Proposed Rules

Federal Register

Vol. 76, No. 201

Tuesday, October 18, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1433]

RIN No. 7100 AD 83

Reserve Requirements of Depository Institutions: Reserves Simplification and Private Sector Adjustment Factor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board is requesting public comment on proposed amendments to Regulation D, Reserve Requirements of Depository Institutions, to simplify the administration of reserve requirements. The proposed amendments would create a common two-week maintenance period for all depository institutions, create a penalty-free band around reserve balance requirements in place of carryover and routine penalty waivers, discontinue as-of adjustments related to deposit revisions, replace all other as-of adjustments with direct compensation, and eliminate the contractual clearing balance program. The proposed amendments are designed to reduce the administrative and operational costs associated with reserve requirements for both depository institutions and the Federal Reserve. The Board is requesting comment on all aspects of the proposal. In connection with the proposed elimination of the contractual clearing balance program, the Board is requesting comment on several issues related to the methodology used for the Private Sector Adjustment Factor that is part of the pricing of Federal Reserve Bank services.

DATES: Comments must be submitted by December 19, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1433 and RIN No. 7100 AD 83, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Kara Handzlik, Senior Attorney (202) 452–3852, Legal Division, or Margaret Gillis DeBoer, Assistant Director (202) 452–3139, or Heather Wiggins, Senior Financial Analyst (202) 452–3674, Division of Monetary Affairs, or, for questions regarding the Private Sector Adjustment Factor, Gregory Evans, Deputy Associate Director (202) 452–3945, or Brenda Richards, Manager (202) 452–2753, Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Reserve Act (Act) [1] authorizes the Board of Governors of the Federal Reserve System (Board) to impose reserve requirements on certain deposits and other liabilities of depository institutions for the purpose of implementing monetary policy. The Board's Regulation D (Reserve Requirements of Depository Institutions, 12 CFR part 204) implements section 19 of the Act. Transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent, depending on the level of transaction accounts at that institution.[2] The reserve requirement ratios are set by the Board within the limits mandated by the Act. A depository institution satisfies its reserve requirement by its holdings of vault cash and, if vault cash is insufficient to meet the requirement, by a balance maintained in an account at a Federal Reserve Bank (Reserve Bank). The amount of balances that an institution must maintain if its reserve requirement is not satisfied by vault cash is referred to as the reserve balance requirement. The balance that an institution maintains to satisfy its reserve balance requirement can be maintained either in the institution's own account at a Reserve Bank or in a pass-through correspondent's Reserve Bank account. In 2008, Congress amended the Federal Reserve Act to authorize the Reserve Banks to pay interest on balances of eligible institutions.[3] Since then, interest has been paid on balances maintained to satisfy reserve balance requirements at a rate determined by the Board (currently 25 basis points).[4]

An institution may also maintain a clearing balance to satisfy its contractual clearing balance requirement pursuant to an agreement between the institution and its Reserve Bank. Clearing balances currently generate earning credits, a form of compensation that can be used only to offset service charges an institution incurs through its use of Federal Reserve priced services (earnings credits currently are computed as 80 percent of the rolling 13-week average of the three-month Treasury bill rate). An institution may also maintain excess balances, which are balances held in excess of the balance maintained to satisfy the reserve balance requirement and the contractual clearing balance requirement, in its account at a Reserve Bank. Like balances maintained to satisfy the

[1] 12 U.S.C. 461.

[2] 12 CFR 204.4(f) (reserve requirement ratios).

[3] Emergency Economic Stabilization Act of 2008, Pub. L. 110–343, § 128, 122 Stat. 3765 (2008).

[4] 12 CFR 204.10(b) (rates of interest paid on balances maintained by eligible institutions at Reserve Banks).

reserve balance requirement, since 2008, interest has been paid on excess balances at a rate determined by the Board (currently 25 basis points).

II. Overview of Proposed Simplifications

The Board is proposing four amendments to Regulation D that would simplify the administration of reserve requirements while maintaining the role of reserve requirements in the implementation of monetary policy. The Board believes that these four simplifications will reduce the administrative and operational costs associated with reserve requirements for depository institutions, Reserve Banks, and the Board:

1. Create a common two-week maintenance period for all depository institutions;
2. Create a penalty-free band around reserve balance requirements in place of using carryover and routine penalty waivers (routine penalty waivers are used to eliminate charges for small or infrequent reserve deficiencies);
3. Discontinue as-of adjustments related to deposit revisions and replace all other as-of adjustments with direct compensation; and
4. Eliminate the contractual clearing balance program.

The Board also proposes to make certain changes to various terms used throughout Regulation D in order to clarify the meaning, enhance the accuracy, and ensure the consistent application of those terms. The proposed changes include replacing the term ''required reserve balance'' with ''balances maintained to satisfy the reserve balance requirement,'' adding a new definition of ''reserve balance requirement,'' and making conforming revisions throughout the regulation.

Upon the Board's adoption of final amendments to Regulation D and the Private Sector Adjustment Factor calculation, related Federal Reserve operating circulars and manuals will be updated accordingly.

1. Create a Common Two-Week Maintenance Period for All Depository Institutions

As noted above, a depository institution may satisfy its reserve balance requirement by maintaining a balance in its own account at a Reserve Bank or in a pass-through correspondent's Reserve Bank account. A depository institution satisfies its reserve balance requirement on average over a period of time, known as a maintenance period. Maintenance periods provide depository institutions flexibility, allowing them to meet their reserve balance requirements on average over a period of time rather than on a daily basis.

Regulation D currently provides for two types of maintenance periods, a one-week maintenance period and a two-week maintenance period.[5] To determine which reserve maintenance period applies to an institution, the Board requires depository institutions to submit deposit reports at different frequencies depending on the amount of their reservable liabilities over the preceding year.[6] The Board assigns depository institutions annually to one of four deposit reporting categories (weekly reporters, quarterly reporters, annual reporters, or nonreporters). Depository institutions that have reservable liabilities above the exemption amount[7] and therefore have non-zero reserve requirements are required to submit deposit data at a weekly or quarterly frequency. Of these institutions, those with the sum of transaction accounts, savings deposits, and small time deposits above a certain threshold are required to report weekly and those with the sum of transaction accounts, savings deposits, and small time deposits below the threshold are required to report quarterly. Weekly reporters are subject to a two-week maintenance period and quarterly reporters are subject to a one-week maintenance period. Institutions that have reservable liabilities below the exemption amount (and therefore have a zero reserve requirement) either report annually or are not required to report at all. Annual reporters and nonreporters with a contractual clearing balance are subject to a one-week maintenance period and, as explained above, receive earnings credits on their clearing balances rather than interest payments. Institutions that have neither reserve requirements nor clearing balance requirements receive interest payments on their average balances over a one-week period at the excess balance rate.

From one year to another, some depository institutions switch reporting frequency because of changes in the levels of the institution's reservable liabilities. Specifically, some depository institutions may switch from a two-week maintenance period to a one-week maintenance period, or vice versa. In certain instances, depository institutions that become eligible to shift to a quarterly instead of weekly reporting frequency elect to remain at the higher reporting frequency in order to maintain the flexibility of satisfying reserve requirements over a two-week maintenance period instead of a one-week maintenance period.

Under the Board's proposal, all depository institutions would be subject to a two-week maintenance period. This proposal would benefit depository institutions, Reserve Banks, and the Board in several ways. It would (1) Provide greater flexibility to depository institutions that currently satisfy reserve balance requirements over a one-week maintenance period; (2) reduce unnecessary complexity in the existing maintenance period structure; (3) reduce administrative and operational costs for depository institutions that may otherwise have had to change maintenance periods when deposit reporting categories (and therefore length of maintenance period) changed; and (4) reduce the operational and administrative cost for Reserve Banks and the Board by eliminating business processes and controls associated with maintaining two maintenance periods.

The creation of a common two-week maintenance period would not impede the conduct of monetary policy. Indeed, it is likely that the two-week maintenance period would enable those depository institutions currently subject to a one-week maintenance period to accommodate more easily unexpected conditions in the Federal funds market because of the longer period of time over which they would be able to manage their reserve positions.

The Board's proposal would not increase the reporting burden on depository institutions that currently have a two-week maintenance period. In addition, for those depository institutions mentioned above that elect

[5] 12 CFR 204.5(b) (maintenance periods). Prior to 1984, all depository institutions satisfied their reserve requirements using a common maintenance period of one week with a lag (''lagged reserve requirements''). Under lagged reserve requirements, the amount of reserves required to be maintained over the maintenance period was calculated based on deposit levels reported during a previous time period. In 1984, however, the Federal Reserve shifted to a framework of contemporaneous reserve requirements. Under contemporaneous reserve requirements, the deposit reporting period and the reserve maintenance period for depository institutions that reported their deposits weekly overlapped significantly. At that time, the Board lengthened the maintenance period for these depository institutions to two weeks in order to provide additional flexibility in meeting reserve requirements. In 1998, the Board returned to the lagged reserve requirements framework, but there was no corresponding change back to a common weekly maintenance period. Accordingly, since 1998, depository institutions that report their deposits weekly have continued to have a two-week maintenance period, while quarterly reporters have continued to have a one-week maintenance period.

[6] 12 U.S.C. 248(a) (authorizing the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy).

[7] The exemption amount is the amount of an institution's reservable liabilities that is subject to a zero-percent reserve requirement. Cf. 12 CFR 204.4(f) (setting forth exemption amount).

to remain weekly reporters to maintain the flexibility of satisfying reserve requirements over a two-week maintenance period instead of a one-week maintenance period, the burden could be reduced, as these institutions could move to a quarterly reporting frequency and still maintain the flexibility of satisfying reserve requirements over a two-week maintenance period. Depository institutions that currently have a one-week maintenance period would have greater flexibility to manage reserve balances over a longer time period; it would not be necessary for such depository institutions to change their internal systems, as they could continue to satisfy their requirement weekly, if desired, within the two-week maintenance period.

Implications for Deposit Data Reporting

For depository institutions that report their deposits weekly, the relationship between the weekly reporting periods and the two-week maintenance period would be maintained. For depository institutions that report their deposits quarterly, the quarterly reporting periods will not change but a new relationship is being proposed to link these quarterly reporting periods to two-week maintenance periods.[8] The Board proposes that each quarterly report be used to calculate the reserve requirement for an interval of either six or seven consecutive two-week maintenance periods, depending on when the interval begins and ends. The interval will begin on the fourth Thursday following the end of each quarterly reporting period if that Thursday is the first day of a two-week maintenance period. If the fourth Thursday following the end of a quarterly reporting period is not the first day of a two-week maintenance period, then the interval will begin on the fifth Thursday following the end of the quarterly reporting period. The interval will end on the fourth Wednesday following the end of the subsequent quarterly reporting period if that Wednesday is the last day of a two-week maintenance period. If the fourth Wednesday following the end of the subsequent quarterly reporting period is not the last day of a two-week maintenance period, then the interval will conclude on the fifth Wednesday following the end of the subsequent quarterly reporting period.

The Board seeks comment on the costs and benefits associated with the proposal to create a common two-week maintenance period. The Board also seeks comment on whether there may be a particular benefit to a one-week common maintenance period rather than the proposed two-week common maintenance period. The Board further seeks comment on possible operational difficulties in transitioning to a two-week maintenance period for those depository institutions that currently have a one-week maintenance period.

2. Create a Penalty-Free Band Around Reserve Balance Requirements in Place of Carryover and Routine Penalty Waivers

Currently, Regulation D requires a depository institution to satisfy its reserve balance requirement on average over that depository institution's maintenance period. A depository institution that has a modest deficiency in its balance maintained to satisfy the reserve balance requirement over a given maintenance period (that is, the institution has maintained on average over the maintenance period a balance that is lower than the amount of its reserve balance requirement) is currently allowed to make up that deficiency in the subsequent maintenance period by holding a higher level of balances.[9] Similarly, a depository institution that has a modest excess of balances maintained to satisfy its reserve balance requirement over a maintenance period is allowed to use that excess to satisfy its reserve balance requirement in the next maintenance period, thereby permitting it to hold a lower average balance over the next maintenance period. The ability to carry a deficiency or excess from one maintenance period over to the next is referred to as ''carryover.''

Carryover was designed to provide depository institutions flexibility in satisfying their reserve balance requirements. Specifically, carryover permits a depository institution to utilize a portion of its excess balances from the current period to satisfy reserve requirements in the subsequent period and thereby avoid having to sell excess funds into the Federal funds market in the event it has more balances than it needs to satisfy its reserve balance requirement. Similarly, within limits, carryover allows a depository institution that does not have sufficient balances to satisfy its reserve balance requirement in the current period to meet a portion of that requirement in the subsequent period and thereby avoid having to increase borrowings in the Federal funds market to avoid a current period deficiency. Either one of these situations could produce sharp swings in market interest rates. Because carryover allows depository institutions to apply one maintenance period's excess or deficiency to the subsequent maintenance period, carryover necessarily links one maintenance period to its successor. As a result, one generally cannot determine for a given maintenance period whether a depository institution has satisfied its reserve balance requirement, or is in an excess or deficient position, until the completion of the subsequent maintenance period. Consequently, Reserve Banks must delay the payment of interest on eligible institutions' balances for at least one maintenance period, in order to calculate the amount and the type of an institution's balances.

Regulation D currently authorizes Reserve Banks to assess charges against depository institutions that fail to satisfy their reserve balance requirements.[10] Regulation D also authorizes Reserve Banks to waive the imposition of these charges except when the deficiency ''arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements.''[11] Regulation D further provides that these ''routine penalty waivers'' are based on ''an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record.''[12] Prior to 2008, reserve balance requirements imposed an implicit tax on depository institutions because it forced depository institutions to hold non-interest-bearing balances at Reserve Banks when those funds could have been invested elsewhere for a return. Because of this implicit tax, depository institutions had an incentive to keep the level of the balances in their Reserve Bank accounts as close as possible to their reserve balance requirements. The ''routine waiver'' provision of Regulation D, permitting Reserve Banks to waive the charge for small or infrequent deficiencies, was designed to avoid punishing depository institutions that generally meet their reserve balance requirements.[13]

[8] The Board currently provides quarterly reporters with reserve maintenance calendars that link quarterly reporting periods to a group of one-week maintenance periods. *See http://www.frbservices.org/centralbank/reservescentral/index.html#rmc.* If the Board adopts the proposed amendments to Regulation D in final form, these reserve maintenance calendars will be updated accordingly.

[9] 12 CFR 204.6(a).

[10] 12 CFR 204.6(a).

[11] 12 CFR 204.6(b).

[12] *Id.*

[13] Infrequent deficiencies cannot exceed a certain percentage of the depository institution's required reserves and can only occur once during a two-year period.

The Board is proposing to create a penalty-free band around each depository institution's reserve balance requirement and to eliminate the carryover and routine waiver provisions of Regulation D. Under the proposal, the top of the penalty-free band would be defined as an amount equal to an institution's reserve balance requirement plus a dollar amount prescribed by the Board. Similarly, the proposal would define the bottom of the penalty-free band as an amount equal to an institution's reserve balance requirement less a dollar amount prescribed by the Board. The dollar amount used to set the top and bottom of the penalty-free band could be set as a fixed dollar amount, specified as a percent of an institution's reserve balance requirement, or as a combination of a fixed dollar amount and a percent of an institution's reserve balance requirement. The dollar amounts prescribed by the Board to determine the top and bottom of the penalty-free band may differ from each other.

A depository institution that maintains balances that exceeded the reserve balance requirement, but fell within the band, would be remunerated at the interest rate paid on balances maintained to satisfy the reserve balance requirement. Balances that exceeded the top of the penalty-free band would be remunerated at the interest rate paid on excess balances.[14] A depository institution that maintains balances below its reserve balance requirement would not be assessed a deficiency charge unless the balances fell below the bottom of the penalty-free band. The proposal would define a deficiency as the bottom of the penalty-free band less the average balance held in an account at a Reserve Bank by or on behalf of an institution over a maintenance period. Under the proposal, Reserve Banks could pay interest on all balances immediately following the close of a maintenance period.

The creation of a penalty-free band in place of carryover and routine penalty waivers would not impede the conduct of monetary policy. The administration of a penalty-free band would be more straightforward than the complex rules surrounding the application of carryover and routine penalty waivers. The elimination of these features will make reserve administration more efficient and less administratively burdensome and operationally complex for depository institutions, Reserve Banks, and the Board, thereby supporting the effective implementation of monetary policy. Reserve Banks would, however, retain the authority to waive charges for deficiencies based on an evaluation of the circumstances in each individual case.

Currently, the Reserve Banks pay interest on balances maintained to satisfy reserve balance requirements at a rate designed to effectively eliminate the opportunity cost of holding such balances. In general, any interest rate paid on balances maintained to satisfy reserve balance requirements reduces the opportunity cost of holding those balances. If the interest rate set on balances used to satisfy reserve balance requirements effectively eliminates the opportunity cost of holding those balances, most depository institutions should in principle be willing to hold any level of balances within the penalty-free band. A depository institution could choose to hold an amount of balances slightly below the reserve balance requirement and lend the difference in the market; however, the additional interest earned would be approximately offset by the reduced earnings from the Reserve Banks. Similarly, a depository institution could choose to hold an amount slightly higher than the reserve balance requirement and earn a greater amount of interest from its balances at the Reserve Bank. This higher amount of interest earned would be comparable to the foregone return of investing these funds in the market.

The Board proposes to set the width of the penalty-free band to approximate the flexibility in meeting reserve requirements that carryover now provides. Under Regulation D currently, the amount an institution can use for carryover into a subsequent maintenance period is calculated as the greater of $50,000 or 4 percent of a depository institution's total reserve requirement.[15] The total reserve requirement is the amount satisfied with both an institution's vault cash and, if its vault cash is insufficient to satisfy the reserve requirement, an institution's reserve balance requirement. The proposed penalty-free band would be based on the reserve balance requirement, not the total reserve requirement. For purposes of implementing monetary policy and controlling the Federal funds rate, reserve balance requirements are a more relevant quantity to consider than required reserves. On average, reserve balance requirements are just under half of total reserve requirements, that is, depository institutions generally satisfy slightly less than half of reserve requirements with reserve balances. The flexibility provided by the 4 percent carryover provision, when expressed in terms of reserve balance requirements, would equate to roughly 10 percent of the reserve balance requirement for a typical depository institution. Establishing a $50,000 minimum for the penalty-free band would preserve that degree of flexibility for institutions with relatively low reserve balance requirements. Therefore, the Board proposes setting the dollar amount used to establish the top and bottom of the penalty-free band at the greater of $50,000 or 10 percent of a depository institution's reserve balance requirement. For pass-through correspondents, the Board proposes setting the dollar amount used to establish the top and bottom of the penalty-free band at an amount that is equal to the greater of $50,000 or 10 percent of the aggregate reserve balance requirement of the correspondent (if any) and all of its respondents.

The Board expects that, if set this way, the width of the penalty-free band would, for a typical depository institution, approximate the flexibility in meeting reserve requirements that carryover currently provides. The Board also expects, however, that there will be depository institutions that are afforded less and more flexibility under the proposal than they are currently afforded under the carryover provision. For example, institutions that have reserve balance requirements that are almost as large as their reserve requirement will have greater flexibility under the proposal because their penalty-free band will be bigger than their current carryover provision. Institutions with very small reserve balance requirements relative to their reserve requirements, on the other hand, will have less flexibility because their penalty-free band will be smaller than their current carryover provision. The Board seeks comment on what factors the Board should consider in determining the appropriate size of the penalty-free band, expressed either in dollars or as a percentage, around a reserve balance requirement.

3. Discontinue As-of Adjustments Related to Deposit Revisions and Replace All Other As-of Adjustments With Direct Compensation

As-of adjustments are currently used to offset the effect of errors caused by the Federal Reserve and depository institutions, including deposit reporting

[14] Under the proposal, the definition of ''excess balance'' would be amended to mean the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period that exceeds the top of the penalty-free band.

[15] 12 CFR 204.5(e).

errors, or to recover float incurred by an institution.

As-of Adjustments for Deposit Revisions

A depository institution is required to submit revisions to past deposit reports to correct for reporting errors. When those revisions result in a change in the depository institution's reserve balance requirement, an as-of adjustment is used to correct the depository institution's level of balances maintained. For example, if a reserve balance requirement for a given period is revised upwards, the as-of adjustment is used so that the depository institution must hold a greater level of balances in a future maintenance period in order to meet its reserve balance requirement.

The administration of as-of adjustments for deposit revisions imposes a burden on depository institutions, Reserve Banks, and the Board. Moreover, the Board believes that as-of adjustments for deposit revisions are not necessary when the payment of interest on reserve balances reduces or largely offsets the opportunity cost of holding balances to satisfy reserve requirements. Consequently, the Board is proposing to eliminate the use of as-of adjustments for deposit revisions. Reports of deposits will continue to be used for the calculation and publication of the monetary aggregates, and therefore revisions to deposit reports would still be required to correct errors.

The payment of interest on balances maintained to satisfy reserve balance requirements essentially eliminates the need for as-of adjustments for deposit revisions. If a revision to a depository institution's reservable liabilities lowers its reserve balance requirement, the depository institution should have held a lower level of balances to satisfy the lower reserve balance requirement prescribed by the revised deposit data. Before the payment of interest on reserves, holding a lower level of such balances would in principle allow the institution to earn additional interest income by lending out the balances. As-of adjustments in this case effectively compensated the depository institution for this loss of investment income by allowing the institution to hold lower reserve balances in a subsequent period. However, because depository institutions are currently paid interest on those balances at a rate approximately equal to the rate of return that can be earned by lending out reserve balances, the depository institution does not incur a loss as a result of the lower reserve requirement after the fact and thus there is no need for an as-of adjustment. Conversely, if a revision to a depository institution's reservable liabilities increases its reserve balance requirement, the depository institution should have held a higher level of balances to satisfy the higher reserve balance requirement prescribed by the revised deposit data. Holding the higher level of balances requires the institution to forego the return it earned on lending those funds. Before the payment of interest on reserves, as-of adjustments effectively required the depository institution to surrender the interest income gained from lending out balances by requiring the institution to maintain higher balances in a subsequent period. But because the Reserve Banks are currently paying interest on balances maintained to satisfy reserve balance requirements at a rate designed to effectively eliminate this opportunity cost, the depository institution does not benefit from holding lower balances than required based on the revised deposit data. As a result, there is again no need for an as-of adjustment.

All As-of Adjustments Other Than Those Related to Deposit Revisions

As-of adjustments can also be used for a number of other purposes including, but not limited to, the correction of transaction errors, the recovery of float, and penalizing an institution for a reserve deficiency in lieu of assessing monetary charges. An as-of adjustment for a transaction-based error corrects the average level of balances maintained by the depository institution to the level that would have resulted had the error not occurred. Reserve Banks also issue as-of adjustments to recover float that arises from an institution's request to defer check and ACH charges for days in which the institution is closed. Currently, a float pricing as-of adjustment or an explicit billing charge to the institution's account is used to compensate the Reserve Bank for the float created. In addition, Reserve Banks have the ability to use as-of adjustments to penalize an institution for a reserve deficiency rather than imposing monetary charges.

The Board is proposing that the income effects of all transaction-based errors be corrected through direct compensation (that is, either a debit or credit applied to an account to offset the effect of an error). For float payments stemming from temporary closings of institutions, the Board proposes that the recovery of float will be made through an explicit billing charge and not with the issuance of as-of adjustments. For as-of adjustments related to reserve deficiencies, the Board is proposing to amend section 204.6(a) of Regulation D to eliminate the ability to address reserve deficiencies in any manner besides the assessment of charges.

Consistent with these proposals, elsewhere in the **Federal Register** the Board is proposing conforming changes to the provisions in Regulation J that refer to as-of adjustments.

As with the other proposed simplifications, the Board believes that discontinuing as-of adjustments related to deposit revisions and replacing all other as-of adjustments with direct compensation does not affect the conduct of monetary policy. The Board is proposing to pay or charge an institution based on the Federal funds rate. As a matter of current practice, for other instances where Reserve Banks directly compensate depository institutions, the amount compensated is based on the Federal funds rate. The Board requests comment on whether use of the Federal funds rate for the calculation of direct compensation is appropriate, and if not, the rate that the Board should use.[16]

4. Eliminate the Contractual Clearing Balance Program

Currently, a depository institution may voluntarily agree with a Reserve Bank to maintain a level of balances in excess of the amount necessary to satisfy its reserve balance requirement. This program, known as the contractual clearing balance program, allows a Reserve Bank and a depository institution to agree on a specific balance, known as a contractual clearing balance, that the depository institution will hold.[17] The actual amount that a depository institution holds to comply with this agreement is known as a clearing balance.[18] Under the contractual clearing balance program, Reserve Banks do not pay explicit interest on clearing balances. Instead, clearing balances generate earnings credits that a depository institution may then use to pay for Reserve Bank priced services.

Clearing balances were also initially implemented to provide depository institutions that have low reserve balance requirements with an incentive to hold a level of balances that will facilitate clearing of payments and reduce the risk of an overdraft in their Reserve Bank accounts. Earnings credits

[16] With respect to Fedwire funds transfers, § 210.32(b)(1)(ii) of Regulation J and Article 4A–506(b) provide that if the amount of interest is not determined by an agreement or rule, the applicable Federal funds rate would apply.

[17] 12 CFR 204.2(x) (definition of contractual clearing balance).

[18] 12 CFR 204.2(v) (definition of clearing balance).

earned on clearing balances can be used only to offset Federal Reserve priced services fees within a 52-week period, after which the credits expire. The interest rate used to calculate earnings credits is currently 80 percent of the 13-week moving average of the yield on the three-month Treasury bill.

The contractual clearing balance program was implemented to replicate similar programs in the private sector. At that time, neither Reserve Banks nor depository institutions were authorized to pay explicit interest on balances maintained by eligible institutions. The contractual clearing balance program permitted Reserve Banks to compensate institutions in the form of earnings credits. The contractual clearing balance program has also played a role in the pricing of Reserve Bank services. Specifically, the level of clearing balances is a significant factor in establishing the amount of imputed costs that must be recovered by the Reserve Bank priced services fees, as required by the Monetary Control Act of 1980.[19]

Currently, balances maintained to satisfy reserve balance requirements and excess balances receive explicit interest, but clearing balances do not. Reserve Banks currently pay explicit interest on excess balances at a rate that is higher than the rate of implicit interest currently paid on clearing balances. In addition, a depository institution can use the explicit interest it receives on balances held at a Reserve Bank for any purpose, including defraying the costs of using Federal Reserve priced services. As a result, a depository institution today that holds balances in excess of the amount necessary to satisfy its reserve balance requirement would receive a higher return by simply reducing its contractual clearing balance to zero, redesignating its clearing balances as excess balances, and receiving explicit interest on those balances at a higher rate. Consistent with this interest rate differential, there has been a marked decrease in the aggregate quantity of clearing balances maintained by depository institutions since the introduction of the payment of explicit interest on Reserve Bank account balances. Between the October 2008 implementation of the payment of interest on reserve balances and June 2011, the total level of clearing balances held by depository institutions has decreased approximately $3.8 billion, from $6.5 billion to $2.7 billion.

The elimination of the contractual clearing balance program would enhance the Federal Reserve's ability to carry out monetary policy by eliminating the complexities associated with maintaining different balance requirements for different kinds of balances and different kinds and levels of interest rates (explicit and implicit).[20] Since 2008, the explicit interest rates paid on balances maintained to satisfy the reserve balance requirement and excess balances have become an important tool for the conduct of monetary policy. Maintaining a separate implicit interest rate paid on clearing balances under these circumstances could interfere with clear communication of the stance of monetary policy.

Under the proposal, the Board would amend Regulation D to remove the definitions of ''clearing balance,'' ''clearing balance allowance,'' and ''contractual clearing balance.'' The proposal would also remove references to clearing balances and contractual clearing balances elsewhere in Regulation D.

With the elimination of the contractual clearing balance program, contractual clearing balance agreements would be terminated and Reserve Banks would no longer issue earnings credits. Earnings credits issued prior to the effective date of the termination would not be affected by this proposal and would expire 52 weeks from their issue date if they are not used. The proposed elimination of the contractual clearing balance program may affect some depository institutions' internal budgeting procedures, because they would need to begin paying for Reserve Bank priced services explicitly, rather than implicitly through the use of earnings credits. Also, a small number of institutions, such as the Federal Home Loan Banks, are not eligible to earn explicit interest on balances in their Reserve Bank accounts, but are eligible to receive earnings credits under the contractual clearing balance program. These institutions would lose the implicit interest from these balances to pay for Reserve Bank services.

Because the level of clearing balances is a significant factor in establishing the amount of imputed costs that must be recovered by Reserve Bank priced services fees, the Board has been considering a revised methodology for imputing those costs as clearing balances have declined.[21] In March 2009, the Board requested comment on a proposal to replace the current ''correspondent bank model'' for imputing these costs with a model based on publicly traded firms (''publicly traded firm model'' or ''PTF model'').[22] The PTF model proposed in 2009 would accommodate the proposed elimination of clearing balances and would also recognize the shift in priced services' financial characteristics and competitors away from correspondent banks. The PTF model would instead compare the Federal Reserve's priced services to the entire universe of U.S. publicly traded firms. Under the PTF model, the imputed elements of priced services, such as the capital structure and financing and tax rates, would be based on data for the U.S. market as a whole rather than banking institutions. The Board is currently considering the comments received on the proposed PTF model but has maintained the correspondent banking model for 2010 and 2011 because significant levels of clearing balances continue to exist.[23]

The Board seeks comment on all aspects of eliminating the contractual clearing balance program. The Board specifically seeks comments on the following issues related to the effect of eliminating the program on imputing costs to be recovered by Federal Reserve priced services:

1. Would eliminating the contractual clearing balance program materially diminish the value of Federal Reserve priced services? If so, how?

2. Are there any operational difficulties related to the elimination of the contractual clearing balance program as proposed? If so, how long is needed to prepare for the elimination of the program?

3. In order to determine the imputed return on equity (profit) of Federal Reserve priced services, an equity financing rate is applied to the level of equity on the priced services balance sheet. Under the proposed PTF model, the imputed equity level would be computed based on the priced services net funding need (assets less liabilities). Without the clearing balance liabilities and the associated imputed

[19] 12 U.S.C. 248a(c)(3).

[20] The elimination of the contractual clearing balance program would not have any effect on a Reserve Bank's ability to compel account holders to maintain a minimum level of balances in order for the Reserve Bank to protect itself from risk. *See* Reserve Bank Operating Circulars at *http://www.frbservices.org/regulations/operating_circulars.html.*

[21] The Monetary Control Act of 1980 requires that the Board set fees for priced services provided to depository institutions by the Reserve Banks to recover all direct and indirect costs of providing these services over the long run. These costs include those actually incurred as well as imputed costs, which include financing costs, taxes, and certain other expenses, as well as the return on equity (profit) that would have been earned by a private-sector provider. 12 U.S.C. 248a(c)(3).

[22] 74 FR 15481 (April 6, 2009).

[23] *See* 74 FR 57472 (November 6, 2009) and 75 FR 67734 (November 3, 2010).

investments, the net priced services' funding need may be very low when the level of assets associated with priced services assets closely matches the level of liabilities. This, in turn, would generate a very low level of imputed equity relative to assets (*i.e.,* less than 5 percent of total assets).[24] A lower equity-to-assets ratio under the PTF model than the FDIC-required amount of 5 percent of total assets under the current correspondent bank model would make the priced services less comparable to the market as a whole.[25] The Board seeks comment on whether it should establish a minimum imputed equity level. If so, the Board seeks comment on the approach it should use to ensure the minimum imputed equity, such as adjusting the debt-to-equity mix from the model (decreasing debt and increasing equity) and/or imputing additional equity.[26] The Board also requests comment on whether it should use the FDIC minimum equity requirements for commercial banks that are used in the current correspondent bank model or some other basis for establishing the minimum level.

4. The proposed PTF model reflected, in part, the recognition that the financial characteristics of the Reserve Banks' priced services and its competitors were becoming less comparable to banking organizations. Even with the elimination of clearing balances, the Reserve Banks' priced services would still incur (and include in its prices) the costs and benefits related to float. Float occurs when the Reserve Banks debit an institution's account for a transaction on a different day than they credit the account of the institution receiving the funds. Reserve Bank float currently represents approximately one-third of the priced services balance sheet. Typically, depository institutions are more likely to reflect large amounts of float, either debit or credit, on their balance sheets than are other types of businesses; however, these data are not separately reported. Nonbank payment processing firms generate some float, but those amounts are generally a much smaller percentage of their balance sheets than is currently the case for the Reserve Banks' priced services balance sheet. The Board seeks comment on whether the correspondent bank model should be replaced only once the amount of float generated by priced services is a much smaller proportion of the Reserve Banks' imputed balance sheet.

5. Effective Dates

The Board proposes to eliminate the contractual clearing balance program and the use of as-of adjustments no earlier than the first quarter of 2012 and to implement a common reserves maintenance period and the penalty-free band around reserve balance requirements no earlier than the third quarter of 2012. The Board requests comment on whether the proposed effective dates are appropriate. The Board specifically seeks comment on time that depository institutions will need to effect the changes in their systems to adapt to these changes and whether the cost of adapting to these changes will be material.

III. Initial Regulatory Flexibility Analysis

Congress enacted the Regulatory Flexibility Act (the ''RFA'') (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation, which would apply to all depository institutions. Based on current information, the Board believes that although a significant number of ''small banking organizations'' would be affected by the rule, the rule would not have a significant economic impact on these small entities because the amendments are intended to decrease costs (5 U.S.C. 605(b)). Nonetheless, the Board has prepared an initial regulatory flexibility analysis in accordance with 5 U.S.C. 603 in order for the Board to seek comment on the potential impact of the proposed rule on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. *Statement of the need for, objectives of, and legal basis for, the proposed rule.* The Board is proposing to amend Regulation D to simplify reserves administration. Section 19 of the Federal Reserve Act authorizes the Board to impose reserve requirements on certain deposits and other liabilities of depository institutions solely for the purposes of implementing monetary policy. The Board's Regulation D implements section 19 of the Act. The Board believes that the proposed amendments to Regulation D will reduce the administrative and operational costs associated with reserve requirements for depository institutions.

2. *Small entities affected by the proposed rule.* The proposed rule would affect all depository institutions. Pursuant to regulations issued by the Small Business Administration (the ''SBA'') (13 CFR 121.201), a ''small banking organization'' includes a depository institution with $175 million or less in total assets. Based on data reported as of March 31, 2011, the Board believes that there are approximately 10,723 small depository institutions. Out of these small depository institutions, there are approximately 3,088 small depository institutions that satisfy their reserve balance requirement on a one-week maintenance period; approximately 1,927 small depository institutions with contractual clearing balances; and approximately 108 small depository institutions that received at least one as-of adjustment over the first five months of 2011.

3. *Projected reporting, recordkeeping, and other compliance requirements.* The proposed rule imposes certain compliance requirements on small depository institutions. Under proposed section 204.5(b)(2), small depository institutions that satisfy their reserve balance requirement on a one-week maintenance period (approximately 3,088) would be subject to a two-week maintenance period. As noted above, it would presumably not be necessary, however, for such a depository institution to change its internal systems, as it could continue to satisfy its requirement weekly, within the two-week maintenance period. The proposed rules would also eliminate the contractual clearing balance program, currently used by approximately 1,927 small depository institutions. Although the contractual clearing program would be eliminated, the Board does not anticipate that small depository institutions would be negatively affected because small depository institutions would receive explicit interest on excess balances instead of earnings credits on clearing balances. Small depository institutions could then use this explicit interest to pay for Reserve Bank priced services or for other purposes. In addition, the proposed rule would eliminate the use of as-of adjustments for deposit revisions. The Board seeks information and comment on any costs, including

[24] If liabilities exceed assets, the equity-to-assets ratio could be negative.

[25] For example, for 2003–2008, the average equity as a percent of total assets for the market as a whole was 18 percent. The priced services imputed equity represents its market capitalization as a going concern entity.

[26] Equity imputed in excess of the priced services funding need would be offset by an increase in imputed investments and would be invested in a risk-free investment that matches the time horizon of the funding need (*i.e.* one-year Treasury bond).

those costs associated with changes to internal systems, that would arise from the application of the proposed rule.

4. *Identification of duplicative, overlapping, or conflicting Federal rules.* The Board does not believe that any Federal rules duplicate, overlap, or conflict with the proposed rule. The Board is proposing in a separate proposal to amend the Board's Regulation J to remove references to as-of adjustments in order to conform that regulation to this proposal. The Board seeks comment regarding any other statutes or regulations that would duplicate, overlap, or conflict with the proposed rule.

5. *Significant alternatives to the proposed rule.* The Board is unaware of any significant alternatives to the proposed rule that accomplish the stated objectives of the Board to simplify the administration of reserve requirements. The Board requests comment on whether there are additional ways to reduce the burden associated with the administration of reserve requirements on small entities associated with this proposed rule.

IV. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). Although the mandatory data collected on the deposits reporting forms [27] are used by the Federal Reserve for administering Regulation D and for constructing, analyzing, and monitoring the monetary and reserve aggregates none of the revisions proposed in this rulemaking would change the deposits reporting forms. No collections of information pursuant to the PRA are contained in this proposed rule.

Comments on this analysis should be sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (Regulation D), Washington, DC 20503.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

[27] Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900; OMB No. 7100–0087), Annual Report of Total Deposits and Reservable Liabilities (FR 2910a; OMB No. 7100–0175), Report of Foreign (Non-U.S.) Currency Deposits (FR 2915; OMB No. 7100–0237), and Allocation of Low Reserve Tranche and Reservable Liabilities Exemption (FR 2930; OMB No. 7100–0088).

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

2. In § 204.1, revise paragraph (b) to read as follows:

§ 204.1 Authority, purpose and scope.

* * * * *

(b) *Purpose.* This part relates to reserve requirements imposed on depository institutions for the purpose of facilitating the implementation of monetary policy by the Federal Reserve System.

* * * * *

3. In § 204.2:

A. Remove and reserve paragraphs (v) through (x);

B. Revise paragraphs (z) and (bb); and

C. Add paragraphs (ee) through (hh).

The additions and revisions read as follows:

§ 204.2 Definitions.

* * * * *

(z) *Excess balance* means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period that exceeds the top of the penalty-free band.

* * * * *

(bb) Balance maintained to satisfy the reserve balance requirement means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy the reserve balance requirement of this part.

* * * * *

(ee) *Reserve balance requirement* means the balance that a depository institution is required to maintain on average over a reserve maintenance period in an account at a Federal Reserve Bank if vault cash does not fully satisfy the depository institution's reserve requirement imposed by this part.

(ff) *Deficiency* means the bottom of the penalty-free band less the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period.

(gg) *Top of the penalty-free band* means an amount equal to an institution's reserve balance requirement plus an amount that is the greater of 10 percent of the institution's reserve balance requirement or $50,000. The top of the penalty-free band for a pass-through correspondent is an amount equal to the aggregate reserve balance requirement of the correspondent (if any) and all of its respondents plus an amount that is the greater of 10 percent of that aggregate reserve balance requirement or $50,000.

(hh) *Bottom of the penalty-free band* means an amount equal to an institution's reserve balance requirement less an amount that is the greater of 10 percent of the institution's reserve balance requirement or $50,000. The bottom of the penalty-free band for a pass-through correspondent is an amount equal to the aggregate reserve balance requirement of the correspondent (if any) and all of its respondents less an amount that is the greater of 10 percent of that aggregate reserve balance requirement or $50,000.

4. In § 204.4 revise paragraphs (d) and (e), and the introductory text of paragraph (f), to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(d) For institutions that file a report of deposits weekly, reserve requirements are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during a 14-day computation period ending every second Monday.

(e) For institutions that file a report of deposits quarterly, reserve requirements are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during the 7-day computation period that begins on the third Tuesday of March, June, September, and December.

(f) For all depository institutions, Edge Agreement corporations, and United States branches and agencies of foreign banks, reserve requirements are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

* * * * *

5. In § 204.5:

A. Revise paragraphs (a)(1), (b), (c), and (d); and

B. Remove paragraph (e).

The revisions read as follows:

§ 204.5 Maintenance of required reserves.

(a)(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall satisfy reserve requirements by maintaining vault cash and, if vault cash does not fully satisfy the institution's reserve requirement, in the form of a balance maintained—

(i) In the institution's account at the Federal Reserve Bank in the Federal Reserve District in which the institution is located, or

(ii) With a pass-through correspondent in accordance with paragraph (d) of this section.

* * * * *

(b)(1) For institutions that file a report of deposits weekly, the balances maintained to satisfy reserve balance requirements shall be maintained during a 14-day maintenance period that begins on the third Thursday following the end of a given computation period.

(2) For institutions that file a report of deposits quarterly, the balances maintained to satisfy reserve balance requirements shall be maintained during an interval of either six or seven consecutive 14-day maintenance periods, depending on when the interval begins and ends. The interval will begin on the fourth Thursday following the end of each quarterly reporting period if that Thursday is the first day of a 14-day maintenance period. If the fourth Thursday following the end of a quarterly reporting period is not the first day of a 14-day maintenance period, then the interval will begin on the fifth Thursday following the end of the quarterly reporting period. The interval will end on the fourth Wednesday following the end of the subsequent quarterly reporting period if that Wednesday is the last day of a 14-day maintenance period. If the fourth Wednesday following the end of the subsequent quarterly reporting period is not the last day of a 14-day maintenance period, then the interval will conclude on the fifth Wednesday following the end of the subsequent quarterly reporting period.

(c) Cash items forwarded to a Federal Reserve Bank for collection and credit are not included in an institution's balance maintained to satisfy its reserve balance requirement until the expiration of the time specified in the appropriate time schedule established under Regulation J, ''Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire'' (12 CFR part 210). If a depository institution draws against items before that time, the charge will be made to its account if the balance is sufficient to pay it; any resulting deficiency in balances maintained to satisfy the institution's reserve balance requirement will be subject to the penalties provided by law and to the deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in an account for any time for which the Federal Reserve Bank has not received payment in actually and finally collected funds.

(d)(1) A depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation with a reserve balance requirement (''respondent'') may select only one pass-through correspondent under this section, unless otherwise permitted by the Federal Reserve Bank in whose District the respondent is located. Eligible pass-through correspondents are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, and depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain balances to satisfy their own reserve balance requirements, which may be zero, in an account at a Federal Reserve Bank. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents.

(2) Respondents or correspondents may institute, terminate, or change pass-through correspondent agreements by providing all documentation required for the establishment of the new agreement or termination of or change to the existing agreement to the Federal Reserve Banks involved within the time period specified by those Reserve Banks.

(3) Balances maintained to satisfy the reserve balance requirements of a correspondent's respondents shall be maintained, along with the balances maintained to satisfy the correspondent's reserve balance requirement (if any), in a single commingled account of the correspondent at the Federal Reserve Bank in whose District the correspondent is located. Balances maintained in the correspondent's account are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the balances maintained to satisfy the reserve balance requirement of a respondent.

(4)(i) A pass-through correspondent shall be responsible for maintaining balances to satisfy its own reserve balance requirement (if any) and the reserve balance requirements of all of its respondents. A charge for any deficiency in the correspondent's account will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents that permit Reserve Banks to determine whether the respondent has provided sufficient funds to the correspondent to satisfy the reserve balance requirement of the respondent. The correspondent shall maintain such records and make such reports as the Board or Reserve Bank may require in order to ensure the correspondent's compliance with its responsibilities under this section and shall make them available to the Board or Reserve Bank as required.

6. In § 204.6, revise the heading and revise paragraphs (a) and (b) to read as follows:

§ 204.6 Charges for deficiencies.

(a) Federal Reserve Banks are authorized to assess charges for deficiencies at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period.

(b) Reserve Banks may waive the charges for deficiencies based on an evaluation of the circumstances in each individual case.

* * * * *

7. In § 204.10 revise paragraphs (b)(1), (b)(3), (c), (d)(3) and (e)(2) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b)(1) For balances up to the top of the penalty-free band, at ¼ percent;

* * * * *

(3) For balances up to the top of the penalty-free band, excess balances, and term deposits, at any other rate or rates as determined by the Board from time to time, not to exceed the general level of short-term interest rates. For purposes of this subsection, ''short-term interest rates'' are rates on obligations with maturities of no more than one year, such as the primary credit rate and rates on term Federal funds, term repurchase agreements, commercial paper, term Eurodollar deposits, and other similar instruments.

(c) *Pass-through balances.* A pass-through correspondent that is an eligible institution may pass back to its respondent interest paid on balances maintained to satisfy the reserve balance requirement of that respondent. In the case of balances held by a pass-through correspondent that is not an eligible institution, a Reserve Bank shall pay interest only on the balances maintained to satisfy the reserve balance requirement of one or more respondents up to the top of the penalty-free band, and the correspondent shall pass back to its respondents interest paid on balances in the correspondent's account.

(d) * * *

(3) Balances maintained in an excess balance account will not satisfy any institution's reserve balance requirement.

* * * * *

(e) * * *

(2) A term deposit will not satisfy any institution's reserve balance requirement.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 7, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–26770 Filed 10–17–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Regulation J; Docket No. R–1434]

RIN 7100 AD 84

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire: Elimination of "As-of Adjustments" and Other Clarifications

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board is requesting public comment on proposed amendments to Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire). The proposed changes would eliminate references to "as-of adjustments" consistent with the Board's proposed amendments to Regulation D to simplify reserves administration. The proposed amendments would also clarify that an institution's Administrative Reserve Bank is deemed to have accepted deposit of a check or other item even if the institution sends the item directly to another Federal Reserve Bank. The proposed amendments would further clarify that Regulation J continues to apply to a Fedwire funds transfer even if the funds transfer also meets the definition of "remittance transfer" under the Electronic Fund Transfer Act.

DATES: Comments must be submitted by December 19, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1434 and RIN 7100 AD 84, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Kara Handzlik, Senior Attorney (202) 452–3852, Legal Division; Margaret Gillis DeBoer, Assistant Director (202) 452–3139, or Heather Wiggins, Senior Financial Analyst (202) 452–3674, Division of Monetary Affairs; or Joseph Baressi, Project Leader, Division of Reserve Bank Operations and Payment Systems (202) 452–3959; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart A of Regulation J governs the collection of checks and other items by the Federal Reserve Banks (Reserve Banks), including the types of checks or other items that may be sent to Reserve Banks, the order in which they are deemed to be handled, and the related warranties and indemnities. Subpart B of Regulation J sets forth the terms and conditions under which Reserve Banks receive and deliver payment orders from and to depository institutions over the Reserve Banks' Fedwire® Funds Service (Fedwire).

The Board is proposing amendments to Regulation J that would eliminate references throughout Regulation J to a Reserve Bank's use of "as-of adjustments." [1] These amendments are consistent with the Board's proposed amendments to Regulation D, published elsewhere in the **Federal Register**, which would simplify reserves administration.[2] The Board is also proposing amendments to subpart A of Regulation J to clarify where a check or other item is deemed to be accepted when it is sent to a Reserve Bank. Specifically, these amendments would clarify that when an institution sends a check or other item for collection to a Reserve Bank, the institution's Administrative Reserve Bank is deemed to have accepted deposit of the item even if the item was sent directly to another Reserve Bank.[3] In addition, the Board is proposing amendments that would clarify the application of subpart B of Regulation J. Under these amendments, subpart B of Regulation J would continue to apply to a Fedwire funds transfer even if that funds transfer also meets the definition of "remittance transfer" under the recently revised Electronic Fund Transfer Act ("EFTA").

II. Overview of Proposed Amendments

Eliminate References to As-of Adjustments

Regulation J defines "as-of adjustment" for purposes of subpart B of the regulation as "a debit or credit, for reserve- or clearing-balance maintenance purposes only, applied to the reserve or clearing balance of a bank that either sends a payment order to a Federal Reserve Bank, or that receives a payment order from a Federal Reserve Bank, in lieu of an interest charge or

[1] If the Board eliminates references to as-of adjustments in its Regulations D and J, the Reserve Banks would make conforming changes to their operating circulars that set forth the terms of their services. The Reserve Banks' operating circulars are available at *http://www.frbservices.org/regulations/operating_circulars.html.*

[2] The proposed amendments to Regulation D, designed to reduce the administrative and operational costs associated with reserve requirements, would discontinue as-of adjustments for deposit revisions and replace all other as-of adjustments with direct compensation. The amendments would also create a common two-week maintenance period for all depository institutions, create a penalty-free band around reserve balance requirements in place of carryover and routine waivers, and eliminate the contractual clearing balance program.

[3] An institution's Administrative Reserve Bank is the Reserve Bank in whose District the institution is located. 12 CFR 210.2(c), *see* section 204.3(g) of Regulation D, 12 CFR 204.3(g) (location of depository institutions).