To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0115-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 11937, March 4, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

PART 932—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 932 and that was published at 76 FR 11937 on March 4, 2011, is adopted as a final rule, without change.

Dated: June 15, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–15446 Filed 6–20–11; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1356]

Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008 and the Small Business Jobs Act of 2010

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule that allows bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any subordinated debt securities issued to the U.S. Department of the Treasury (Treasury) under the capital purchase program (CPP), in tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies, provided that the Subordinated Securities will count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital; and allows bank holding companies that are subject to the Board's Small Bank Holding Company Policy Statement (small bank holding companies) and that are S-Corp BHCs or Mutual BHCs to exclude the CPP Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Small Bank Holding Company Policy Statement (Policy Statement). The Board is also adopting, and requesting comment on, an interim final rule that allows small bank holding companies that are S-Corps or Mutual BHCs to exclude from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement subordinated debt securities issued to the Treasury through the Small Business Lending Fund established under the Small Business Jobs Act of 2010.

DATES: The final rule will become effective on June 21, 2011. Comments on allowing S-Corp BHCs and Mutual BHCs that issue SBLF Subordinated Securities to the Treasury to exclude the securities from the definition of debt under the Policy Statement are due by July 30, 2011.

FOR FURTHER INFORMATION CONTACT: Anna Lee Hewko, (202) 530–6260, Assistant Director, Capital and Regulatory Policy, or Brendan G. Burke, (202) Senior Supervisory Financial Analyst, Division of Banking Supervision and Regulation; April C. Snyder, Counsel, (202) 452–3099, or Benjamin W. McDonough, Counsel, (202) 452–2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Board issued an interim final rule (CPP interim rule) (74 FR 26077) to allow bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any subordinated debt securities issued to the Treasury under the capital purchase program (CPP Subordinated Securities) established by Treasury under the Economic Stabilization Act of 2008 (EESA) [1] in tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies (Capital Guidelines),[2] provided that the Subordinated Securities would count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital. The CPP interim rule also permitted bank holding companies that are subject to the Board's Small Bank Holding Company Policy Statement (Policy Statement) [3] and that are S-Corps or Mutual BHCs, to exclude the CPP Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement.

The Board is now adopting the CPP interim final rule as a final rule in substantially the same form, as discussed below. In addition, for the reasons explained below, the Board is adopting as an interim final rule a provision that would allow bank holding companies that are subject to the Board's Policy Statement and that are S-Corp BHCs or Mutual BHCs to exclude subordinated debt securities issued to the Treasury through the Small Business Lending Fund established under the Small Business Jobs Act of 2010 (SBLF Subordinated Securities) from debt for purposes of the debt-to-equity standard under the Policy Statement.

Capital Guidelines

Under the Troubled Asset Relief Program (TARP) established in the Emergency Economic Stabilization Act of 2008 (EESA), Division A of Pub. L. No. 110–343, 122 Stat. 3765 (2008), Treasury provided capital to eligible banks, bank holding companies and savings associations (collectively, banking organizations), as well as certain other financial institutions (CPP).[4] S-Corp BHCs generally could not participate in the CPP through the issuance of Senior Perpetual Preferred Stock because, under the Internal Revenue Code, S-Corp BHCs may not issue more than one class of equity security. Bank holding companies organized in mutual form also cannot issue Senior Perpetual Preferred Stock

[1] Public Law 110–343, 122 Stat. 3765 (2008).

[2] 12 CFR part 225, Appendices A and D.

[3] 12 CFR part 225, Appendix C.

[4] Through the CPP, Treasury invested in newly issued senior perpetual preferred stock of banking organizations (Senior Perpetual Preferred Stock) that are not S-Corps or organized in mutual form. On June 1, 2009, the Board published a final rule on the capital treatment of the Senior Perpetual Preferred Stock. *See* 74 FR 26081 (June 1, 2009).

because of their mutual ownership structure.

Under the CPP, Treasury purchased the CPP Subordinated Securities, which rank senior to common stock but are subordinated to the claims of depositors and other creditors unless such other claims are explicitly made pari passu or subordinated to the Subordinated Securities.[5] These terms were designed to facilitate S-Corp and Mutual BHC participation in the CPP in a manner that is as economically comparable as possible, consistent with the legal structure of S-Corp and Mutual BHCs, the Board's capital adequacy guidelines, and the Internal Revenue Code, to institutions that issued Senior Perpetual Preferred Stock to the Treasury under the CPP.[6]

As with other securities issued to Treasury under the CPP, and as described in further detail in the interim final rule, the CPP Subordinated Securities included certain features designed to make them attractive to a wide array of generally sound S-Corp and mutual banking organizations and to encourage such companies to replace such securities with private capital once the financial markets return to more normal conditions. In particular, the CPP Subordinated Securities bear an interest rate that increases substantially five years after issuance.

Under the Board's current Capital Guidelines, the CPP Subordinated Securities generally would be ineligible for tier 1 capital treatment because they are subordinated debt, but would be eligible for inclusion in tier 2 capital.[7] However, the Subordinated Securities were purposefully structured to have features that are very close to those of the subordinated notes underlying trust preferred securities that qualify for tier 1 capital as a restricted core capital element for bank holding companies (qualifying trust preferred securities).[8] Moreover, the CPP Subordinated Securities could not be redeemed without the approval of the Federal Reserve, to ensure redemptions are consistent with safety and soundness.[9] Additionally, the CPP Subordinated Securities were issued to Treasury as part of a nationwide program to increase capital available to eligible banking organizations that are in generally sound financial condition in order to promote stability in the financial markets and the banking industry as a whole.

For these reasons and in order to support the participation of S-Corp BHCs in the Capital Purchase Program, promote the stability of banking organizations and the financial system, and help banking organizations meet the credit needs of creditworthy customers, the Board adopted the CPP interim rule to permit S-Corp BHCs that issued CPP Subordinated Securities to the Treasury to include the full amount of such securities in tier 1 capital for purposes of the Board's Capital Guidelines, subject to certain limitations.[10]

The Board received two comments on the CPP interim rule. Both comments generally were in favor of the Board's action. One commenter suggested that the Board extend the capital treatment provided by the CPP interim rule to instruments with similar terms issued to private entities. Another commenter expressed support for the CPP interim rule generally and asked that the Board clarify in the final rule that the capital treatment of the CPP interim rule would apply to all CPP Subordinated Securities issued, whether before or after the publication of the CPP interim rule.

As discussed in the CPP interim rule, the Board, as a matter of prudential policy and practice, generally has not allowed subordinated debt to be included in tier 1 capital, given the contractual obligations they place on the issuing banking organization and consequent limited ability to absorb losses. The Board remains concerned that instruments with debt or debt-like features have limited ability to absorb losses. However, as discussed above and in the CPP interim rule, issuance of the CPP Subordinated Securities to Treasury in connection with TARP was consistent with a strong public policy objective, which was to increase the capital available to banking organizations generally in a stressed economic environment and thereby promote stability in the financial markets and the banking industry as a whole, as well as facilitate the ability of banking organizations to meet the needs of creditworthy households, businesses, and other customers. In addition, as discussed above and in the CPP interim rule, the terms and public policy considerations related to the CPP Subordinated Securities mitigated supervisory concerns. These facts and circumstanced, viewed in light of the unique, temporary, and extraordinary nature of the CPP, countervailed in many respects the Board's concerns with regard to the subordinated debt nature of the securities. For these reasons and others related to subsequent legislation, as described below, the Board has not extended the capital treatment provided under the CPP interim rule to subordinated debt other than the CPP Subordinated Securities.

Since the issuance of the CPP interim rule, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA).[11] Under section 171 of the DFA, the Board must establish minimum risk-based and capital leverage requirements for bank holding companies that are no less than the generally applicable minimum risk-based and leverage capital requirements for insured depository institutions. Under current generally applicable capital requirements for insured depository institutions, subordinated debt cannot be included in the tier 1 capital of insured depository institutions and therefore as a general matter, could not be included in the tier 1 capital of bank holding companies. However, the DFA exempted from the requirements of section 171 debt instruments issued by banks and bank holding companies pursuant to EESA to the Treasury prior to October 4, 2010. Therefore, section of the DFA generally does not affect the treatment in the CPP interim rule of CPP Subordinated Debt Securities, although other subordinated

[5] This final rule accords the same capital treatment to Subordinated Securities issued by Mutual BHCs as those issued by S-Corp BHCs, and accordingly, any reference to a S-Corp BHC in the notice shall also be deemed to include a Mutual BHC unless the context otherwise requires.

[6] The interest payments on the CPP Subordinated Securities are tax deductible for shareholders of the issuing S-Corp and therefore this interest rate is economically comparable (assuming a 35 percent marginal tax rate) to the dividend payments on the Senior Preferred Stock, which are not tax deductible.

[7] *See* 12 CFR part 225, Appendix A, sections II.A.2. and II.A.2.d.

[8] For example, like such junior subordinated notes, the CPP Subordinated Securities were deeply subordinated and junior to the claims of depositors and other creditors of the issuing bank holding company. Furthermore, interest payable on the CPP Subordinated Securities could be deferred by the issuing S-Corp BHC for up to 20 quarters without creating an event of default and the CPP Subordinated Securities were issued with a maturity of 30 years, which is the same minimum term required for such junior subordinated notes. *See* 12 CFR part 225, Appendix A, section II.A.1.c.iv.

[9] *See* 12 CFR part 225, Appendix A, section II.A.1.c.ii.(2).

[10] As explained in the interim final rule, an S-Corp BHC issuing CPP Subordinated Securities must take into account the amount of CPP Subordinated Securities in determining the amount of *other* restricted core capital elements the company could include in its tier 1 capital. Thus, for example, if the amount of Subordinated Securities issued by an S-Corp BHC equaled or exceeded 25 percent of the company's tier 1 capital elements, the company could not include any other currently outstanding or future restricted core capital elements in tier 1 capital, and any such restricted core capital elements in the company's tier 1 capital elements could only be included in tier 2 capital. *See* 74 FR 26077, 26079 (June 1, 2009).

[11] Public Law 111–203, 124 Stat. 1376 (2010).

debt securities are subject to section 171 of the DFA.

For the reasons above, the Board has adopted the CPP interim rule as a final rule, clarifying that the provisions apply to all CPP Subordinated Securities issued to Treasury prior to October 4, 2010, in accordance with the DFA.

The Board expects S-Corp BHCs that issue CPP Subordinated Securities, like all other bank holding companies, to hold capital commensurate with the level and nature of the risks to which they are exposed. In addition, the Board expects banking organizations that issue CPP Subordinated Securities to appropriately incorporate the obligations associated with the CPP Subordinated Securities into the organization's liquidity and capital funding plans.

Small Bank Holding Company Policy Statement

CPP Subordinated Securities

In the CPP interim rule, in order to maintain competitive equality between large and small bank holding companies, the Board also amended the Policy Statement to allow bank holding companies that are subject to the Policy Statement and that are S-Corp BHCs to exclude the Subordinated Securities from debt for purposes of the debt-to-equity standard under Policy Statement.[12] Generally, bank holding companies with less than $500 million in consolidated assets (small bank holding companies) are not subject to the Capital Guidelines and instead are subject to the Policy Statement.

The Policy Statement limits the ability of a small bank holding company to pay dividends if its debt-to-equity ratio exceeds certain limits. However, the Policy Statement provides that small bank holding companies may exclude from debt an amount of subordinated debt associated with qualifying trust preferred securities up to 25 percent of the bank holding company's equity (as defined in the Policy Statement), less goodwill on the parent company's balance sheet, in determining compliance with the requirements of certain provisions of the Policy Statement.[13] The practical effect of excluding the CPP Subordinated Securities from debt for purposes of the Policy Statement is to allow issuance of CPP Subordinated Securities by small bank holding companies without exceeding the debt-to-equity ratio standard that would disallow the payment of dividends by such small bank holding companies. In turn, this allows small bank holding companies that issue CPP Subordinated Securities to downstream Treasury's investment in the form of the CPP Subordinated Securities as additional common stock to subsidiary depository institutions (that counts as tier 1 capital of the depository institutions) and to pay dividends to the small bank holding company's shareholders to the extent appropriate and permitted by the Federal Reserve.

Because the CPP Subordinated Securities and the junior subordinated notes underlying qualifying trust preferred securities have very similar features, and to facilitate the participation of small bank holding companies in the Capital Purchase Program, the Board adopted the CPP interim rule to allow small bank holding companies that are S-Corp BHCs to exclude the CPP Subordinated Securities from the definition of debt for purposes of the debt-to-equity ratio standard under the Policy Statement. The factors and considerations discussed above with respect to the Board's treatment of the CPP Subordinated Securities under its Capital Adequacy Guidelines also apply equally to the Board's decision to modify the Policy Statement in this manner.

Section 171 of the DFA, by its terms, does not apply to any small bank holding company that is subject to the Policy Statement as in effect on May 19, 2010. The CPP Subordinated Securities may be excluded from the definition of debt under the Policy Statement as in effect on May 19, 2010. Therefore, S-Corp BHCs and Mutual BHCs subject to the Policy Statement as in effect on May 19, 2010, are not subject to the requirements of section 171 and may under the final rule continue to exclude the CPP Subordinated Securities from debt.

SBLF Subordinated Securities

Under the Small Business Jobs Act of 2010 (SBJA),[14] a $30 billion Small Business Lending Fund (SBLF) was established to facilitate lending to small business by banking organizations with less than $10 billion in consolidated assets. The increased lending would be enabled through capital investments by Treasury in these banking organizations. The resulting rise in availability of credit to small businesses is intended to counteract the effects of the financial crisis on lending to small businesses and encourage increased hiring by small businesses.

Treasury has established term sheets for the issuance of subordinated securities by S-Corp BHCs and Mutual BHCs that are eligible for the SBLF program, with terms and structure similar to the CPP Subordinated Securities. The SBLF Subordinated Securities, like the CPP Subordinated Securities, are deeply subordinated, cannot be redeemed by a bank holding company issuer without the permission of the Federal Reserve, and cannot provide for accelerated interest except in liquidation or bankruptcy.[15] Furthermore, the SBLF Subordinated Securities, like the CPP Subordinated Securities, are issued to Treasury as part of a nationwide program to provide capital to eligible banking organizations that are in generally sound financial condition in order to increase the capital available for lending to small businesses, thereby mitigating the ongoing effects of the financial crisis on small businesses and promoting financial stability.

Based on these facts and circumstances, the Board has concluded that the SBLF Subordinated Securities are in terms and substance substantially equivalent to the CPP Subordinated Securities and may be excluded from debt under the Policy Statement as in effect on May 19, 2010, on the same basis and for the same reasons as described above. The Board therefore has approved an interim final rule for public comment that allows S-Corp and mutual bank holding companies that issue SBLF Subordinated Securities to the Treasury to exclude the securities from the definition of debt under the Policy Statement.

The Board requests comment on allowing S-Corp BHCs and Mutual BHCs to exclude the SBLF Subordinated Securities from debt under the Policy Statement.

Administrative Procedure Act

As discussed above and in the interim final rule, the Board found good cause for issuing the CPP interim rule and

[12] 12 CFR part 225, Appendix C.

[13] 12 CFR part 225, Appendix C, section 2, n. 3.

[14] Public Law 111–240, 124 Stat. 2504 (2010).

[15] The SBLF Subordinated Securities, like the CPP Securities, bear an interest step-up feature. This feature is designed in accordance with the SBJA. The SBLF Subordinated Securities, unlike the CPP Subordinated Securities that had a maturity of 30 years, have a stated maturity of 10 years. However, as with the CPP Subordinated Securities, for public policy reasons, the step-up feature is designed to encourage the issuer to replace the government investment with private capital at a point in time prior to the stated maturity. The term sheets for SBLF Subordinated Securities are available on Treasury's Web site at *http://www.treasury.gov/resource-center/sb-programs/Pages/Overview-for-S-Corporation-Banks-and-Mutual-Institutions.aspx.*

making it effective on June 1, 2009, without opportunity to comment before the effective date. The Board has considered comments that were submitted after the publication of the final rule and for the reasons described above, adopted the final rule for CPP Subordinated Securities substantially in the form of the interim final rule.

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. §§ 553(b) and (d)), the Board also finds that there is good cause for issuing this interim final rule with respect to the SBLF Securities and making the rule effective on June 21, 2011, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking. The Board is requesting public comment on the interim final rule.

As explained, the SBLF Subordinated Securities are substantially equivalent to the CPP Subordinated Securities in terms and substance. Furthermore, the Board has adopted the interim final rule in light of the important policy considerations of the SBLF program and to help address the continued effects of the financial crisis and recession on small businesses. The rule will allow S-Corp BHCs that are subject to the Policy Statement to exclude the SBLF Subordinated Securities from debt for purposes of the debt-to-equity ratio standard of the Policy Statement. This will help counteract the effects of the recent financial crisis on lending to small businesses and promote stability in the banking system as well as economic growth through increased availability of credit to small businesses.

The Board believes it is important to provide S-Corp BHCs that are subject to the Policy Statement immediately with guidance concerning the capital treatment of the SBLF Subordinated Securities so that they may make appropriate judgments concerning the extent of their participation in the SBLF program and to provide S-Corp BHCs with immediate certainty concerning the treatment of SBLF Subordinated Securities under the Policy Statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[16] Under regulations issued by the Small Business Administration,[17] a small entity includes a bank holding company with assets of $175 million or less (a small bank holding company). As of December 31, 2010, there were approximately 4,493 small bank holding companies.

The purpose of the final rule for CPP Subordinated Securities, like the interim final rule, is to facilitate participation in the CPP for S-Corp and Mutual BHCs, increase capital available to banking organizations, and promote stability in the financial markets and banking industry. Similarly, the purpose of the interim final rule for SBLF Subordinated Securities is to facilitate participation by S-Corp BHCs and Mutual BHCs in the SBLF program, thereby making more capital available for small business lending and alleviate the effects of the financial crisis and economic downturn on lending to small businesses.

As a general matter, the Capital Guidelines apply only to a bank holding company that has consolidated assets of $500 million or more. Therefore, the final rule, like the CPP interim rule, would not affect small bank holding companies. Furthermore, the final rule has no new effect on small bank holding companies that were applicants to the CPP and excluded CPP Subordinated Securities from the definition of debt under the Policy Statement pursuant to the CPP interim rule, which reduced burden and benefited small bank holding companies, as explained in the CPP interim rule. Therefore, the Board believes adoption of the final rule for CPP Subordinated Securities will not result in a significant economic impact on small bank holding companies.

The changes to the Policy Statement under the interim final rule for SBLF Subordinated Securities will also reduce burden and benefit small bank holding companies. By allowing them to exclude the SBLF Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement, issuance of the subordinated securities to Treasury would have a neutral effect on the ability of the issuing small bank holding company to issue dividends or make acquisitions with regard to its debt-to-equity ratio. Furthermore, the interim final rule does not appear to duplicate, overlap, or conflict with any other Federal rules. Therefore, the Board believes that the interim final rule will not result in a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the interim final rule would impose undue burdens on, or have unintended consequences for, small banking organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the interim final rule.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final rule and interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule or interim final rule.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the interim final rule easier to understand. For example:

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

List of Subjects in 12 CFR Part 225

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

Authority and Issuance

Accordingly, the interim rule amending 12 CFR part 225 which was published at 74 FR 26077 on June 1, 2009, is adopted as a final rule with the following changes:

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

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

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906,

[16] *See* 5 U.S.C. 603(a).

[17] *See* 13 CFR 121.201.

3907, 3909, and 5371; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 2. Appendix A to part 225 is amended by revising section II.A.1.a.iv., paragraph (5), to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *
A. * * *
1. * * *
a. * * *
iv. * * *

(5) Subordinated debentures issued prior to October 4, 2010, to the Treasury under the TARP (TARP Subordinated Securities) established by the EESA by a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHC) or by a bank holding company organized in mutual form (Mutual BHC).

* * * * *

■ 3. In appendix C to part 225, revise paragraph 3 in footnote 3 to section 2 to read as follows:

Appendix C to Part 225—Small Bank Holding Company Policy Statement

* * * * *

2. Ongoing Requirements

[3] * * *

In addition, notwithstanding any other provision of this policy statement and for purposes of compliance with paragraphs 2.C., 3.A., 4.A.i, and 4.B.i. of this policy statement, both a bank holding company that is organized in mutual form and a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code may exclude from debt subordinated debentures issued to the United States Department of the Treasury under (i) the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110–343, 122 Stat. 3765 (2008), and (ii) the Small Business Lending Fund established by the Small Business Jobs Act of 2010, Title IV of Public Law 111–240, 124 Stat. 2504 (2010).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 13, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–14983 Filed 6–20–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 309 and 310

RIN 3064–AD83

Disclosure of Information; Privacy Act Regulations; Notice and Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), abolished the Office of Thrift Supervision (OTS) and redistributed, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the FDIC, respectively. The Board of Directors has determined that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended. In taking this action the FDIC's goal is to avoid potential confusion and uncertainty that may arise regarding information concerning State savings associations after the Transfer Date.

DATES: The effective date of the Interim Rule is July 21, 2011. Written comments must be received by the FDIC no later than August 22, 2011.

ADDRESSES: You may submit comments by any of the following methods:

Agency Web Site: http://www.fdic.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.

E-mail: Comments@FDIC.gov. Include RIN 3064–AD83 in the subject line of the message.

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

Hand Delivery/Courier: 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. (EST).

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

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1–(877) 275–3342 or 1–(703) 562–2200.

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov;* Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or *rray@fdic.gov;* or Martin P. Thompson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898–6767 or *marthompson@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Act, signed into law on July 21, 2010, provides for a substantial reorganization of the regulation of savings associations and their holding companies. Beginning July 21, 2011, the Transfer Date established in Dodd-Frank, functions formerly performed by the OTS will be divided among the FRB, OCC, and FDIC. Section 316(b) of the Act provides that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the Transfer Date continue in effect and are enforceable by the appropriate successor Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law. Section 323(b) also provides for the transfer on the Transfer Date of OTS property, including books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence relating to such reports, to the respective agencies, that were used by the OTS on the day before the Transfer Date to support OTS functions.

Section 316(c) of the Act further provides for the identification of OTS regulations relating to the supervision of State savings associations to be transferred to the FDIC. The FDIC does not intend to continue or enforce existing OTS regulations regarding the Freedom of Information Act or Privacy Act.

II. The Interim Rule

The OTS regulations governing Freedom of Information Act and Privacy Act issues are contained in 12 CFR parts 503 and 505. Because the OTS, unlike the FDIC, is a component part of the Department of the Treasury (Treasury), the OTS rules supplement Treasury's