REPORT TO CONGRESS

Differences in Accounting and Capital Standards among the Federal Banking Agencies

December 2022

Summary

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences among the accounting and capital standards used by the agencies for insured depository institutions (institutions).[1] Section 37(c) requires that this report be published in the *Federal Register*. The agencies have not identified any material differences among the agencies' accounting and capital standards applicable to the institutions they regulate and supervise.

Introduction

In accordance with section 37(c), the agencies are submitting this joint report, which covers differences among their accounting and capital standards existing as of September 30, 2022, applicable to institutions.[2] In recent years, the agencies have acted together to harmonize their accounting and capital standards and eliminate as many differences as possible. As of September 30, 2022, the agencies have not identified any material differences among the agencies' accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rule for institutions (capital rule),[3] which harmonized the agencies' capital rule in a comprehensive manner.[4] Since 2013, the

---

[1] 12 U.S.C. § 1831n(c)(1) and 12 U.S.C. § 1831n(c)(3).

[2] Although not required under section 37(c), this report includes descriptions of certain of the Board's capital standards applicable to depository institution holding companies where such descriptions are relevant to the discussion of capital standards applicable to institutions.

[3] See 78 Fed. Reg. 62,018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 Fed. Reg. 55,340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 Fed. Reg. 20,754 (April 14, 2014). The agencies' respective capital rule is at 12 C.F.R. pt. 3 (OCC), 12 C.F.R. pt. 217 (Board), and 12 C.F.R. pt. 324 (FDIC). The capital rule applies to institutions, as well as to certain bank holding companies (BHCs) and savings and loan holding companies (SLHCs). *See also* 12 C.F.R. § 217.1(c).

[4] The capital rule reflects the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to BHCs, SLHCs, and state member banks (SMBs), while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

agencies have revised the capital rule on several occasions, further reducing the number of differences in the agencies' capital rule.[5] oday, only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally non-material differences among the agencies' capital rule. No new material differences were identified in the capital standards applicable to institutions in this report compared to the previous report submitted by the agencies pursuant to section 37(c).

Differences in the Standards among the Federal Banking Agencies

Differences in Accounting Standards

As of September 30, 2022, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

Differences in Capital Standards

The following are the remaining technical differences among the capital standards of the agencies' capital rule.[6]

Definitions

The agencies' capital rule largely contains the same definitions.[7] The differences that exist generally serve to accommodate the different needs of the institutions that each agency charters, regulates, and/or supervises.

The agencies' capital rule has differing definitions of a pre-sold construction loan. The capital rule of all three agencies provides that a pre-sold construction loan means any "one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. § 1831n), and, in addition to other criteria, the purchaser has not terminated the contract."[8] The Board's definition provides further clarification that, if a purchaser has terminated the contract, the institution must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Consolidated Reports of Condition and Income (Call Report).[9] Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rule

---

[5] See e.g., 84 Fed. Reg. 35,234 (July 22, 2019). The OCC and FDIC revised their capital rule to conform with language in the Board's capital rule related to the qualification criteria for additional tier 1 capital instruments and the definition of corporate exposures. As a result, these differences, which were included in previous reports submitted by the agencies pursuant to section 37(c), have been eliminated.

[6] Certain minor differences, such as terminology specific to each agency for the institutions that it supervises, are not included in this report.

[7] See 12 C.F.R. § 3.2 (OCC); 12 C.F.R. § 217.2 (Board); 12 C.F.R. § 324.2 (FDIC).

[8] 12 C.F.R. § 3.2 (OCC); 12 C.F.R. § 217.2 (Board); 12 C.F.R. § 324.2 (FDIC).

[9] 12 C.F.R. § 217.2.

would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rule generally provides uniform eligibility criteria for regulatory capital instruments, there are some textual differences among the agencies' capital rule. The capital rule of each of the three agencies requires that, for an instrument to qualify as common equity tier 1 or additional tier 1 capital, cash dividend payments be paid out of net income and retained earnings, but the Board's capital rule also allows cash dividend payments to be paid out of related surplus.[10] The provision in the Board's capital rule that allows dividends to be paid out of related surplus is a difference in substance among the agencies' capital rule. However, due to the restrictions on institutions regulated by the Board in separate regulations, this additional language in the Board's rule has a practical impact only on bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and is not a difference as applied to institutions. The agencies apply the criteria for determining eligibility of regulatory capital instruments in a manner that ensures consistent outcomes for institutions.

Both the Board's capital rule and the FDIC's capital rule also include an additional sentence noting that institutions regulated by each agency are subject to restrictions independent of the capital rule on paying dividends out of surplus and/or that would result in a reduction of capital stock.[11] These additional sentences do not create differences in substance between the agencies' capital standards, but rather note that restrictions apply under separate regulations.

In addition, the Board's capital rule includes a requirement that a Board-regulated institution[12] must obtain prior approval before redeeming regulatory capital instruments.[13] This requirement effectively applies only to a BHC or an SLHC and is, therefore, not included in the OCC's and FDIC's capital rule. All three agencies require institutions to obtain prior approval before redeeming regulatory capital instruments in other regulations.[14] The additional provision in the Board's capital rule, therefore, only has a practical impact on BHCs and SLHCs and is not a difference as applied to institutions.

---

[10] 12 C.F.R. § 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board).

[11] 12 C.F.R. § 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board); 12 C.F.R. § 324.20(b)(1)(v) and 324.20(c)(1)(viii) (FDIC). Although not referenced in the capital rule, the OCC has similar restrictions on dividends; 12 C.F.R. § 5.55 and 12 C.F.R. § 5.63. Certain restrictions on the payment of dividends that apply under separate regulations, and therefore not discussed in this report, are different among the agencies. *Compare* 12 C.F.R § 208.5 (Board) and 12 C.F.R. § 5.64 (OCC) *with* 12 C.F.R § 303.241 (FDIC).

[12] Board-regulated institution refers to an SMB, a BHC, or an SLHC. *See* 12. C.F.R. § 217.2.

[13] 12 C.F.R. § 217.20(f); *see also* 12 C.F.R. § 217.20(b)(1)(iii).

[14] See 12 C.F.R. § 5.46, 5.47, 5.55, and 5.56 (OCC); 12 C.F.R. § 208.5 (Board); 12 C.F.R. § 303.241 (FDIC).

Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rule with regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct identified losses from common equity tier 1 capital elements, to the extent that the institutions' common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.[15] Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

For example, identified losses may include, among other items, assets classified as loss, off-balance-sheet items classified as loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities. The Board and the OCC expect their supervised institutions to promptly recognize examiner-identified losses, but the requirement is not explicit under their capital rule. Instead, the Board and the OCC apply their supervisory authorities to ensure that their supervised institutions charge off any identified losses.

Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in activities that are not permissible for national banks.[16]

When subsidiaries of a savings association are engaged in activities that are not permissible for national banks,[17] the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association. If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required, and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.[18] As the appropriate federal banking agencies for federal and state savings associations, respectively, the OCC and the FDIC apply this capital treatment to

---

[15] 12 C.F.R. § 324.22(a)(9).

[16] 12 U.S.C. § 1464(t)(5).

[17] Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

[18] A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.

those types of institutions. The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

Tangible Capital Requirement

Federal law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.[19] The capital rule of the OCC and the FDIC includes a requirement that savings associations maintain a tangible capital ratio of 1.5 percent.[20] This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of total assets.[21] Generally speaking, the appropriate federal banking agency must appoint a receiver within 90 days after an institution becomes critically undercapitalized.[22]

Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that took effect beginning on January 1, 2018.[23] These standards require certain BHCs to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these BHCs to meet a 6 percent supplementary leverage ratio to be considered "well capitalized" under the PCA framework.[24] The rule text establishing the scope of application for the enhanced supplementary leverage ratio differs among the agencies. The Board and the FDIC apply the enhanced supplementary leverage ratio standards for institutions based on parent BHCs being identified as global systemically important BHCs as defined in 12 C.F.R. § 217.2.[25] The OCC applies enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier BHC that has more than $700 billion in total assets or more than $10 trillion in assets under custody.[26]

---

[19] 12 U.S.C. § 1464(t)(1)(A)(ii) and (t)(2)(B).

[20] 12 C.F.R. § 3.10(a)(6) (OCC); 12 C.F.R. § 324.10(a)(1)(vi) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

[21] See 12 U.S.C. § 1831o(c)(3); see also 12 C.F.R. § 6.4 (OCC); 12 C.F.R. § 208.45 (Board); 12 C.F.R. § 324.403 (FDIC).

[22] 12 U.S.C. § 1831o(h)(3)(A).

[23] See 79 Fed. Reg. 24,528 (May 1, 2014).

[24] 12 C.F.R. § 6.4(b)(1)(i)(D)(2) (OCC); 12 C.F.R. § 208.43(b)(1)(iv)(B) (Board); 12 C.F.R. § 324.403(b)(1)(v) (FDIC).

[25] 12 C.F.R. § 208.43(b)(1)(iv)(B) (Board); 12 C.F.R. § 324.403(b)(1)(ii) (FDIC).

[26] 12 C.F.R. § 6.4(b)(1)(i)(D)(2) (OCC).