data from the Consolidated Financial Statements for Holding Companies (FR Y–9C), the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), as reported by The Bank of New York Mellon Corporation, State Street Corporation, and Northern Trust Corporation and their IDI subsidiaries as of third quarter 2018, as well as data from the 2018 Comprehensive Capital Analysis and Review and confidential information collected through the supervisory process.

[36] Because The Bank of New York Mellon Corporation and State Street Corporation are each GSIBs, the amount of tier 1 capital required to meet regulatory minimums and avoid limitations on capital distributions is based on a 5 percent requirement at the holding company level and a 6 percent requirement at the insured depository institution subsidiary level. Because Northern Trust Corporation is not a GSIB, its required amount of tier 1 capital is based on a 3 percent requirement at both the holding company and insured depository institution subsidiary levels.

[37] For purposes of this analysis, a capital requirement is considered binding at the level that it would impose restrictions on the ability of a firm to make capital distributions or if the firm would no longer be considered ''well capitalized'' under the agencies' prompt corrective action framework.

[38] The Board's capital plan rule requires certain large bank holding companies, including the GSIBs, to hold capital in excess of the minimum capital ratios by requiring them to demonstrate the ability to satisfy the capital requirements, including the supplementary leverage ratio, under stressful conditions. 12 CFR 225.8(e)(2).

[39] Depository institutions are not subject to post-stress capital requirements.

[40] The findings set forth in this impact analysis with respect to the release of capital pertain only to the revisions under this proposal, and do not consider the capital impact of other prospective changes to the capital rule.

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency to consider whether the rule it proposes will have a significant economic impact on a substantial number of small entities.[41] In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The proposal would also make corresponding changes to the Board's reporting forms.

As discussed in detail above, the proposed rule would amend the capital rule to provide an exclusion under the denominator of the supplementary leverage ratio for central bank deposits of a custodial banking organization, defined as a top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company's total assets; or a subsidiary of such a depository institution holding company.

The Board has broad authority under the International Lending Supervision Act (ILSA)[42] and the PCA provisions of the Federal Deposit Insurance Act[43] to establish regulatory capital requirements for the institutions it regulates. For example, ILSA directs each Federal banking agency to cause banking institutions to achieve and maintain adequate capital by establishing minimum capital requirements as well as by other means that the agency deems appropriate.[44] The prompt corrective action (PCA) provisions of the Federal Deposit Insurance Act direct each Federal banking agency to specify, for each relevant capital measure, the level at which an IDI subsidiary is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[45] In addition, the Board has broad authority to establish regulatory capital standards for bank holding companies, savings and loan holding companies, and U.S. intermediate holding companies of foreign banking organizations under the Bank Holding Company Act, the Home Owners' Loan Act, and the Dodd-Frank Reform and Consumer Protection Act (Dodd-Frank Act).[46]

The proposed rule would apply only to advanced approaches banking organizations. Advanced approaches banking organizations include depository institutions, bank holding companies, savings and loan holding companies, or intermediate holding companies with at least $250 billion in total consolidated assets or has consolidated on-balance sheet foreign exposures of at least $10 billion, or a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches banking organization. The proposed rule therefore would not impose mandatory requirements on any small entities, unless the small entity was a subsidiary of an advanced approaches banking organization.

Further, as discussed previously in the Paperwork Reduction Act section, the proposed rule, once final, may require changes to the Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)) and the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128 (Board)). In addition, the Board is aware of no other Federal rules that duplicate, overlap, or conflict with the proposed changes to the capital rule. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[47] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million if they are either independently owned and operated or owned by a holding company that also has less than $550 million in total assets.[48]

As of September 30, 2018, there were 3,533 FDIC-supervised institutions, of which 2,726 are considered small entities for the purposes of RFA. These small entities hold $494 billion in

[41] 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 $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,304 small bank holding companies, 216 small savings and loan holding companies, and 541 small state member banks.

[42] 12 U.S.C. 3901–3911.

[43] 12 U.S.C. 1831o.

[44] 12 U.S.C. 3907(a)(1).

[45] 12 U.S.C. 1831o(c)(2).

[46] *See* 12 U.S.C. 1467a, 1844, 5365, 5371.

[47] 5 U.S.C. 601 *et seq.*

[48] The SBA defines a small banking organization as having $550 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

assets, accounting for 16.5 percent of total assets held by FDIC-supervised institutions.[49]

The proposed rule would apply to only three advanced approaches banking organizations, one of which has an IDI subsidiary that is FDIC-supervised and has less than $550 million in total assets. However, that institution is not a small entity for the purposes of RFA since it is owned by a holding company with over $550 million in total assets. Since this proposal does not affect any FDIC-supervised institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[50] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?
- 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 achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[51] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and clients of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on 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.[52]

The agencies note that comment on these matters has been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

E. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[53] Under this analysis, the OCC considered whether the proposed rule 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 (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is near zero. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

List of Subjects

12 CFR Part 3

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

12 CFR Part 217

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

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 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, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by adding the definitions of ''custody bank'', ''fiduciary or custodial and safekeeping account'', and ''qualifying central bank'' in alphabetical order as follows:

§ 3.2 Definitions.

* * * * *

Custody bank means a national bank or Federal savings association that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of section 3.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means:

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the OECD, if:

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 3.32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 3. Section 3.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 3.10 Minimum capital requirements.

* * * * *

[49] FDIC Call Report, September 30, 2018.

[50] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[51] 12 U.S.C. 4802(a).

[52] 12 U.S.C. 4802.

[53] 2 U.S.C. 1531 *et seq.*

(c) * * *

(4) * * *

* * * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member national bank and Federal savings association and paragraph (c)(4)(ii)(J) of this section for a custody bank:

* * * * *

(J) A custodial bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds that the custody bank's clients have on deposit at the custody bank that are linked to fiduciary or custodial and safekeeping accounts. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a clients that maintains a fiduciary or custodial and safekeeping account with the custody bank, and the deposit account is used to facilitate the administration of the fiduciary or custody and safekeeping account.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

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

■ 4. 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.

■ 5. Section 217.2 is amended by adding the definitions of ''custodial banking organization,'' ''fiduciary or custodial and safekeeping accounts,'' and ''qualifying central bank'' in alphabetical order as follows:

§ 217.2 Definitions.

* * * * *

Custodial banking organization means

(1) A Board-regulated institution that is:

(i) A top-tier depository institution holding company domiciled in the United States that has assets under custody that are at least 30 times the amount of the depository institution holding company's total assets; or

(ii) A state member bank that is a subsidiary of a depository institution holding company described in paragraph (1)(i).

(2) For purposes of this definition, total assets are equal to the average of the banking organization's total consolidated assets for the four most recent calendar quarters. Assets under custody are equal to the average of the Board-regulated institution's assets under custody for the four most recent calendar quarters.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of § 217.10(c)(4)(ii)(J), an account administered by a custodial banking organization for which the custodial banking organization provides fiduciary or custodial and safekeeping services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 6. Section 217.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 217.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member Board-regulated institution and paragraph (c)(4)(ii)(J) of this section for a custodial banking organization:

* * * * *

(J) A custodial banking organization shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custodial banking organization has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custodial banking organization that are linked to fiduciary or custodial and safekeeping accounts at the custodial banking organization. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custodial banking organization and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

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

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

■ 8. Section 324.2 is amended by adding the definitions of ''custody bank,'' ''fiduciary or custodial and safekeeping accounts,'' and ''qualifying central bank'' in alphabetical order as follows:

§ 324.2 Definitions.

* * * * *

Custody bank means an FDIC-supervised institution that is a subsidiary of a depository institution holding company that is a custodial banking organization under 12 CFR 217.2.

* * * * *

Fiduciary or custodial and safekeeping account means, for purposes of section 324.10(c)(4)(ii)(J), an account administered by a custody bank for which the custody bank provides fiduciary or custodial and safekeeping services, as authorized by applicable federal or state law.

* * * * *

Qualifying central bank means

(1) A Federal Reserve Bank;

(2) The European Central Bank, and

(3) The central bank of any member country of the Organisation for Economic Co-operation and Development, if

(i) Sovereign exposures to the member country would receive a zero percent risk-weight under section 324.32 of this part; and

(ii) The sovereign debt of the member country is not in default or has not been in default during the previous 5 years.

* * * * *

■ 9. Section 324.10, paragraph (c)(4)(ii) is revised and new paragraph (c)(4)(ii)(J) is added to read as follows:

§ 324.10 Minimum capital requirements.

* * * * *

(c) * * *

(4) * * *

(ii) For purposes of this part, total leverage exposure means the sum of the items described in paragraphs (c)(4)(ii)(A) through (H) of this section, as adjusted pursuant to paragraph (c)(4)(ii)(I) of this section for a clearing member FDIC-supervised institution and paragraph (c)(4)(ii)(J) of this section for a custody bank:

* * * * *

(J) A custody bank shall exclude from its total leverage exposure the lesser of:

(1) The amount of funds that the custody bank has on deposit at a qualifying central bank; and

(2) The amount of funds in deposit accounts at the custody bank that are linked to fiduciary or custodial and safekeeping accounts at the custody bank. For purposes of this paragraph, a deposit account is linked to a fiduciary or custodial and safekeeping account if the deposit account is provided to a client that maintains a fiduciary or custodial and safekeeping account with the custody bank and the deposit account is used to facilitate the administration of the fiduciary or custodial and safekeeping account.

* * * * *

Dated: March 25, 2019.

Joseph M. Otting,

Comptroller of the Currency.

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

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on March 29, 2019.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–08448 Filed 4–29–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01;–P 6714–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0673; FRL–9992–04–Region 6]

Air Plan Approval; Texas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve elements of two State Implementation Plan (SIP) submissions from the State of Texas for the 2015 Ozone (O_3) National Ambient Air Quality Standard (NAAQS). These submittals address how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Texas SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS.

DATES: Written comments must be received on or before May 30, 2019.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2018–0673, at *https://www.regulations.gov* or via email to *paige.carrie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e,.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Carrie Paige (214) 665–6521, *paige.carrie@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige (214) 665–6521, *paige.carrie@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Paige or Mr. Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA.

I. Background

Below is a short discussion of background on the 2015 Ozone NAAQS addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.

EPA has regulated Ozone since 1971, when we published the first NAAQS for Photochemical Oxidants (36 FR 8186, April 30, 1971). Most recently, following a periodic review of the 2008 NAAQS for O_3, EPA revised the primary and secondary O_3 NAAQS to 0.070 ppm (82 FR 65291, October 26, 2015).[1] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.[2]

Each state must submit a SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of Section 110(a)(2) of the CAA. This section of Act includes a list of specific elements necessary for a States air quality program. We term this SIP an infrastructure SIP or i-SIP. On September 13, 2013, the EPA issued guidance addressing the i-SIP elements for NAAQS.[3] On August 17, 2018, the

[1] Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs.*

[2] Information on ozone formation and health effects is available at *https://www.epa.gov/ozone-pollution.*

[3] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.