consulting with the Selective Service System. The official will examine the individual's request and make his or her own conclusion as to whether the failure to register was knowing and willful. The decision of OPM is final. There is no further right to administrative review.

(c) OPM will provide the agency and the individual who requested reconsideration with a copy of its decision.

(d) If OPM affirms the agency's determination that the failure to register was knowing and willful, the agency must cease considering the individual for appointment or, if the individual is a current employee, initiate steps to terminate his employment.

[FR Doc. 2011–30788 Filed 11–28–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, 16, 28, and 160

[Docket No. OCC–2011–0019]

RIN 1557–AD36

Alternatives to the Use of External Credit Ratings in the Regulations of the OCC

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to, or requirements in, such regulations regarding credit ratings. Second, the agencies are required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of credit-worthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

Through this notice of proposed rulemaking (NPRM), the OCC seeks comment on a proposal to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness.

The OCC also is proposing to amend its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

DATES: Comments must be received by December 29, 2011.

ADDRESSES: Commenters are encouraged to use the title ''Alternatives to the Use of Credit Ratings in the Regulations of the OCC'' to facilitate the organization and review of comments. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Alternatives to the Use of Credit Ratings in the Regulations of the OCC'' to facilitate the organization and review 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–2011–0019'' to submit or view public comments and to view supporting and related materials for this proposed rule. 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.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2011–0019'' 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, 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 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 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–2011–0019'' to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 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) 874–4700. 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.

FOR FURTHER INFORMATION CONTACT: Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874–4660; Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (the Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Second, the

[1] Public Law 111–203, Section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

agencies are required to remove references to, or requirements of reliance on, credit ratings and substitute such standard of creditworthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on those standards.

This NPRM describes the areas where the regulations of the OCC, other than those that establish regulatory capital requirements, currently reference credit ratings; sets forth the considerations underlying such reliance; and then requests comment on the alternatives we propose to replace credit ratings in those provisions. In connection with this NPRM, the OCC is simultaneously seeking comment on guidance to help explain the due diligence national banks and Federal savings associations should conduct in purchasing investment securities for their investment portfolios and to reiterate supervisory expectations for the securities the institution actually purchases. This proposed guidance is published elsewhere in this issue of the **Federal Register.**

The regulations subject to this proposal generally require banks to determine whether a particular security or issuance qualifies, or does not qualify, for a specific treatment. For example, the OCC's investment securities regulations generally require a bank to determine whether or not a security is ''investment grade'' in order to determine whether purchasing the security is permissible. By contrast, some aspects of the OCC's risk-based capital regulations require a bank to place exposures (for example, securitization exposures) into one of several categories based on gradations of risk, which, in some cases under the current rules, may be determined by reference to nationally recognized statistical rating organizations (NRSROs) [2] credit ratings. This type of granular risk measurement requires fundamentally different, more complex analyses than the analysis required to make the binary—or ''yes/no''—determinations necessary for the rules subject to this proposal. Separately, the OCC and the other Federal banking agencies issued a joint advance notice of proposed rulemaking on the agencies' use of credit ratings in risk-based capital frameworks,[3] and we continue our efforts to explore the development of alternative standards appropriate for those frameworks.

A. Non-Capital Regulations That Reference Credit Ratings Regulations Applicable to National Banks and Federal Branches of Foreign Banks

The OCC's regulations on permissible investment securities, securities offerings, and foreign bank capital equivalency deposits each reference or rely on credit ratings issued by NRSROs. These regulations are described below.

Investment Securities

The OCC's investment securities regulations at 12 CFR part 1 use credit ratings as a factor for determining the credit quality, marketability, and appropriate concentration levels of investment securities purchased and held by national banks. Under the OCC rules, an investment security must not be ''predominantly speculative in nature.'' The OCC rules provide that an obligation is not ''predominantly speculative in nature'' if it is rated investment grade or, if unrated, is the credit equivalent of investment grade. ''Investment grade,'' in turn, is defined as a security rated in one of the four highest rating categories by two or more NRSROs (or one NRSRO if the security has been rated by only one NRSRO).

Credit ratings also are used to determine marketability in the case of a security that is offered and sold under the Securities and Exchange Commission's (SEC) Rule 144A.[4] Under part 1, a 144A security is deemed to be marketable if it is rated investment grade or the credit equivalent of investment grade. In addition, credit ratings are used to determine concentration limits on certain investment securities. For example, OCC rules limit holdings of so-called ''Type IV'' securities of any one obligor that are rated in the third highest investment grade rating categories to 25 percent of the bank's capital and surplus.[5] There is no concentration limit for small business-related securities that are rated in the highest or second highest investment grade categories.

Securities Offerings

Securities issued by national banks are not covered by the registration provisions and SEC regulations governing other issuers' securities under the Securities Act of 1933. However, the OCC has adopted 12 CFR part 16 to require disclosures related to national bank-issued securities. Part 16 includes references to ''investment grade'' ratings. For example, § 16.6, which provides an optional abbreviated registration system for debt securities that meet certain criteria, requires that a security receive an investment grade credit rating to qualify for the abbreviated registration system.

International Banking Activities

Under section 4(g) of the International Banking Act (IBA),[6] each foreign bank with a Federal branch or agency must establish and maintain a capital equivalency deposit (CED) with a member bank located in the state where the Federal branch or agency is located. The IBA authorizes the OCC to prescribe regulations describing the types and amounts of assets that qualify for inclusion in the CED, ''as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest.'' [7] At 12 CFR 28.15, OCC regulations set forth the types of assets eligible for inclusion in a CED. Among these assets are certificates of deposit that are payable in the United States and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument.

Regulations Applicable to Federal Savings Associations

Under Title III of the Dodd-Frank Act, on July 21, 2011, the rulemaking authority of the Office of Thrift Supervision (OTS) for Federal savings associations under the Home Owner's Loan Act transferred to the OCC.[8] To facilitate the OCC's enforcement and administration of former OTS rules and to make appropriate changes to these rules to reflect OCC supervision of Federal savings associations, the OCC republished the OTS regulations, with

[2] A nationally recognized statistical rating organization (NRSRO) is an entity registered with the U.S. Securities and Exchange Commission (SEC) as an NRSRO under section 15E of the Securities Exchange Act of 1934. *See,* 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[3] 75 FR 53823 (Aug. 25, 2010).

[4] Rule 144A provides a safe harbor from the registration requirements of the Securities Act of 1933 for certain private resales of restricted securities to qualified institutional buyers. The restricted securities that fall under this safe harbor are generally referred to as 144A securities.

[5] A Type IV investment security includes certain small business related-securities, commercial mortgage-related securities, or residential mortgage-related securities. *See* 12 CFR 1.2(m).

[6] 12 U.S.C. 3102(g).

[7] 12 U.S.C. 3102(g)(4).

[8] For a more detailed description of the allocation of jurisdiction over savings associations and savings and loan holding companies affected by the Dodd-Frank Act, see 76 FR 48950 (August 9, 2011).

nomenclature and other technical changes, in the Code of Federal Regulations at Chapter I, parts 100 through 197 (Republished Regulations), effective on July 21, 2011.[9]

The lending and investment regulations for Federal savings associations, now codified at 12 CFR part 160, use credit ratings as a factor for determining the credit quality, liquidity, and marketability. For example, under these rules, for a Federal savings association to purchase an investment security, the security must be ''[r]ated in one of the four highest categories as to the portion of the security in which the association is investing by a nationally recognized investment rating service at its most recently published rating before the date of purchase by the association.'' [10]

In addition, lending regulations for all Federal savings associations, now codified at 12 CFR part 160, subpart B, establish appropriate concentration levels of investment securities purchased and held by Federal savings associations. For example, § 160.40 limits holdings of corporate debt securities of any one issuer that are rated in the third or fourth highest investment grade rating categories to 15 percent of the association's capital and surplus. For securities that are rated in the highest or second highest investment grade categories, that limit is 25 percent of the savings association's capital and surplus.[11]

Credit ratings also are used to determine marketability in the case of a security that is offered and sold pursuant to the SEC's Rule 144A. As previously noted, a 144A security is generally deemed to be marketable if it is rated investment grade.

B. Advance Notices of Proposed Rulemaking

On August 13, 2010, the OCC published an advance notice of proposed rulemaking (ANPR) that identified the references to credit ratings in its regulations at 12 CFR parts 1, 16, and 28 and requested comment on alternative creditworthiness standards.[12] On October 14, 2010, the OTS published a similar ANPR describing the references to credit ratings in the non-capital regulations applicable to savings associations, including the OTS's investment securities regulations.[13] Together, the ANPRs generally described, and requested comment on, four alternative frameworks for measuring creditworthiness to replace existing references to credit ratings.

One alternative described in the ANPRs was the use of an approach currently contained in the existing investment securities regulations which permit a national bank or Federal savings association to purchase unrated securities. (An unrated security is one that does not have a credit rating issued by an NRSRO.) Under this approach, the national bank or Federal savings association would make the determination as to whether the security is the ''credit equivalent'' of investment grade by conducting and documenting its own credit assessment and analysis. This determination would be subject to examiner review, and national banks and Federal savings associations would continue to be expected to understand and manage the associated price, liquidity and other related risks associated with their investment securities activities.

The ANPRs outlined a second alternative by redefining the ''investment grade'' standard to focus on a broader set of criteria than the current creditworthiness standard. The current standard focuses primarily on the timely repayment of principal and interest and the risk of default and references credit ratings for that purpose. A broader standard could take into account criteria for marketability, liquidity, and price risk associated with market volatility, while removing references to credit ratings. National banks and Federal savings associations would be required to consider these broader standards in making determinations on whether securities are ''investment grade.'' These determinations would be subject to examiner review.

A third option in the ANPRs was to permit national banks and Federal savings associations to use internal loan classification systems to rate investment securities. This option borrows from both existing classification systems used by the Federal banking agencies to identify problem loans and the bank's or savings association's internal risk rating systems. The banking agencies classify loans on a scale reflecting decreasing credit quality. Generally, well-performing loans are rated ''pass.'' Troubled loans are rated ''special mention,'' ''substandard,'' ''doubtful,'' or ''loss,'' depending on the quality of the credit. In their respective ANPRs, the OCC and the OTS suggested defining all investments classified ''special mention'' or worse as predominately speculative and thus not ''investment grade.''

Finally, the OTS ANPR outlined a fourth alternative to using credit ratings that would permit savings associations to consider external data, including external data and credit analyses provided by third parties, to make a creditworthiness determination. Alternative ways to measure credit risk might be to derive ''implied ratings'' from the market price of traded instruments. The implied rating could be derived from the price of equities, debt instruments, or credit default swaps linked to the security. Investors typically require a higher return for an investment with a higher risk of default. For example, a yield spread (the difference between the yield on a corporate bond relative to a government bond with similar maturity) is often used as a measure of relative creditworthiness. A larger credit spread reflects a lower credit quality and higher perceived risk of the issuer's default.

In addition to the proposed alternative frameworks for considering creditworthiness without reference to credit ratings, the agencies set forth criteria that appear to be most relevant to evaluating potential creditworthiness standards. The agencies requested comment on whether other considerations should be taken into account. Specifically, the ANPRs stated that any alternative creditworthiness standard should:

- Foster prudent risk management;
- Be transparent, replicable, and well defined;
- Allow different banking organizations to assign the same assessment of credit quality to the same or similar credit exposures;
- Allow for supervisory review;
- Differentiate among investments in the same asset class with different credit risk; and
- Provide for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable.

C. Comments Received on the ANPRs

Notwithstanding the requirements of section 939A of the Dodd-Frank Act, a majority of commenters on the ANPRs

[9] To make it easier for Federal savings associations to use the republished rules, the OCC has preserved where possible the OTS's numbering system by republishing these regulations with OCC part numbers that correspond to the former OTS rules, specifically, by changing the ''5'' to a ''1''. For example, 12 CFR part 560 was republished as 12 CFR part 160.

[10] 12 CFR 160.40(a)(2).

[11] A Federal savings association may invest up to 10 percent of its capital and surplus in commercial paper rated in the highest category by at least two NRSROs, and corporate debt securities rated in one of the two highest categories by at least one NRSRO. This is in addition to being able to invest another 15 percent of its capital and surplus in these securities pursuant to its lending authority. 12 CFR 160.93(d)(5).

[12] 75 FR 49423 (Aug. 13, 2010).

[13] 75 FR 63107 (Oct. 14, 2010).

said that the agencies should continue to use credit ratings. Most commenters argued that credit ratings are a valuable tool for national banks and Federal savings associations (herein, referred to collectively as ''banks'')—especially small banks—for measuring credit risk. Several commenters expressed doubt that any of the suggested alternatives for measuring creditworthiness would yield results that would be as useful and cost-effective as credit ratings. The commenters suggested that passage of the Dodd-Frank Act, specifically measures adding to the SEC's oversight authority over NRSROs, would improve the accuracy of credit ratings. A number of commenters stated that the agencies should interpret the statute in a manner that would permit the continued use of credit ratings or permit banks to consider credit ratings as one of several factors when measuring credit risk.

Commenters on the ANPRs focused largely on two issues: Competitive equity and compliance burden. Community and regional bank commenters argued that the inability to use credit ratings in evaluating investments could disadvantage them when compared with larger institutions that have advanced analytical capabilities. Larger internationally active banks expressed concern that they will be disadvantaged when compared to their foreign counterparts who may continue to use external credit ratings. Commenters also stated that developing internal rating systems to replace the long-standing use of NRSRO credit ratings would involve cost considerations greater than those under the current regulation, without a corresponding benefit to risk management. While commenters noted that cost and burden would be a factor for all banks, it would likely be more pronounced for community and regional banks. These smaller institutions may not currently have in-house the systems and management capabilities to convert quickly to new standards. Commenters noted that if smaller financial institutions are unable to develop processes necessary to comply with the new standard, it would prevent them from purchasing many of the investment securities they are currently permitted to hold. Thus, commenters stated that a cost-effective, simple standardized approach to measuring credit risk would be particularly important for community and regional banks.

Commenters generally agreed with and supported the factors and criteria set forth in the ANPRs as important for evaluating potential creditworthiness standards. Commenters suggested that, in establishing alternative creditworthiness measures, the agencies also should seek to avoid regulatory arbitrage, create parity with international standards, avoid oversimplified measures, dampen systemic risk, capture market complexities, identify appropriate time horizons, and allow for accurate and timely reassessments. Commenters further suggested that the agencies should consider transparency, replicability, assessment speed, ease of use, consistency across different regulated entities, and the existence of credit support.

II. Description of the Proposed Amendments to Non-Capital Regulations

The OCC is proposing to amend the definition of ''investment grade'' to remove the current reference to credit ratings and to replace other references to credit ratings with alternative standards of creditworthiness for the purposes of its regulations at 12 CFR parts 1, 16, 28, and 160.

Parts 1, 16, and 160

This proposal generally removes references to credit ratings provided by NRSROs and instead generally requires national banks and Federal savings associations to make assessments of a security's creditworthiness, similar to the assessments currently required for the purchase of unrated securities.

National Bank Regulations

Under the proposed amendments to parts 1 and 16, a security would be ''investment grade'' if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. The ''adequate capacity to meet financial commitments'' standard would replace language in §§ 1.2 and 16.2 which currently reference NRSRO credit ratings. To meet this new standard, national banks must be able to determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.[14]

When determining whether a particular issuer has an adequate capacity to meet financial commitments under a security for the projected life of the asset or exposure, the OCC expects national banks to consider a number of factors, to the extent appropriate. While external credit ratings and assessments remain valuable sources of information and provide national banks with a standardized credit risk indicator, banks must supplement the external ratings with due diligence processes and analyses that are appropriate for the bank's risk profile and for the size and complexity of the instrument. Therefore, it would be possible that a security rated in the top four rating categories by an NRSRO may not satisfy the proposed revised investment grade standard. Further information for national banks seeking to comply with the new regulations is being issued as proposed guidance at the same time as this NPRM.

Additionally, 12 CFR 1.3(e)(2) of the current rules imposes a concentration limit on a national bank's purchases of certain small business-related securities for its own account. The provision limits a national bank's purchase of covered small business-related securities to 25 percent of the bank's capital and surplus unless the securities are rated in the highest two investment grade rating categories. The OCC is proposing to amend this provision to remove the limit since it is not required by statute. However, under the OCC's proposed amendment, national banks still may purchase only those securities that meet the statutory creditworthiness criteria set forth in the definition of small business-related securities in section 3(a)(53)(A) of the Securities Exchange Act of 1934.[15] Currently, the statutory criteria include a requirement that the security be rated in one of the four highest investment grade rating categories by an NRSRO. However, the Dodd-Frank Act provides that this ratings-based requirement will be removed by July 21, 2012, and replaced with an alternative standard developed by the SEC.

Similarly, §§ 1.2(m)(2) and (3) include references to NRSRO credit ratings and references the definition of ''mortgage-related security'' in section 3(a)(41) of the Securities Exchange Act of 1934.[16] This statutory definition includes a requirement that the security be rated in the top two investment grade categories by an NRSRO. Like the definition of small business-related security, the Dodd-Frank Act removes the reference to credit ratings in July 2012 and directs the SEC to develop an alternative creditworthiness standard. Consistent with the Dodd-Frank Act, the OCC is proposing to delete the explicit references to credit ratings in its

[14] In the case of a structured finance transaction, principal and interest repayment is not necessarily solely reliant on the direct debt repaying capacity of the issuer or obligor. That is, the credit risk profile may be influenced more by the quality of the underlying collateral as well as the cash flow rules and the structure of the security itself than by the condition of the issuer.

[15] 15 U.S.C. 78c(a)(53)(A).

[16] 15 U.S.C. 78c(a)(41).

regulations at 12 CFR 1.2(m)(2) and (3). However, these provisions would continue to refer to the definition of mortgage-related security in the Securities Exchange Act of 1934.

Federal Savings Association Regulations

Notably, under current law, savings associations generally are prohibited by statute from investing in corporate debt securities unless they are rated ''investment grade'' by an NRSRO.[17] However, the Dodd-Frank Act provides that on July 21, 2012, this statutory requirement will be replaced by ''standards of creditworthiness established by the [FDIC].'' [18] In this NPRM, the OCC is proposing to define the term ''investment grade,'' as it is used in Part 160, to refer to 12 U.S.C. 1831e. Therefore, it will continue to reference the current ratings-based requirement until such time as that requirement is replaced by the FDIC.

Additionally, in § 160.40, the regulations applicable to Federal savings associations distinguish between commercial paper rated in the highest two rating categories, and in § 160.93, the regulations distinguish between commercial paper rated in the highest rating category and corporate debt securities rated in the two highest rating categories. Section 160.40(a)(1)(ii) generally provides that Federal savings associations may invest in commercial paper only if it rated in the highest two investment grade categories or guaranteed by a company with such a rating. Section 160.93(d)(5)(i) provides a less restrictive lending limitation for commercial paper that is rated in the highest rating category, and § 160.93(d)(5)(ii) provides a less restrictive lending limitation for corporate debt securities rated in the two highest rating categories. In this NPRM, the OCC is proposing to remove these references to credit ratings. Under the revised rules, Federal savings associations would be permitted to invest in commercial paper if it meets the standards set forth at 12 U.S.C. 1831e(d)(1), which currently limits all savings associations to purchasing corporate debt securities that are of investment grade, but will, after July 21, 2012, include a new creditworthiness standard established by the FDIC. Additionally, the less restrictive lending limitations would apply to all commercial paper and corporate debt securities that meet the revised creditworthiness standards.

Finally, at § 160.42, Federal savings associations are subject to certain limitations with regard to purchases of state and local government obligations. Currently, Federal savings associations may hold state or municipal revenue bonds that have ratings in one of the four highest investment grade rating categories from one issuer up to a limit of 10 percent of total capital without prior OCC approval. Under the revised rules, this provision would apply to state or municipal revenue bonds if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

Safety and Soundness Regulations

In addition to regulatory provisions that generally limit national banks and Federal savings associations to purchasing securities that are of investment grade, OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices.[19] Specifically, national banks and Federal savings associations must consider the interest rate, credit, liquidity, price and other risks presented by investments, and the investments must be appropriate for the particular bank.[20] In addition to determining whether a security is of investment grade, national banks and Federal savings associations with substantial securities portfolios, in particular, must have and maintain robust risk management frameworks in place to ensure that an investment in a particular security appropriately fits within its goals and that the institution will remain in compliance with all relevant concentration limits.

Consistency With Other Federal Regulations

Consistent with section 939A's directive that the Federal agencies seek to establish, to the extent feasible, uniform standards of creditworthiness, in developing this proposal, the OCC has considered the approaches in the two recent proposals issued by the SEC,[21] as well as a recent proposal issued by the National Credit Union Administration (NCUA).[22]

On March 9, 2011, the SEC published a notice of proposed rulemaking to implement Section 939A with respect to its regulations governing investments made by mutual funds.[23] The proposal includes replacing creditworthiness standards that reference credit ratings with standards that would reflect evaluating other criteria. The proposal would replace a requirement that a security purchased by a money-market mutual fund be rated in ''one of the two highest short-term rating categories'' with a standard that the security have minimal credit risk. The determination would be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations. Under the SEC's proposed rule 2a–7, while the board of directors of a mutual fund must independently determine that an investment has minimal risk, they would be permitted to continue using credit ratings as one factor to make that determination.[24]

On May 6, 2011, the SEC published a proposal to amend additional rules, including the Broker-Dealer Net Capital Rule, to remove references to credit ratings.[25] The Net Capital Rule currently applies lower capital requirements to certain types of securities held by broker-dealers if the securities are rated in high rating categories by at least two NRSROs. Under the proposal, to receive a favorable treatment for commercial paper, nonconvertible debt, and preferred stock, a broker-dealer would be required to establish, maintain, and enforce written policies and procedures designed to assess the credit and liquidity risks applicable to a security, and based on this process, would have to determine that the investment has only a ''minimal amount of credit risk.''

Under the SEC's proposed amendments, a broker-dealer could consider various factors in assessing the credit risk for a security. These factors could include credit spreads, securities-related research, internal or external credit risk assessments (including credit

[17] 12 U.S.C. 1831e(d)(1).

[18] Public Law 111–203, Section 939(a)(2) (July 21, 2010).

[19] 12 CFR 1.5; 12 CFR 160.1(b), 160.40(c).

[20] 12 CFR 1.5(a); 12 CFR 160.1(b), 160.40(c).

[21] *See* 76 FR 12896 (March 9, 2011); 76 FR 26550 (May 6, 2011).

[22] 76 FR 11164 (March 1, 2011).

[23] 76 FR 12896 (March 9, 2011).

[24] Specifically, the SEC proposal states:

Nothing in the proposed rule would prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule as long as the board concluded that the [credit] ratings specified in the policies and procedures establish similar standards to those proposed and are credible and reliable for that use.

76 FR 12899 n.32. The SEC's March 9 proposal also notes that in addition to referencing credit ratings, the SEC rules already require a mutual fund board of directors to determine that a security meets the requisite investment standards based on factors ''in addition to any ratings assigned.'' Thus, under the SEC's current rule a mutual fund may not purchase an investment based on the credit rating alone.

[25] 76 FR 26550 (May 6, 2011).

ratings), and default statistics. The SEC proposal's preamble states that the criteria are meant to capture securities that should generally qualify as investment grade under the current ratings-based standard ''without placing undue reliance on third-party credit ratings.'' Similarly, the OCC's amendments would allow national banks and Federal savings associations to review multiple factors in evaluating the creditworthiness of a security.

On March 1, 2011, the NCUA published a proposal to amend a number of its regulations to remove references to credit ratings and replace those references with narratives based on ratings descriptions published by Standard and Poor's and Fitch.[26] For example, where NCUA regulations refer to an investment with an ''AA'' rating, the proposal would revise the reference to refer to a security that a credit union determines has a ''very strong capacity to meet financial commitments.'' Similarly, where NCUA regulations currently refer to an investment with an ''A'' rating, the proposal would revise the reference to refer to a security that a credit union determines has a ''strong capacity to meet financial commitments,'' in line with the S&P definition; and likewise, where NCUA regulations currently refer to an investment with a ''BBB'' rating, the proposal would revise the reference to refer to a security that a credit union determines has an ''adequate'' capacity to meet financial commitments. Under the NCUA proposal, a Federal credit union must reach these conclusions through its own analysis, rather than exclusively relying on credit ratings. However, part of that analysis may include the consideration of credit ratings.

The NCUA proposal also provides that when a Federal credit union considers the creditworthiness of a security, the credit union must consider whether the security will continue to have the capacity to meet financial commitments, *even under adverse economic conditions.* The OCC is not currently proposing to include similar language in its investment securities regulations. However, the OCC invites comment on whether such a standard would be appropriate, and on how such a standard could be implemented.

In the preamble to its proposal, the NCUA stated that it has and will continue to require Federal credit unions to conduct internal credit analyses that go beyond simple reliance on credit ratings, therefore, the NCUA does not believe that the proposed approach would result in significant changes for most Federal credit unions. Similarly, the OCC's proposed amendments would not change the OCC's continuing expectation that national banks and Federal savings associations consider and evaluate multiple factors when evaluating the creditworthiness of a security, and that they supplement the use of external ratings with due diligence processes and analyses that are appropriate for the bank's risk profile and for the size and complexity of the instrument.

Part 28—Foreign Banking Institutions

The OCC's capital equivalency deposit regulation at 12 CFR 28.15 currently allows for the use of certificates of deposit or bankers' acceptances as part of the deposit, if its issuer is rated investment grade by an internationally recognized rating organization. The OCC proposes to remove the requirement referencing credit ratings provided by ratings organizations. Instead, the issuer of the certificate of deposit or banker's acceptance must have ''an adequate capacity to meet financial commitments for the projected life of the asset or exposure.''

Part 5—Financial Subsidiaries

Finally, the OCC is proposing to make a technical change to 12 CFR 5.39, which pertains to financial subsidiaries of national banks. Currently, this regulation contains language that appeared in Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a), as added by the Gramm-Leach-Bliley Act.[27] Prior to its amendment by the Dodd-Frank Act, section 5136A permitted a national bank, directly or indirectly, to control a financial subsidiary or hold an interest in a financial subsidiary only if the bank was one of the largest 100 insured depository institutions and has at least one issue of outstanding debt rated in one of the top three investment grade categories by an NRSRO. The Dodd-Frank Act amended section 5136A to remove the reference to investment grade ratings.[28]

The OCC is proposing to revise this provision to conform with the revised statutory language. The new language would provide that a national bank may, directly or indirectly, control a financial subsidiary or hold an interest in a financial subsidiary only if the bank is one of the 100 largest insured banks *and* the bank has not fewer than one issue of outstanding debt that meets such applicable standard or criteria established by the Treasury Department and the Federal Reserve Board pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

III. Implementation Guidance

Together with this NPRM, the OCC is publishing proposed updates and revisions to its guidance for national bank and Federal savings association investment activities. This guidance reflects the OCC's expectations for national banks and Federal savings associations as they review their systems and consider any changes necessary to comply with the revisions proposed in this NPRM. The guidance describes factors institutions should consider with respect to certain types of investment securities to assess creditworthiness and continue conducting their activities in a safe and sound manner. Commenters are strongly encouraged to review and provide comment on the guidance in conjunction with their review of and comment on this NPRM.

As noted above, OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices.[29] Neither this NPRM, nor the proposed guidance, would change this requirement. The OCC expects national banks and Federal savings associations to continue to follow safe and sound practices in their investment activities.

IV. Request for Comment

The OCC seeks comment on all aspects of this NPRM and the revised proposed revision to the term ''investment grade'' as it is referenced in the OCC's regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits. Commenters are also strongly encouraged to provide comments on the proposed guidance the OCC released in connection with this NPRM, which describes how national banks and Federal savings associations could implement the new standards. In addition, the OCC seeks comment on the specific questions set forth below.

1. Does the proposed revision to the definition of investment grade satisfy the OCC's stated goals of applying a standard that:

- Fosters prudent risk management;
- Is transparent, replicable, and well defined;

[26] 76 FR 11164 (March 1, 2011).

[27] Public Law 106–102, Section 121, 113 Stat. 1338, 1373–81 (Nov. 12, 1999).

[28] Public Law 111–203 at Section 939(d), 124 Stat. at 1886.

[29] 12 CFR 1.5; 12 CFR 160.1(b), 160.40(c).

• Allows different banks or savings associations to assign the same or similar assessment of credit quality to the same or similar credit exposures;

• Allows for supervisory review;

• Differentiates among investments in the same asset class with different credit risk; and

• Provides for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable?

2. Commenters on the ANPRs suggested a number of additional objectives to consider in developing creditworthiness standards, including avoidance of regulatory arbitrage; avoidance of oversimplified measures; dampening systemic risk; capturing market complexities; identifying appropriate time horizons; and, allowing for accurate and timely reassessments. Does the OCC's proposed revision to the definition of ''investment grade'' satisfy these objectives? What changes could the OCC make to the proposed investment grade definition to better address these objectives?

3. The OCC recognizes that any measure of creditworthiness likely will involve tradeoffs between more refined differentiation of creditworthiness and greater implementation burden. Does the proposed revised definition strike an appropriate balance between measurement of credit risk and implementation burden in considering alternative measures of creditworthiness? Are there other alternatives permissible under Dodd-Frank Section 939A that strike a more appropriate balance?

4. The OCC notes that the proposed ''investment grade'' standard for national bank investment securities activities is generally consistent with proposals published by the SEC and the NCUA (although the OCC's proposed standard does not include the NCUA's provision specifically referencing the consideration of adverse economic circumstances). The OCC requests comment on whether establishing consistent standards is appropriate in light of the different types of entities subject to OCC, SEC, and NCUA jurisdiction.

5. This proposal would apply separate creditworthiness standards for national bank and Federal savings association investments in corporate debt securities. The OCC requests comment on how best to align these standards consistent with section 939A's direction that Federal agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness.

V. Regulatory Analyses

A. Paperwork Reduction Act

This notice of proposed rulemaking amends several regulations for which the OCC currently has approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (OMB Control Nos. 1557–0014; 1557–0190; 1557–0120; 1557–0205). The amendments in this proposal do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has previously approved. Therefore, no additional OMB PRA approval is required at this time.

B. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,[30] (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

This proposal would affect all 578 small national banks and all 288 small federally chartered savings associations.[31] However, because banks have long been expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, most if not all of the institutions affected by the proposed rule already engage in appropriate risk management activity. Although the proposed rule will affect a substantial number of small banks and federally chartered savings associations, it will not have a significant effect on a substantial number of those institutions. Therefore, the OCC certifies that the proposed rule would not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

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. 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 has determined that its proposed rule would not result in expenditures by state, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 160

Banks, Banking, Consumer protection, Investments, manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency proposes to amend parts 1, 16, 28, and 160 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

2. In part 1, in § 1.2, revise paragraphs (d) through (f), and (h), and (m) through (n), as follows:

§ 1.2 Definitions.

* * * * *

(d) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments

[30] 5 U.S.C. 605(b).

[31] All totals are as of June 30, 2011.

if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

(e) *Investment security* means a marketable debt obligation that is investment grade and not predominately speculative in nature.

(f) *Marketable* means that the security:

(1) Is registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.;*

(2) Is a municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2);

(3) Is offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and investment grade; or

(4) Can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

* * * * *

(h) [reserved]

* * * * *

(m) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is fully secured by interests in a pool of loans to numerous obligors.

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a commercial mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of loans to numerous obligors.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a residential mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)) that does not otherwise qualify as a Type I security.

(n) *Type V security* means a security that is:

(1) Investment grade;

(2) Marketable;

(3) Not a Type IV security; and

(4) Fully secured by interests in a pool of loans to numerous obligors and in which a national bank could invest directly.

3. In § 1.3, revise paragraphs (e) and (h) as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(e) *Type IV securities.* A national bank may purchase and sell Type IV securities for its own account. The amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

* * * * *

(h) *Pooled investments*—(1) *General.* A national bank may purchase and sell for its own account investment company shares provided that:

(i) The portfolio of the investment company consists exclusively of assets that the national bank may purchase and sell for its own account; and

(ii) The bank's holdings of investment company shares do not exceed the limitations in section 1.4(e).

(2) *Other issuers.* The OCC may determine that a national bank may invest in an entity that is exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940, provided that the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account.

(3) Investments made under this paragraph (h) must comply with section 1.5 of this part, conform with applicable published OCC precedent, and must be:

(i) Marketable and investment grade, or

(ii) Satisfy the requirements of § 1.3(i).

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

4. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

5. In § 5.39, revise paragraphs (g)(3) through (5) and (j)(2) to read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(g) * * *

(3) The national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year; and

(4) The bank has not fewer than one issue of outstanding debt that meets such applicable standard or criteria established by the Treasury Department and the Federal Reserve Board pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

(5) Paragraph (g)(3) does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

* * * * *

(j) * * *

(2) *Eligible debt requirement.* A national bank that does not continue to meet the qualification requirements set forth in paragraphs (g)(3) and (g)(4) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) and (g)(4) of this section. For purposes of this paragraph (j)(2), the term ''equity capital'' includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

* * * * *

PART 16—SECURITIES OFFERING DISCLOSURE RULES

6. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 93a.

7. In § 16.2, revise paragraph (g) as follows:

§ 16.2 Definitions.

* * * * *

(g) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

* * * * *

8. In § 16.6, revise paragraph (a)(4) as follows:

§ 16.6 Sales of nonconvertible debt.

(a) * * *

(4) The debt is investment grade.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

9. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

10. In § 28.15, revise paragraph (a)(1)(iii) as follows:

§ 28.15 Capital equivalency deposits.

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

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer has an adequate capacity to meet financial commitments for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected

* * * * *

PART 160—LENDING AND INVESTMENT

11. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

12. In § 160.3, add the following definition in alphabetical order:

§ 160.3 Definitions.

* * * * *

Investment grade means a security that meets the creditworthiness standards described in 12 U.S.C. 1831e.

* * * * *

13. In § 160.40, revise paragraphs (a)(1)(i) and (a)(2)(ii) as follows:

§ 160.40 Commercial paper and corporate debt securities.

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

(i) Investment grade as of the date of purchase; or

(ii) Guaranteed by a company having outstanding paper that meets the standard set forth in paragraph (a)(1)(i) of this section.

(2) * * *

(i) * * *

(ii) Investment grade.

* * * * *

14. In § 160.42, revise paragraphs (a) and (d) to read as follows:

§ 160.42 State and local government obligations.

(a) Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof (''governmental entity''), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations	None	None.
(2) Other obligations of a governmental entity (*e.g.,* revenue bonds) if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.	None	10% of the institution's total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by the OCC.	As approved by the OCC	10% of the institution's total capital.

* * * * *

(d) For all securities, the institution must perform its own detailed analysis of credit quality. In doing so, the institution must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity and determine that such investment is appropriate for the institution. The institution must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

* * * * *

15. In § 160.93, revise paragraph (d)(5) introductory text and paragraph (d)(5)(i) to read as follows:

§ 160.93 Lending limitations.

(d) * * *

(5) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

* * * * *

16. In § 160.121, revise paragraphs (b)(1) and (2) to read as follows:

§ 160.93.121 Investments in state housing corporations.

(b) * * *

(1) The obligations are investment grade; or

(2) The obligations are approved by the OCC. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the Federal savings association's total capital.

* * * * *

Dated: November 18, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–30428 Filed 11–28–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1230]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to