1997: NSR must serve copies of its NS–1 petition, and a copy of this Decision No. 5, upon all persons with whom it would be required to consult pursuant to our 49 CFR part 1105 environmental regulations if its NS–1 petition were an exemption petition; and NSR must certify to the Board, in writing, that it has complied with this service requirement (and must attach to its certification a list of all such persons). (3) NSR and CSXT also must serve copies of their petitions and this decision on the Council on Environmental Quality, the Environmental Protection Agency's Office of Federal Activities, and the Federal Railway Administration, and certify that they have done so.[7]

Following receipt of any comments and any replies, we will endeavor to issue a decision on the CSX–1 and NS–1 waiver petitions as soon after June 4, 1997, as is practicable.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 7, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–12484 Filed 5–12–97; 8:45 am]

BILLING CODE 4915–00–P

[7] With respect to any person upon whom the petitions have already been served, CSXT and NSR are not required to serve their petitions a second time. Rather, with respect to any such person, CSXT and NSR should serve only a copy of Decision No. 5, but should otherwise comply with the certification requirement.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket Number 97–12]

Report to the Congress Regarding the Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives regarding differences in capital and accounting standards among the federal banking and thrift agencies.

SUMMARY: The Office of the Comptroller of the Currency (OCC) has prepared this report as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires the OCC to provide a report to Congress on any differences in capital standards among the federal financial regulatory agencies. This notice is intended to satisfy the FDICIA requirement that the report be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Roger Tufts, Senior Economic Advisor, Office of the Chief National Bank Examiner (202) 874–5070, Eugene Green, Deputy Chief Accountant, Office of the Chief Accountant (202) 874–4933, or Ronald Shimabukuro, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives

Submitted by the Office of the Comptroller of the Currency

This report[1] describes the differences among the capital requirements of the Office of the Comptroller of the Currency (OCC) and those of the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS).[2] The report is divided into four sections. The first section provides a short overview of the current capital requirements; the second section discusses the differences in the capital standards; the third section briefly discusses recent efforts of the Agencies to promote more consistent capital standards; and the fourth section discusses the differences in accounting standards related to capital. The report covers developments through December 31, 1996.

A. Overview of the Risk-Based Capital Standards

Since the adoption of the risk-based capital guidelines in 1989, all of the Agencies have applied similar capital standards to the institutions they supervise. The risk-based capital guidelines implement the Accord on International Convergence of Capital Measurement and Capital Standards adopted in July, 1988, by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Accord).

The risk-based capital guidelines establish a framework for imposing capital requirements generally based on credit risk. Under the risk-based capital guidelines, balance sheet assets and off-balance sheet items are categorized, or ''risk-weighted,'' according to the relative degree of credit risk inherent in the asset or off-balance sheet item. The risk-based capital guidelines specify four risk-weight categories—zero percent, 20 percent, 50 percent, and 100 percent. Assets or off-balance sheet items with the lowest levels of credit risk are risk-weighted in the lowest risk weight category; those presenting greater levels of credit risk receive a higher risk weight. Thus, for example, securities issued by the U.S. government are risk-weighted at zero percent; one- to four-family home mortgages are risk-weighted at 50 percent; unsecured commercial loans are risk-weighted at 100 percent.

Off-balance sheet items must first be translated into an on-balance-sheet credit equivalent amount by applying the conversion factors, or multipliers, that are specified in the risk-based capital guidelines of the Agencies. This credit equivalent amount is then assigned to one of the four risk-weight categories. For example, a bank may extend to its customer a line of credit that the customer may borrow against for up to two years. The unused portion of this two year line of credit—that is, the amount of available credit that the customer has not borrowed—is carried as an off-balance sheet item. Under the agencies' risk-based capital guidelines, this unused portion is translated to an on-balance-sheet credit equivalent amount by applying a 50 percent conversion factor, and the resulting amount is then assigned to the 100 percent risk-weight category based on the credit risk of the counterparty.

Once all the assets and off-balance sheet items have been risk-weighted, the

[1] This report is made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, 105 Stat. 2236 (December 19, 1991), 12 U.S.C. 1831n(c). Section 121 of FDICIA supersedes section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (August 9, 1989), which imposed similar reporting requirement and was repealed.

[2] The OCC is the primary supervisor of national banks. Bank holding companies and state-chartered banks that are members of the Federal Reserve System are supervised by the FRB. State-chartered nonmember banks are supervised by the FDIC. The OTS supervises savings associations and savings and loan holding companies. In this report, the term ''Banking Agencies'' refers to the OCC, FRB and the FDIC; the term ''Agencies'' refers to all four of the agencies, including the OTS.

total amount of all risk-weighted assets and off-balance sheet items is used to determine the total amount of capital required for that institution. Specifically, the risk-based capital guidelines of the Agencies require each institution to maintain a ratio of total capital to risk-weighted assets of 8 percent.

Total capital is comprised of two components—Tier 1 capital (core capital) and Tier 2 capital (supplementary capital).[3] Tier 1 capital includes common stockholders' equity, noncumulative perpetual preferred stock and related surplus, and minority interests in consolidated subsidiaries. Tier 2 capital includes the allowance for loan and lease losses, certain types of preferred stock, some hybrid capital instruments, and certain subordinated debt. These Tier 2 capital instruments, as well as the total amount of Tier 2 capital, are subject to limitations and conditions provided by the risk-based capital guidelines of the Agencies. In addition, the risk-based capital guidelines also require the deduction of certain assets from either Tier 1 capital or total capital. For example, as described in section B(6), all goodwill must be deducted from Tier 1 capital.

Institutions generally are expected to hold capital above the required minimum level, and most institutions usually do exceed minimum risk-based capital requirement. For example, most national banks currently hold capital in excess of 10 percent of risk-weighted assets.[4] However, in addition to the risk-based capital requirement, the Agencies also impose a leverage capital requirement, expressed as the percentage of Tier 1 capital to total assets. Unlike the risk-based capital ratio, the leverage capital ratio is based on total assets, not total risk-weighted assets. This means that the leverage capital ratio is computed without regard to the risk-weight categories assigned to the assets and without including off-balance sheet items.

B. Remaining Differences in Capital Standards of the Agencies

Although the Agencies have adopted common leverage capital requirements and risk-based capital guidelines, there remain some technical differences in language and interpretation of the capital standards. These differences are described in this section. Some of these differences, however, may be eliminated through an interagency rulemaking conducted pursuant to section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act).[5] The items in this section for which the Agencies have agreed to propose uniform treatment are marked with an asterisk (*) and further discussed in section C(1)(i) of this report.

*1. Leverage Capital Requirements**

Under the OCC leverage capital requirement, highly-rated banks (composite CAMELS[6] rating of 1) must maintain a minimum leverage capital ratio of at least 3 percent of Tier 1 capital to total assets. All other banks must maintain an additional 100 to 200 basis points of Tier 1 capital to total assets. The OCC leverage capital requirement is the same as the rules of the other Banking Agencies.

Saving associations are subject to a leverage ratio requirement of 3 percent of core capital[7] to adjusted total assets and a tangible capital requirement of 1.5 percent of total assets. The OTS has not yet adopted a final rule to amend its leverage ratio requirement to be consistent with the leverage ratio requirements of the other Banking Agencies. See 56 FR 16238 (April 22, 1991). OTS regulated institutions, however, must satisfy the same percentage requirements for leverage capital as banks in order to be considered adequately capitalized for purposes of the PCA standards applicable to all insured depository institutions. See 12 U.S.C. 1831o.

2. Equity Investments

To the extent that a bank is permitted to hold equity securities (such as securities obtained in connection with debts previously contracted), the OCC risk-based capital guidelines generally require these investments to be risk weighted at 100 percent. However, on a case-by-case basis, the OCC may require deduction of equity investments from the capital of the parent bank or impose other requirements in order to assess an appropriate capital charge above the minimum capital requirements. The other Banking Agencies have similar rules. The capital treatment of equity investments is also discussed in section B(5) of this report.

After the enactment of FIRREA, savings associations were required to deduct equity investments that are impermissible for national banks from capital gradually during a phase-in period. The phase-in period ended July 1, 1996.

3. Assets subject to Guarantee Arrangements by the Federal Savings and Loan Insurance Corporation (FSLIC)/Federal Deposit Insurance Corporation

The OCC risk-based capital guidelines assign assets with FSLIC or FDIC guarantees to the 20 percent risk-weight category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The other Banking Agencies also assign these assets to the 20 percent weight category. The OTS assigns these

[3] In addition to Tier 1 and Tier 2 capital, the risk-based capital guidelines of the Banking Agencies also permit certain banks to hold limited amounts of Tier 3 capital to satisfy market risk requirements. See section C(2) for further discussion.

[4] In addition to the risk-based capital guidelines, the Agencies have issued regulations implementing the prompt corrective action (PCA) provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA requires that the Agencies take certain supervisory actions if an institution's capital declines to unacceptable levels. See 12 U.S.C. 1831o. As required by the statute, the PCA regulations establish four capital categories that are defined in terms of three separate capital measures (the risk-based capital ratio, the leverage ratio, and the ratio of Tier 1 capital to risk-weighted assets). These four categories are: well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized. By way of illustration, an institution is well capitalized if its risk-based capital ratio is 10 percent or greater; its leverage ratio is 5 percent or greater; and its ratio of Tier 1 capital to risk-weighted assets is 6 percent or greater. A fifth PCA category—critically undercapitalized—is defined, as the statute requires, as a 2 percent ratio of tangible equity to total assets. See 12 CFR Part 6 (1996) (the OCC's prompt corrective action regulations).

[5] Pub. L. 103–325, section 303, 108 Stat. 2160, 2215 (1994) (codified at 12 U.S.C. 1835). Section 303(a)(2) required that the Agencies ''work jointly * * * to make uniform all regulations and guidelines implementing common statutory or supervisory policies.'' See also Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, Joint Report: Streamlining of Regulatory Requirements (September 23, 1996) (Progress report submitted by the Agencies to the Congress pursuant to section 303(a)(3) of the CDRI Act).

[6] On December 9, 1996, the Federal Financial Institutions Examination Council (FFIEC) adopted the revised Uniform Financial Institutions Rating System (UFIRS or CAMELS rating system). The UFIRS is an internal rating system used by the federal and state banking regulators for assessing the soundness of financial institutions on a uniform basis and for identifying those insured institutions requiring special supervisory attention. Among other things, the revised UFIRS added a sixth ''S'' component called ''Sensitivity to Market Risk'' to the CAMELS rating system. This change reflects an increased emphasis by the Agencies on the quality of risk management practices. A final notice was published in the **Federal Register** on December 19, 1996, effective January 1, 1997. See 61 FR 67021 (December 19, 1996).

[7] While the definition of core capital is generally consistent with the definition of Tier 1 capital, there are some differences. Mutual savings associations may include certain nonwithdrawable accounts and pledged deposits as core capital. In addition, under section 221 of FIRREA, 12 U.S.C. 1828(n), qualifying supervisory goodwill was permitted to be included in core capital for savings associations; however, supervisory goodwill was phased out of core capital at the end of 1994.

assets to the zero percent risk-weight category.

4. Limitation on Subordinated Debt and Limited-Life Preferred Stock

The OCC limits the amount of Tier 2 capital that may be included in total capital to no more than 100 percent of Tier 1 capital. Consistent with the Basle Accord, the OCC further limits the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. In addition, the OCC risk-based capital guidelines require that subordinated debt and limited-life preferred stock be discounted 20 percent in each of the five years prior to maturity. The other Banking Agencies have similar rules.

The OTS risk-based capital rules also limit Tier 2 capital to 100 percent of Tier 1 capital, but do not contain any sublimit on the total amount of limited-life instruments that may be included within Tier 2 capital. In addition, the OTS allows savings associations the option of either (1) discounting maturing capital instruments (issued on or after November 7, 1989) by 20 percent a year over the last five years of their term, or (2) including the full amount of such instruments, provided that the amount maturing in any of the next seven years does not exceed 20 percent of the total capital of the savings association.

*5. Subsidiaries**

Consistent with the Basle Accord, the Banking Agencies generally require that significant[8] majority-owned subsidiaries be consolidated with the parent institution for both regulatory reporting and capital purposes. If a subsidiary is not consolidated, the bank's investment in the subsidiary constitutes a capital investment in the subsidiary. The OCC risk-based capital guidelines specifically provide that capital investments in an unconsolidated banking or financial subsidiary must be deducted from the total capital of the bank. The OCC risk-based capital guidelines also permit the OCC to require the deduction of investments in other subsidiaries and associated companies on a case-by-case basis. In addition, Part 5 of the OCC's regulations requires deconsolidation of any subsidiary that engages as principal in activities not permitted to be conducted in the bank directly, and requires the bank's equity investment in that subsidiary to be deducted from the capital of the bank. See 61 FR 60342 (November 27, 1996).

The FRB risk-based capital guidelines for state member banks generally require the deduction of investments in unconsolidated banking and finance subsidiaries. The FRB may require an investment in unconsolidated subsidiaries other than banking and finance subsidiaries or joint ventures and associated companies, (1) to be deducted, (2) to be appropriately risk-weighted against the proportionate share of the assets of the entity, or (3) to be consolidated line-by-line with the entity. In addition, the FRB may require the parent organization to maintain capital above the minimum standard sufficient to compensate for any risks associated with the investment.

The FRB risk-based capital guidelines also explicitly permit the deduction of investments in certain subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the FRB deducts investments in, and unsecured advances to, ''Section 20'' securities subsidiaries from the capital of the parent bank holding company.

The FDIC accords similar treatment to certain type of securities subsidiaries of state-chartered nonmember banks. Moreover, under the FDIC rules, investments in, and extensions of credit to, certain mortgage banking subsidiaries are also deducted in computing the capital of the parent bank. Neither the OCC nor the FRB has a similar requirement with regard to mortgage banking subsidiaries.

Under OTS risk-based capital guidelines, a distinction is made between saving associations subsidiaries engaged in activities permissible for national banks and their subsidiaries and saving association subsidiaries engaged in activities ''impermissible'' for national banks. This distinction is mandated by FIRREA. Subsidiaries of savings associations that engage only in activities permissible for national banks are consolidated on a line-for-line basis if majority-owned and on a *pro rata* basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in national bank-impermissible activities are deducted in computing tangible and core capital of the parent association. The remaining assets (the percent of assets corresponding to the nondeducted portion of the investment in the subsidiary) are consolidated with the assets of the parent association. However, investments, including loans outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date, are grandfathered. These investments were required to be phased-out of capital by July 1, 1994; however, the transition period for investments made prior to April 12, 1989, in nonincludable real estate subsidiaries could be extended, in certain circumstances, to July 1, 1996. See 12 U.S.C. 1464(t)(5)(D). During this transition period, investments in subsidiaries engaged in impermissible activities that had not been phased out of capital were consolidated on a *pro rata* basis.

6. Nonresidential Construction and Land Loans

Under the OCC risk-based capital guidelines, loans for real estate development and construction are assigned to the 100 percent risk-weight category. Reserves or charge-offs are required for such loans when weaknesses or losses develop. The OCC has no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan. The other Banking Agencies have similar rules.

OTS generally also assigns these loans to the 100 percent risk-weight category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, savings associations must deduct the full amount of the excess portion from total capital.[9]

7. Mortgage-Backed Securities (MBS)

The OCC risk-based capital guidelines generally assign a risk weight to privately-issued MBSs according to the underlying assets, but in no case is a privately-issued MBS assigned to the zero percent risk-weight category. Privately-issued MBSs, where the direct underlying assets are mortgages, are generally assigned a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk-weight category. The other Banking Agencies have similar rules.

[8] A significant majority-owned subsidiary is a subsidiary in which the investment by the parent bank represents a significant financial interest of the parent bank as evidenced by (1) the bank investment or advances to the subsidiary equals 5 percent or more of the total equity capital of the bank, (2) the bank's proportional share of the gross income or revenue of the subsidiary equals 5 percent or more of the gross income or revenue of the bank, (3) the income (or loss before taxes) of the subsidiary amount to 5 percent or more of the income (or loss before taxes) of the bank, or (4) the subsidiary is the parent of a subsidiary that is considered a significant subsidiary.

[9] Prior to July 1, 1994, only a percentage (as provided by a phase-in schedule) of the excess portion was required to be deducted from total capital.

Similarly, the OTS assigns privately issued MBSs backed by securities issued or guaranteed by government agencies or government-sponsored enterprises to the 20 percent risk-weight category. However, unlike the Banking Agencies, the OTS also assigns certain privately-issued high quality mortgage-related securities with AA or better investment ratings to the 20 percent risk-weight category. Like the Banking Agencies, the OTS does not assign any privately issued MBS to the zero percent category.

With respect to other MBSs, the Agencies assign to the 100 percent risk-weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their *pro rata* share of loss.

8. Agricultural Loan Loss Amortization

In determining regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984, and December 31, 1991.[10] The program also applies to losses incurred between January 1, 1983, and December 31, 1991, as a result of reappraisals and sales of agricultural other real estate owned and agricultural personal property. These losses must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Savings associations are not eligible to participate in the agricultural loan loss amortization program established by this statute.

*9. Treatment of Junior Liens on One- to Four-Family Properties**

In some cases, a banking organization may make two loans secured by the same residential property; one loan is secured by a first lien, the other by a second lien. The OCC and the FDIC generally assign first liens on one-to four-family properties to the 50 percent risk-weight category. The assignment of first lien mortgages to the 50 percent risk-weight category is based upon the expectation that banks will adhere to the requirement for prudent underwriting standards with respect to the maximum loan-to-value ratio, the borrower's paying capacity and the long-term expectations for the real estate market in which the bank is lending.

The OCC assigns all second liens on residential property to the 100 percent risk-weight category, regardless of whether the institution also holds the first lien. The FDIC similarly assigns all second liens to the 100 percent risk-weight category. However, in determining the risk-weight of the first lien, the FDIC considers the first and second liens together to assess whether the first lien satisfies prudent underwriting standards. When evaluated together, if the first and second liens are within the prudent loan-to-value ratio and satisfy all other underwriting standards, then the first lien will be assigned to the 50 percent risk-weight category; otherwise, it will be assigned to the 100 percent risk-weight category.

The FRB and OTS consider the first and second liens as a single loan, provided there are no intervening liens. Therefore, the total amount of these transactions may be assigned to the 100 percent risk-weight category, if, in the aggregate, the two loans exceed a prudent loan-to-value ratio and, therefore, do not qualify for the 50 percent risk-weight category. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions. However, if the total amount of the transaction does satisfy a prudent loan-to-value ratio and other underwriting standards, then both the first and second liens may be assigned to the 50 percent risk-weight category.

10. Pledged Deposits and Nonwithdrawable Accounts

Pledged deposits and nonwithdrawable accounts that satisfy specified OTS criteria may be included in core capital by mutual savings associations. Pledged deposits and nonwithdrawable accounts generally represent capital investments in mutual saving associations under the same terms as perpetual noncumulative preferred stock. These mutual saving associations accept capital investments in the form of pledged deposits and nonwithdrawable accounts because mutual associations are not legally authorized to issue common or preferred stock. Income capital certificates and mutual capital certificates that were issued by savings associations under applicable statutory authority and regulations and held by the FDIC may be included in Tier 2 capital by savings associations.

These instruments are unique to savings associations and are not held by commercial banks. Consequently, these instruments are not addressed in the OCC risk-based capital guidelines.

*11. Mutual Funds**

The OCC and the other Banking Agencies generally assign all of the holdings of a bank in a mutual fund to the risk category appropriate to the asset with the highest risk that a particular mutual fund is *permitted* to hold under its operating rules. This approach takes into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund. On a case-by-case basis, however, the OCC may permit a bank to risk weight the investments in a mutual fund on a *pro rata* basis relative to the maximum risk weights of the assets the mutual fund is permitted to hold but limited to no lower than a 20 percent risk weight.

The OTS applies a capital charge based on the riskiest asset that is actually held by the mutual fund at a particular time. In addition, the OTS and OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be risk weighted on a *pro rata* basis dependent on the actual composition of the fund.

*12. Collateralized Transactions**

Both the OCC and FRB permit certain loans and transactions collateralized by cash and OECD government securities to qualify for a zero percent risk weight. The FDIC and OTS risk weight loans and transactions collateralized by cash and OECD government securities at 20 percent. See discussion in section C(1)(i) of this report.

C. Recent Interagency Rulemaking Projects

The three Banking Agencies have amended their capital adequacy rules in several significant ways since they were originally adopted. First, the credit risk framework of the risk-based capital guidelines has been expanded to cover derivative contracts. Second, the risk-based capital guidelines have been amended to incorporate a market risk component which serves to supplement credit risk. Third, all four Agencies have added an interest rate risk component to their capital adequacy rules. In amending the capital adequacy rules, the practice of the Agencies is to consult closely with one another even in instances where joint rulemaking is not statutorily required. This ensures that all insured depository institutions are subject to the same standards to the maximum extent feasible. The following describes the most significant rulemaking projects undertaken during the period covered by this report.

[10] This program will sunset January 1, 1999. *See* 60 FR 27401 (May 24, 1995).

1. Amendments to the Risk-Based Capital Credit Risk Framework

This section discusses regulatory efforts of the Agencies to amend the credit risk framework of the risk-based capital guidelines.

a. Expanded Matrix for Derivative Contracts

On September 5, 1995, the OCC and the other Banking Agencies issued a joint final rule on derivative contracts which amended the risk-based capital guidelines to cover derivative contracts. See 60 FR 46170 (September 5, 1995); see also 59 FR 45243 (September 1, 1994) (OCC proposed rule). Specifically, the rule expanded and revised the set of off-balance sheet credit conversion factors used to calculate the potential future credit exposure on derivative contracts and permitted banks to net multiple derivative contracts executed with a single counterparty that are subject to a qualifying bilateral netting contract when calculating the potential future credit exposure.

b. Membership in the Organization for Economic Cooperation and Development (OECD)

Under the risk-based capital guidelines, claims on, or guarantees by, certain entities in OECD-based countries generally are subject to a lower capital charge. See 12 CFR Part 3, Appendix A 3(a)(1)(iii) (securities issued by the United States or the central government of an OECD country subject to zero percent risk weight). On December 20, 1995, the OCC and the other Banking Agencies amended the definition of ''OECD-based country'' to exclude any country that has rescheduled its external sovereign debt within the previous five years. See 60 FR 66042 (December 20, 1995). This rule was issued in response to a change by the Basle Committee on Banking Regulations and Supervisory Practices to the Basle Accord.

c. Unrealized Gains and Losses on Securities Available for Sale

The Agencies have all issued final rules on unrealized gains and losses on securities available for sale. The final rules were developed jointly by the OCC and the other Agencies in response to Financial Accounting Standard (FAS) 115, which generally requires net unrealized gains and losses on securities available for sale to be included in capital. See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 115 (Accounting for Certain Investments in Debt and Equity Securities), No. 126-D (May 1993). The Federal Financial Institutions Examination Council adopted FAS 115 for regulatory reporting purposes beginning December 15, 1993.

The proposed rules of the Agencies would have adopted FAS 115 for regulatory capital purposes by amending the definition of ''common stockholders' equity'' in the capital guidelines to include both unrealized gains and losses on securities available for sale. However, after careful consideration of the comments received, the OCC, along with the other Agencies, decided not to adopt the proposed rule because of the potential volatility that could result if FAS 115 unrealized gains and losses are required to be included in regulatory capital. Consequently, the OCC final rule does not require national banks to use FAS 115 for the purposes of computing regulatory capital. See 59 FR 60552 (November 25, 1994). The FDIC, the OTS and the FRB issued similar final rules. See 59 FR 66662 (December 28, 1994) (FDIC final rule); 60 FR 42025 (August 15, 1995) (OTS final rule); and 59 FR 63641 (December 8, 1994) (FRB final rule).

d. Concentrations of Credit and Nontraditional Activities

The Agencies have implemented section 305 of FDICIA by amending their capital adequacy rules to explicitly identify concentrations of credit risk and certain risks arising from nontraditional activities as important factors in assessing each institution's overall capital adequacy. The four Agencies issued a joint final rule on the risks from concentrations of credit and nontraditional activities. The final rule was published in the **Federal Register** on December 15, 1994. See 59 FR 64561 (December 15, 1994).

e. Bilateral Netting Contracts

On December 28, 1994, the OCC and the OTS issued a joint final rule on bilateral netting contracts. This final rule amended the risk-based capital guidelines to permit netting of certain interest rate and foreign exchange rate contracts in calculating the current exposure portion of the credit equivalent amount of these contracts for risk-based capital purposes. See 59 FR 66645 (December 28, 1994). The FRB and the FDIC issued similar final rules. See 59 FR 62987 (December 7, 1994) (FRB final rule); and 59 FR 66656 (December 28, 1994) (FDIC final rule).

f. Collateralized Transactions

The rule on collateralized transactions amended the OCC risk-based capital guidelines to lower the risk weight from 20 percent to zero percent on certain loans and transactions collateralized by cash or government securities. The OCC issued its final rule on collateralized transactions on December 28, 1994. See 59 FR 66642 (December 28, 1994). See section C(1)(i) for a description of the plan of the Agencies to issue uniform rules with respect to collateralized transactions.

g. Deferred Tax Assets

The OCC final rule on deferred tax assets amended the risk-based capital guidelines to limit the amount of certain deferred tax assets that may be included in an institution's Tier 1 capital to the lesser of (1) the amount of deferred tax assets the institution expects to realize within one year or (2) 10 percent of Tier 1 capital. This final rule was developed jointly by the Agencies in response to FAS 109, which was adopted for regulatory reporting purposes beginning January 1, 1993. See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 109 (Accounting for Income Taxes), No. 112–A (February 1992). FAS 109 provides guidance on the accounting treatment of income taxes and generally allows banks to report certain deferred tax assets they could not previously recognize. The OCC issued its final rule on February 10, 1994. See 60 FR 7903 (February 10, 1994). The FRB and the FDIC issued similar final rules. See 59 FR 65920 (December 22, 1994) (FRB); and 60 FR 8182 (February 13, 1995) (FDIC). The OTS had adopted this general approach through the issuance of a Thrift Bulletin. See TB–56 (January 1993).

h. Mortgage Servicing Rights

On August 1, 1995, the OCC, the other Banking Agencies, and the OTS issued a joint interim rule with request for comment on the capital treatment of originated mortgage servicing rights (OMSR). See 60 FR 39266 (August 1, 1995). The interim rule was developed in response to FAS 122 on mortgage servicing rights which eliminates the accounting distinction between OMSRs and purchased mortgage servicing rights (PMSR). See Financial Accounting Standards Board, Statement of Financial Accounting Standards Number 122 (Accounting for Mortgage Servicing Rights). Specifically, the interim rule amends the capital adequacy rules to treat OMSRs the same as PMSRs for regulatory capital purposes. Therefore, subject to an overall 50 percent limit of Tier 1 capital, both OMSRs and PMSRs may be included in capital for regulatory capital and PCA purposes.

i. CDRI Act Section 303(a)(2) Capital Amendments

In addition to the general ongoing efforts of the Agencies to achieve uniform capital and accounting standards, as part of the interagency review of regulations under section 303(a)(2) of the RCDRIA, the Agencies currently are evaluating the capital and accounting differences in this report in contemplation of changes to achieve greater uniformity. The Agencies already have issued a joint proposed rule on collateralized transactions as part of their efforts under section 303(a)(2) of the CDRI Act. See 61 FR 42565 (August 16, 1996). Under this joint proposed rule, the FDIC and OTS would adopt a collateralized transactions rule lowering the risk weight from 20 percent to zero percent on certain loans and transactions collateralized by cash or government securities; the OCC and FRB would revise their current collateralized transactions rule to use more uniform language.

In addition to collateralized transactions, the Agencies have identified several other provisions as appropriate for revision under section 303(a)(2) of the CDRI Act. These provisions include the capital treatment of presold residential construction loans, junior liens on one to four-family residential properties, and mutual funds, investments in subsidiaries and the minimum leverage capital requirement. See Joint Report: Streamlining of Regulatory Requirements, pages I–6 through I–9.

2. Market Risk Component

The joint final rule issued by the Banking Agencies on market risk amended the risk-based capital guidelines to incorporate a measure for market risk in foreign exchange and commodity activities and in the trading of debt and equity instruments. Market risk generally represents the risk of loss attributable to on and off-balance sheet positions caused by movements in market prices. The effect of the final rule is to require certain banks with relatively large amounts of trading activities to hold additional capital based on the measure of their market risk exposure as determined by the banks own internal value-at-risk model. The final rule also establishes a third capital category, Tier 3 capital, which generally consists of certain short term subordinated debt subject to a lock-in clause that prevent the issuer from repayment if the bank's risk-based capital ratio falls below 8 percent. Tier 3 capital can only be used to satisfy market risk capital requirements. The joint final rule was issued by the Banking Agencies on September 6, 1996. See 61 FR 47358 (September 6, 1996).

3. Interest Rate Risk Component

The joint final rule issued by the Banking Agencies on interest rate risk amended the capital adequacy rules to clarify the authority of the Banking Agencies to specifically include in their evaluation of bank capital an assessment of the exposure to declines to bank's capital due to changes in interest rates. The final rule on interest rate risk was issued jointly by the OCC and the other Banking Agencies on August 2, 1995. See 60 FR 39490 (August 2, 1995). The Banking Agencies also have issued a joint policy statement on interest rate risk on June 26, 1996. See 61 FR 33166 (June 26, 1996). The joint policy statement provides guidance to banks on measuring and managing their interest rate risk exposure.

The OTS has adopted an interest rate risk component to its risk-based capital guidelines, which became effective on January 1, 1994. Once fully implemented, under the OTS rule thrift institutions with an above normal level of interest rate risk will be subject to a capital charge commensurate to their risk exposure. Unlike the interest rate risk rules of the Banking Agencies, the OTS rule, when implemented, would impose an automatic capital charge for interest rate risk over a specified level. In addition, under the OTS rule, the OTS collects data and computes the interest rate risk exposure and corresponding capital charge for all thrift institutions required to report.

4. Recourse

In general, recourse is the risk of loss retained by an institution when it sells an asset. Recourse arrangements allow the purchaser of an asset to seek recovery against the institution that sold the asset under the conditions in the agreement. Under the current risk-based capital guidelines of the Banking Agencies, sales of assets involving recourse generally must be reported as financings which means that the assets are retained on the balance sheet of the selling bank. The OTS treats sales with recourse as sales for regulatory reporting and leverage ratio purposes if they meet the criteria under generally accepted accounting principles (GAAP) for sales treatment, including the establishment of a recourse liability account for reasonably estimated losses from the recourse obligation.

a. Low Level Recourse

Prior to the adoption of the final rule on low level recourse, the risk-based capital guidelines of the Banking Agencies had the effect of requiring a full leverage and risk-based capital charge whenever assets are sold with recourse, even if the institution's maximum exposure under the recourse obligation is less than the capital charge on the asset sold. On April 10, 1995, the OCC issued a final rule on low level recourse. See 60 FR 17986 (April 10, 1995). This final rule amends the risk-based capital guidelines to limit the amount of capital that a bank must hold to the maximum contractual loss exposure retained by the bank under the recourse obligation if that amount is less than the amount of the effective capital requirement for the underlying asset. This final rule implements the requirements of section 350 of the CDRI Act (12 U.S.C. 4808), which generally limits the risk-based capital charge for assets transferred with recourse to the amount of recourse the bank is contractually liable under the recourse agreement. The FRB and the FDIC issued similar final rules. See 60 FR 8177 (February 13, 1995) (FRB final rule); and 60 FR 15858 (March 28, 1995) (FDIC final rule). The OTS capital rules already reflected this position on low level recourse.

b. Recourse and Direct Credit Substitutes

On May 25, 1994, the Agencies jointly issued an advance notice of proposed rulemaking (ANPR) on recourse. See 59 FR 27116 (May 25, 1995). The ANPR proposed an approach that would use credit ratings to more closely match the risk-based capital assessment to an institution's relative risk of loss in certain asset securitizations.

c. Small Business Loan Recourse

Section 208 of the CDRI Act (12 U.S.C. 1835) generally reduces the amount of capital required to be held by certain qualified institutions for recourse retained in certain transfers of small business loans and leases of personal property. Currently, the Agencies are engaged in rulemaking to implement section 208. The FRB issued a final rule on August 31, 1995. See 60 FR 45612 (August 31, 1995). The FDIC, OTS, and the OCC, have issued interim rules with request for comment. See 60 FR 45606 (August 31, 1995) (FDIC interim rule); 60 FR 45618 (August 31, 1995) (OTS interim rule); and 60 FR 47455 (September 13, 1995) (OCC interim rule).

D. Interagency Differences in Accounting Principles

The regulatory reporting standards for all commercial banks, whether regulated by the OCC, the FRB, or the FDIC, are prescribed in the instructions to the Call Report. The Call Report instructions are prepared by the Federal Financial Institutions Examination Council (FFIEC) and require banks to follow generally accepted accounting principles (GAAP) for reports of condition and income required to be filed with the Banking Agencies except as permitted under section 121 of FDICIA. Under section 121 of FDICIA, the Banking Agencies must require financial institutions to use accounting principles ''no less stringent than GAAP'' for reports of condition and income to be filed with the Banking Agencies. Reporting in accordance with GAAP generally satisfies this statutory requirement.

Although the accounting and reporting requirements imposed by the Banking Agencies were, for the most part, already consistent with GAAP, on November 3, 1995, the FFIEC announced the full adoption of GAAP as the reporting basis for the Call Report. Proposed Call Report changes to further conform the Call Report with GAAP were published for comment on September 16, 1996. See 61 FR 48687 (September 16, 1996). The final Call Report changes were published on February 21, 1997. See 62 FR 8078 (February 21, 1997).

The OTS requires each savings association to file the Thrift Financial Report. That report is filed on a basis consistent with GAAP as it is applied by savings associations, which differs in a few respects from GAAP as GAAP applies to banks. These current differences in accounting principles between the banks and thrift institutions result in some differences in financial statement presentation and in amounts of regulatory capital required to be maintained by these institutions. The following summarizes the significant differences between the Thrift Financial Report and the Call Report as of year-end 1996. However, the implementation of the current Call Report changes to move toward the full adoption of GAAP by the Banking Agencies will essentially eliminate substantive accounting differences among the Agencies. As a result most of the accounting differences discussed in this section will be eliminated. To the degree, any accounting differences remain, the Agencies will continue to work toward reconciling those remaining differences.

1. Futures and Forward Contracts

Differences in this area result because the Banking Agencies generally require future and forward contracts to be marked to market, whereas under GAAP savings associations may defer gains and losses resulting from certain hedging activities.

The Banking Agencies do not follow GAAP, but require banks to report changes in the market value of futures and forward contracts, even when used as hedges, in current income. However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP. The accounting for futures and forward contracts is being reexamined by the Financial Accounting Standards Board (FASB) as part of an ongoing project on accounting for derivatives.

The OTS requires savings associations to follow GAAP to account for futures contracts. Accordingly, when specified hedging criteria are satisfied, the accounting for the futures contract is matched with the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the income effects of the hedged item are recognized. This reporting can result in the deferral of both gains and losses. Although there is no specific GAAP for forward contracts, the OTS applies these same principles to forward contracts.

2. Push-Down Accounting

When a depository institution is acquired in a purchase transaction, the holding company is required to revalue all of the assets and liabilities of the depository institution at fair value at the time of acquisition. When push-down accounting is applied, the same fair value adjustments recorded by the parent holding company are also recorded at the depository institution level.

All of the agencies require the use of push-down accounting when there has been a substantial change in the ownership of the institution. However, differing standards have been applied to determine when this substantial change has occurred.

The Banking Agencies require push-down accounting when there is at least a 95 percent change in ownership of the institution. This approach is consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change of ownership.

3. Excess Service Fees

Excess service fees are created when a bank sells mortgage loans, but retains the servicing rights. Excess service fees represent the present value of the servicing fees in excess of the normal servicing fee. Savings associations consider excess servicing fees in the determination of the gain or loss on a loan sale, whereas banks generally recognize the excess fee over the life of the loan.

The Banking Agencies require banks to follow GAAP for residential first mortgage loans. This requires that when loans are sold with servicing retained and the stated servicing fee is sufficiently higher than a normal servicing fee, the sales price is adjusted to determine the gain or loss from the sale. This allows additional gain recognition for the excess servicing fee at the time of sale and recognizes a normal servicing fee in each subsequent year. This gain cannot exceed the gain assuming the loans were sold with servicing released. In addition, the Banking Agencies allow limited recognition at the time of sale of excess servicing fees for SBA loans.

For all other loans, the Banking Agencies require that excess servicing fees retained on loans sold be recognized over the contractual life of the transferred assets.

The OTS follows GAAP in valuing all excess service fees. Therefore, the accounting stated above for sales of mortgage loans with excess servicing at banking institutions would apply to all loan sales with excess servicing at savings associations.

4. In-substance Defeasance of Debt

The Banking Agencies do not permit banks to defease their liabilities in accordance with FAS 76, whereas saving associations may eliminate defeased liabilities from the balance sheet. FAS 76 concerns the extinguishment of debt. Specifically, FAS 76 specifies that debt is to be considered extinguished if the debtor is relieved of primary liability for the debt by the creditor and it is probable that the debtor will not be required to make future payments as guarantor of the debt. In addition, even though the creditor does not relieve the debtor of its primary obligation, debt is to be considered extinguished if (1) the debtor irrevocably places cash or other essentially risk-free monetary assets in a trust solely for satisfying that debt and (2) the possibility that the debtor will be required to make further payments is remote. The Banking Agencies report in-substance defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

The OTS accounts for debt that has been in-substance defeased in accordance with GAAP. Therefore, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

5. Sales of Assets with Recourse

Banks generally do not report sales of receivables if any risk of loss is retained. Savings associations report sales when the risk of loss can be estimated in accordance with FAS 77.

The Banking Agencies generally allow banks to report transfers of receivables as sales only when the transferring institution: (1) retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this rule does not apply to the transfer of mortgage loans under certain government programs (GNMA, FNMA, etc.). Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of pools of mortgages are also reported as sales if the transferring institution does not retain more than an insignificant risk of loss on the assets transferred.

The OTS follows GAAP to account for a transfer of all receivables with recourse. A transfer of receivables with recourse is recognized as a sale if: (1) the seller surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

6. Negative Goodwill

The Banking Agencies require that negative goodwill be reported as a liability, and not netted against the goodwill asset.

The OTS permits negative goodwill to offset the goodwill assets resulting from other acquisitions.

7. Offsetting of Amounts Related to Certain Contracts

Financial Accounting Standards Board Interpretation Number (FIN) 39 became effective in 1994. FIN 39 allows the offsetting of assets and liabilities on the balance sheet (e.g., loans, deposits, etc.), as well as the netting of assets and liabilities arising from off-balance sheet derivatives instruments, when four conditions are met. These conditions relate to whether a valid right of offset exists. FIN 41, which also became effective in 1994, provides for the netting of repurchase and reverse repurchase agreements when certain conditions are met.

The Banking Agencies have adopted FIN 39 solely for on-balance sheet amounts arising from conditional and exchange contracts (e.g., interest rate swaps, options, etc.). The Banking Agencies have not adopted FIN 41. The Call Report's existing guidance, which generally prohibits netting of assets and liabilities, is currently followed in all other cases. The OTS policy on netting of assets and liabilities is consistent with GAAP.

8. Specific Valuation Allowance for and Charge-offs of Troubled Loans

The Banking Agencies generally consider real estate loans that lack acceptable cash flows or other repayment sources to be ''collateral dependent.'' When the fair value of the collateral of such a loan has declined below book value, the loan is reduced to fair value. This approach is consistent with GAAP applicable to banks and FAS 114.

The OTS requires a specific valuation allowance against or partial charge-off of a loan when its book value exceeds its ''value.'' The ''value'' is defined as either the present value of the expected future cash flows discounted at the loan's effective interest rate, the observable market price, or the fair value of the collateral. This policy is also consistent with the requirements of FAS 114.

Effective March 31, 1995, the OTS required that losses on collateral dependent loans be measured based on the fair value of the collateral. Accordingly, after March 31, 1995, the OTS policy regarding the recognition of losses on collateral dependent loans became comparable to that of the Bank Agencies.

Dated: May 6, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–12515 Filed 5–12–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE–113–82, Required Distributions from Qualified Plans and Individual Retirement Plans (§ 1.403(b)–2).

DATES: Written comments should be received on or before July 14, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Required Distributions from Qualified Plans and Individual Retirement Plans.

OMB Number: 1545–0996.

Regulation Project Number: EE–113–82.

Abstract: This regulation provides rules regarding the minimum distribution requirements applicable to any annuity contract, custodial account, or retirement income account described in Internal Revenue Code section 403(b). The minimum distribution rules do not apply to benefits accrued before January 1, 1987.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Not-for-profit institutions, and state, local, and tribal governments.

Estimated Number of Respondents: 8,400.