

# Rules and Regulations

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1631

#### Availability of Records; Correction

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Direct final rule; correcting amendment.

**SUMMARY:** The Federal Retirement Thrift Investment Board (Agency) published a direct final rule in the February 27, 2012, **Federal Register**, pursuant to the Privacy Act of 1974, as amended, to permit Freedom of Information Act (FOIA) requests via electronic mail and facsimile. The direct final rule was published with an incorrect facsimile number. This facsimile number publication was a technical error, and is hereby corrected.

**DATES:** Effective October 9, 2012 and is applicable beginning February 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Erin F. Graham, (202)–942–1605.

**SUPPLEMENTARY INFORMATION:** This document contains corrections to FRTIB regulations stemming from the direct final rule published in the February 27, 2012, **Federal Register** (77 FR 11384) and provides the correct facsimile number for FOIA requests.

#### List of Subjects in 5 CFR Part 1631

Courts, Freedom of information, Government employees.

Accordingly, 5 CFR part 1631 is amended by making the following correcting amendment:

#### PART 1631—AVAILABILITY OF RECORDS

■ 1. The authority citation for part 1631 continues to read as follows:

**Authority:** 5 U.S.C. 552.

#### § 1631.6 [Amended]

■ 2. In § 1631.6, in paragraph (a)(3), revise “202–942–1776” to read “202–942–1676”.

Dated: October 1, 2012.

**James B. Petrick,**  
*General Counsel.*

[FR Doc. 2012–24773 Filed 10–5–12; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 9

[Docket No. OCC–2011–0023]

RIN 1557–AD37

#### Short-Term Investment Funds

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the requirements imposed on national banks pursuant to the OCC’s short-term investment fund (STIF) rule (STIF Rule). Regulations governing Federal savings associations (FSAs) require compliance with the national bank STIF Rule. The final rule adds safeguards designed to address the risk of loss to a STIF’s principal, including measures governing the nature of a STIF’s investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about a STIF’s holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable net asset value (NAV).

**DATES:** The final rule is effective on July 1, 2013. Comments are solicited only on the Paperwork Reduction Act aspects of this final rule and must be submitted by November 8, 2012.

**ADDRESSES:** Comments on the Paperwork Reduction Act aspects of this final rule should be directed to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax

to (202) 874–5274 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

**FOR FURTHER INFORMATION CONTACT:** Joel Miller, Group Leader, Asset Management (202) 874–4493, David Barfield, National Bank Examiner, Market Risk (202) 874–1829, Patrick T. Tierney, Counsel, Legislative and Regulatory Activities Division (202) 874–5090, Suzette H. Greco, Assistant Director, or Adam Trost, Senior Attorney, Securities and Corporate Practices Division (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Short-Term Investment Funds

A collective investment fund (CIF) is a bank-managed fund that holds pooled fiduciary assets that meet specific criteria established by the OCC fiduciary activities regulation at 12 CFR 9.18. Each CIF is established under a “Plan” that details the terms under which the bank manages and administers the fund’s assets. The bank acts as a fiduciary for the CIF and holds legal title to the fund’s assets. Participants in a CIF are the beneficial owners of the fund’s assets. Each participant owns an undivided interest in the aggregate assets of a CIF; a participant does not directly own any specific asset held by a CIF.<sup>1</sup>

A fiduciary account’s investment in a CIF is called a “participating interest.” Participating interests in a CIF are not insured by the Federal Deposit Insurance Corporation and are not subject to potential claims by a bank’s creditors. In addition, a participating interest in a CIF cannot be pledged or otherwise encumbered in favor of a third party.

The general rule for valuation of a CIF’s assets specifies that a CIF admitting a fiduciary account (that is, allowing the fiduciary account, in effect, to purchase its proportionate interest in the assets of the CIF) or withdrawing the fiduciary account (that is, allowing the fiduciary account, in effect, to redeem the value of its proportionate interest in the CIF) may only do so on the basis of a valuation of the CIF’s assets, as of the admission or withdrawal date, based on the mark-to-market value of the CIF’s

<sup>1</sup> 12 CFR 9.18.

assets.<sup>2</sup> This general valuation rule is designed to protect all fiduciary accounts participating in the CIF from the risk that other accounts will be admitted or withdrawn at valuations that dilute the value of existing participating interests in the CIF.

A STIF is a type of CIF that permits a bank to value the STIF's assets on an amortized cost basis, rather than at mark-to-market value, for purposes of admissions and withdrawals. This is an exception to the general rule of market valuation. In order to qualify for this exception under the OCC's current Part 9 fiduciary activities regulation, a STIF's Plan must require the bank to: (1) Maintain a dollar-weighted average portfolio maturity of 90 days or less; (2) accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity; and (3) hold the fund's assets until maturity under usual circumstances.<sup>3</sup> Because a STIF's investments are limited to shorter-term assets and those assets generally are required to be held to maturity, differences between the amortized cost and mark-to-market value of the assets will be rare, absent atypical market conditions or an impaired asset.

The OCC's STIF Rule governs STIFs managed by national banks. In addition, regulations adopted by the Office of Thrift Supervision, now recodified as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>4</sup> have long required FSAs to comply with the requirements of the OCC's STIF Rule.<sup>5</sup> Thus, the proposed revisions to the national bank STIFs Rule would apply to a FSA that establishes and administers a STIF. As of June 30, 2012, there was approximately \$118 billion invested in STIFs administered by national banks and there were no STIFs administered by FSAs reported.<sup>6</sup>

This final rule enhances protections provided to STIF participants and reduces risks to banks that administer STIFs. The final rule does not affect the obligation that STIFs meet the CIF requirements described in 12 CFR Part 9, which allows national banks to maintain and invest fiduciary assets, consistent with applicable law.<sup>7</sup> Also, national banks managing CIFs are required to adopt and follow written policies and procedures that are adequate to maintain their fiduciary activities in compliance with applicable law.<sup>8</sup> Additionally, 12 CFR Part 9 will continue to require a STIF's bank manager, at least once during each calendar year, to conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.<sup>9</sup> These examples of CIF requirements applicable to STIFs are not exclusive. Other requirements apply, and a bank must comply with all applicable requirements of 12 CFR Part 9 when acting as a fiduciary for a CIF.

In light of the issuance of this final rule, a bank administering a STIF must revise the written Plan required by 12 CFR 9.18(b)(1).

#### *B. Comparison to Other Products That Seek To Maintain a Stable NAV*

There are other types of funds that seek to maintain a stable NAV. The most significant of these from a financial market presence standpoint are "money market mutual funds" (MMMFs). These funds are organized as open-ended management investment companies and are regulated by the U.S. Securities and Exchange Commission ("SEC") pursuant to the Investment Company Act of 1940, particularly pursuant to the provisions of SEC Rule 2a-7 thereunder ("Rule 2a-7").<sup>10</sup> MMMFs seek to

maintain a stable share price, typically \$1.00 a share. In this regard, they are similar to STIFs.

There are a number of important differences between MMMFs and STIFs; most significantly, MMMFs are open to retail investors, whereas, STIFs only are available to authorized fiduciary accounts. MMMFs may be offered to the investing public and have become a popular product with retail investors, corporate money managers, and institutional investors seeking returns equivalent to current short-term interest rates in exchange for high liquidity and the prospect of protection against the loss of principal. In contrast to the approximately \$118 billion currently held in STIFs administered by national banks, MMMFs, as of July 2012, held approximately \$2.5 trillion dollars of investor assets.<sup>11</sup>

During the recent period of financial market stress, beginning in 2007 and stretching into 2009, certain types of short-term debt securities frequently held by MMMFs experienced unusually high volatility. Concerns by investors that their MMMFs could not maintain a stable NAV eventually led to investor redemptions out of those funds, and some funds needed to liquidate sizeable portions of their securities to meet investor redemption requests. The volume of redemption requests depressed market prices for short-term debt instruments, exacerbating the problem for all types of stable NAV funds.

The President's Working Group on Financial Markets ("PWG"),<sup>12</sup> after reviewing the market turmoil during the period 2007 through 2009, recommended that the SEC strengthen the regulation and monitoring of MMMFs and also recommended that bank regulators consider strengthening the regulation and monitoring of other types of products that seek to maintain a stable NAV.<sup>13</sup>

investment of money by a bank in its fiduciary capacity as trustee, executor, administrator, or guardian and (2) the collective investment of assets of certain employee benefit plans are exempt from the Investment Company Act under 15 U.S.C. 80a-3(c)(3) and (c)(11), respectively. MMMFs are not subject to comparable restrictions as to the type of participant who may invest in the fund or the purpose of such investment.

<sup>11</sup> See <http://www.ici.org/research/stats/mmf>.

<sup>12</sup> The PWG is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

<sup>13</sup> Report of the President's Working Group on Financial Markets, Money Market Fund Reform Options, p. 35 (Oct. 2010), see <http://www.treasury.gov/press-center/press-releases/Documents/>

<sup>2</sup> 12 CFR 9.18(b)(5)(i). If the bank cannot readily ascertain market value as of the valuation date, the bank generally must use a fair value for the asset, determined in good faith. 12 CFR 9.18(b)(4)(ii)(A).

<sup>3</sup> 12 CFR 9.18(b)(4)(ii)(B).

<sup>4</sup> 76 FR 48950 (2011).

<sup>5</sup> 12 CFR 150.260.

<sup>6</sup> Fifteen national banks collectively reported STIF investments that they administer. Other types of institutions managing certain types of CIFs may also follow the requirements of the OCC's STIF Rule. For example, New York state law provides that all investments in short-term investment common trust funds may be valued at cost, if the plan of operation requires that: (i) The type or category of investments of the fund shall comply with the rules and regulations of the Comptroller of the Currency pertaining to short-term investment funds and (ii) in computing income, the difference between cost of investment and anticipated receipt on maturity of investment shall be accrued on a straight-line basis. See N.Y. Comp. Codes R. & Regs. Tit. 3, § 22.23 (2010). Additionally, in order to

retain their tax-exempt status, common trust funds must operate in compliance with § 9.18 as well as the federal tax laws. See 26 U.S.C. 584. The OCC does not have access to comprehensive data quantifying investments held by STIFs administered by other types of institutions pursuant to legal requirements incorporating the OCC's STIF Rule. Although the direct scope of the STIF Rule provisions in § 9.18 of the OCC's regulations is national banks and Federal branches and agencies of foreign banks acting in a fiduciary capacity (12 CFR 9.1(c)), the nomenclature of the STIF Rule refers simply to "banks." For the sake of convenience, the OCC continues this approach and also applies the same convention to the discussion of the STIF final rule.

<sup>7</sup> 12 CFR 9.2(b).

<sup>8</sup> 12 CFR 9.5.

<sup>9</sup> 12 CFR 9.6(c).

<sup>10</sup> 15 U.S.C. 80a; 17 CFR 270.2a-7. Because STIFs are a form of CIF, they are generally exempt from the SEC's rules under the Investment Company Act. STIFs used exclusively for (1) the collective

The SEC subsequently adopted amendments to Rule 2a–7 to strengthen the resilience of MMMFs.<sup>14</sup> The OCC's changes to the STIF Rule issued today are informed by the SEC's revisions to Rule 2a–7.<sup>15</sup> In light of the differences between the MMMF as an investment product and the STIF—*e.g.*, a bank's fiduciary responsibility to a STIF and requirements limiting STIF participation to eligible accounts under the OCC's fiduciary account regulation at 12 CFR part 9—the OCC's rules differ from the SEC's in certain respects.

## II. Overview of the Proposed Rule

On April 9, 2012, the OCC published proposed amendments to its Part 9 STIF Rule<sup>16</sup> to add safeguards designed to address participating interests' risk of loss to a STIF's principal, including measures governing the nature of a STIF's investments; ongoing monitoring of the STIF's mark-to-market value and assessment of potential changes in its mark-to-market value under adverse market conditions; greater transparency and regulatory reporting about the STIF's holdings; and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable NAV. The proposal is described in detail in the Section-by-Section Analysis section of this **SUPPLEMENTARY INFORMATION**.

## III. Comments on the Proposed Rule

The comment period for the proposed rule ended on June 8, 2012. The OCC received a total of nine comments: Three from individuals, three from trade associations, two from non-bank financial services firms, and one from a national bank.

In general, commenters supported the proposed rule; however, two commenters asserted that the proposal should more closely follow the SEC's 2a–7 MMMF rule. The OCC's proposal, and the final rule issued today, differs from the SEC's 2a–7 MMMF rule, which reflects the differences between MMMFs and STIFs—MMMFs are a retail investment offering, while STIF participation is limited to eligible accounts under the OCC's fiduciary

account regulation at 12 CFR Part 9 and the exemptions from the Investment Company Act of 1940 relied upon by banks organizing STIFs.<sup>17</sup>

One commenter noted that a significant portion of STIF assets are managed by state chartered banks that are not required to comply with the OCC's STIF Rules and that implementation of the OCC's proposed changes may thus place national bank STIF administrators at a competitive disadvantage to state-regulated STIFs and their bank administrators. The OCC acknowledges this concern, but notes that some states' laws may require state banks administering certain comparable funds to comply with the standards the OCC applies to STIFs. In any case, the OCC has concluded that, on balance, the benefits of the final rule issued today that enhance protections provided to STIF participants and reduce risks to banks that administer STIFs outweigh the competitive issue raised by the commenter.

Additional comments are addressed in the Section-by-Section Analysis section of this **SUPPLEMENTARY INFORMATION**.

## IV. Section-by-Section Analysis

### Effective Date

Some commenters requested that the final rule have a compliance date in the range of 12 to 16 months after the date of issuance. The final rule's effective date, which will be same date upon which the OCC will expect compliance with the rule, is July 1, 2013. This effective date will provide affected banks with sufficient time to make the systems, process, and investment changes necessary to implement the rule. The OCC believes that the implementation period is adequate given that most affected institutions already are complying with many aspects of the final rule.

### Section 9.18(b)(4)(iii)(A)

STIFs typically maintain stable NAVs in order to meet the expectations of the fund's bank managers and participating fiduciary accounts.<sup>18</sup> To the extent a bank fiduciary offers a STIF with a fund objective of maintaining a stable NAV, participating accounts and the OCC expect those STIFs to maintain a stable NAV using amortized cost. The proposal would require a Plan to have as a primary objective that the STIF operate with a stable NAV of \$1.00 per

participating interest.<sup>19</sup> The OCC received no comment on the proposed stable \$1.00 NAV Plan requirement and adopts it as proposed.

### Section 9.18(b)(4)(iii)(B)

The current STIF Rule requires the bank managing a STIF<sup>20</sup> to maintain a dollar-weighted average portfolio maturity of 90 days or less. The current STIF Rule restricts the weighted average maturity of the STIF's portfolio in order to limit the exposure of participating fiduciary accounts to certain risks, including interest rate risk. The proposed rule would change the maturity limits to further reduce such risks. First, the proposal would reduce the maximum weighted average portfolio maturity permitted by the rule from 90 days or less to 60 days or less. Second, it would establish a new maturity test that would limit the portion of a STIF's portfolio that could be held in longer term variable- or floating-rate securities.

### 1. Dollar-Weighted Average Portfolio Maturity

The final rule amends the “dollar-weighted average portfolio maturity”<sup>21</sup> requirement of the STIF Rule to 60 days or less. Currently, banks managing STIFs must maintain a dollar-weighted average portfolio maturity of 90 days or less.<sup>22</sup> Securities that have shorter periods remaining until maturity generally exhibit a lower level of price volatility in response to interest rate and credit spread fluctuations and, thus, provide a greater assurance that the STIF will continue to maintain a stable value.

Having a portfolio weighted towards securities with longer maturities poses greater risks to participating accounts in a STIF. For example, a longer dollar-weighted average maturity period increases a STIF's exposure to interest rate risk. Additionally, longer maturity periods amplify the effect of widening

<sup>19</sup>The OCC expects banks to normalize and treat stable NAVs operating at a multiple of a \$1.00 (*e.g.*, \$10 NAV) or fraction of \$1.00 (*e.g.*, \$0.5) as operating with a NAV of \$1.00 per participating interest.

<sup>20</sup>The current STIF Rule incorporates this and other measures through requirements that a bank operate a STIF in accordance with a written plan that, at a minimum, imposes a series of required provisions with respect to the STIF. The STIF revisions incorporate additional measures that require a STIF plan to adopt specific additional restrictions and procedures.

<sup>21</sup>Generally, “dollar-weighted average portfolio maturity” means the average time it takes for securities in a portfolio to mature, weighted in proportion to the dollar amount that is invested in the portfolio. Dollar-weighted average portfolio maturity measures the price sensitivity of fixed-income portfolios to interest rate changes.

<sup>22</sup>12 CFR 9.18(b)(4)(ii)(B)(1).

10.21%20PWC%20Report%20Final.pdf. See also Financial Stability Oversight Council 2012 Annual Report, pp. 11–12 (July 2012) available at <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

<sup>14</sup> See Money Market Fund Reform, 75 FR 10060 (Mar. 4, 2010).

<sup>15</sup>The OCC will continue to evaluate the requirements of 12 CFR Part 9 in light of future policy assessments and initiatives concerning stable NAV funds, and will take such additional actions as are appropriate.

<sup>16</sup>77 FR 21057 (Apr. 9, 2012).

<sup>17</sup> See footnote 10, *supra*, and accompanying text.

<sup>18</sup>For example, many STIF plan participants (*e.g.*, pensions) have policies, procedures, and operational systems that presume a stable NAV.

credit spreads on a STIF. Finally, a STIF holding securities with longer maturity periods generally is exposed to greater liquidity risk because: (1) Fewer securities mature and return principal on a daily or weekly basis to be available for possible fiduciary account withdrawals, and (2) the fund may experience greater difficulty in liquidating these securities in a short period of time at a reasonable price.

STIFs with a shorter portfolio maturity period would be better able to withstand increases in interest rates and credit spreads without material deviation from amortized cost. Furthermore, in the event distress in the short-term instrument market triggers increasing rates of withdrawals from STIFs, the STIFs would be better positioned to withstand such withdrawals as a greater portion of their portfolios mature and return principal on a daily or weekly basis and would have greater ability to liquidate a portion of their portfolio at a reasonable price.

The OCC received one comment addressing the proposed change to the dollar-weighted average portfolio maturity from 90 to 60 days. The commenter asserted that a 60-day dollar-weighted average portfolio maturity would affect STIFs' ability to manage portfolios in a declining interest rate environment and increase demand for securities with shorter interest rate durations. The commenter also stated that this aspect of the proposal would limit a bank's ability to match the expected interest rate horizon of assets to the interest rate and duration of liabilities.

The OCC recognizes the concerns expressed by the commenter; however, as previously discussed, STIFs with a 60-day dollar-weighted average portfolio maturity (1) will better withstand increases in interest rates and credit spreads without material deviation from amortized cost and (2) be better positioned to withstand withdrawals during distress in the short-term instrument market. For these reasons, the 60-day dollar-weighted average portfolio maturity is adopted as proposed without change.

## 2. Dollar-Weighted Average Portfolio Life Maturity

The final rule, consistent with the proposal, adds a new maturity requirement for STIFs, which limits the dollar-weighted average portfolio life maturity to 120 days or less. The dollar-weighted average portfolio life maturity is measured without regard to a security's interest rate reset dates and, thus, limits the extent to which a STIF

can invest in longer-term securities that may expose it to increased liquidity and credit risk.

The dollar-weighted average portfolio maturity measurement in the current STIF Rule does not do as much as its name might suggest to restrict the introduction of certain types of longer-term instruments into a STIF portfolio. For example, floating rate instruments are generally treated according to their next reset date, while they may still be instruments of a longer contractual term that expose the STIF to higher liquidity and credit risks than an instrument of shorter maturity. For this reason, the final rule imposes a new dollar-weighted average portfolio life maturity limitation on the structure of a STIF, to capture certain credit and liquidity risks not encompassed by the dollar-weighted average portfolio maturity restriction. The rule requires that STIFs maintain a dollar-weighted average portfolio life maturity of 120 days or less, which provides a reasonable balance between strengthening the resilience of STIFs to credit and liquidity events while not unduly restricting a bank's ability to invest the STIF's fiduciary assets in a diversified portfolio of short-term, high quality debt securities.

One commenter argued that the proposed 120-day dollar-weighted average portfolio life maturity standard would restrict the ability of STIFs to acquire high credit quality debt securities with legal final maturities longer than one year and would restrict STIFs' ability to diversify fund holdings among multiple types of high quality securities and issuers. To remedy these issues, the commenter suggested that a 180-day dollar-weighted average portfolio life maturity standard would be more appropriate.

The OCC believes that the short-term securities markets are sufficiently diverse in terms of high quality securities and issuers that implementation of a 120-day dollar-weighted average portfolio life maturity standard will not be materially detrimental to national banks and their sponsored STIFs. Furthermore, the OCC believes that a 120-day dollar-weighted average portfolio life maturity standard strengthens the resilience of STIFs to credit and liquidity risks, particularly in volatile markets, which is a systemic benefit that outweighs the particular concerns raised by the commenter. For these reasons, the OCC adopts the 120-day dollar-weighted average portfolio life maturity standard as proposed without change.

## 3. Determination of Maturity Limits

### a. Calculation Method

In determining the dollar-weighted average portfolio maturity of STIFs under the current rule, national banks generally apply the same methodology as required by the SEC for MMMFs pursuant to Rule 2a-7. Dollar-weighted average maturity under Rule 2a-7 is calculated, generally, by treating each security's maturity as the period remaining until the date on which, in accordance with the terms of the security, the principal amount must be unconditionally paid or, in the case of a security called for redemption, the date on which the redemption payment must be made. Rule 2a-7 also provides eight exceptions to this general rule. For example, for certain types of variable-rate securities, the date of maturity may be the earlier of the date of the next interest rate reset or the period remaining until the principal can be recovered through demand. For repurchase agreements, the maturity is the date on which the repurchase is scheduled to occur, unless the repurchase agreement is subject to demand for repurchase, in which case the maturity is the notice period applicable to demand.<sup>23</sup> Consistent with the proposal, the final rule text specifies that banks are to apply the same methodology as the SEC requires under Rule 2a-7 for determining dollar-weighted average portfolio maturity and dollar-weighted average portfolio life maturity.<sup>24</sup>

### b. No Assets Grandfathered When Determining Maturity Limits

Two commenters requested that the OCC not include, or "grandfather", assets held by STIFs prior to the publication or effective date of the final rule for purposes of calculating the proposed 60-day dollar-weighted average portfolio maturity and 120-day dollar-weighted average portfolio life maturity standards. These commenters suggested that, if the rule did not

<sup>23</sup> See 17 CFR 270.2a-7(d)(1)-(8).

<sup>24</sup> The SEC's Rule 2a-7 adopting release describes the new weighted average life maturity calculation as being based on the same methodology as the weighted average maturity determination, but made without reference to the set of maturity exceptions the rule permits for certain interest rate readjustments for specified types of assets under the rule. 17 CFR 270.2a-7(c)(2)(iii). The OCC is adopting the same maturity calculation, referring to it as the dollar-weighted average portfolio life maturity. The calculation bases a security's maturity on its stated final maturity date or, when relevant, the date of the next demand feature when the fund may receive payment of principal and interest (such as a put feature). See 75 FR 10072 (Mar. 4, 2010) at footnote 154 and accompanying text.

provide for the grandfathering of STIF assets, national bank STIF administrators would be required to sell certain STIF portfolio assets in order to comply with the proposed standards. These commenters asserted that such a forced sale of STIF assets may not be in the best interest of STIFs or their account participants.

The final rule does not include grandfathering provisions. OCC believes that it is possible that a limited number of STIFs may be required to sell certain portfolio holdings in order to comply with the revised standards, which could, potentially, decrease the book value of a STIF. However, allowing these assets to remain in a limited number of STIFs would continue to expose participants in those STIFs to the heightened liquidity and credit risks of these assets—risks to which investors in other STIFs will not be exposed. In addition, the final rule does not become effective until July 1, 2013, affording affected banks an extended period during which they can determine the most appropriate strategy for disposition of these assets.

#### *Section 9.18(b)(4)(iii)(E)*

To ensure that banks managing STIFs observe standards designed to limit the amount of credit and liquidity risk to which participating accounts in STIFs are exposed, the OCC proposed to require the Plan to include a provision for the adoption of portfolio and issuer qualitative standards and concentration restrictions. No comment was received on this proposed Plan provision and, thus, it is adopted as proposed without change. The OCC expects bank fiduciaries to identify, monitor, and manage issuer concentrations and lower quality investment concentrations, and to implement procedures to perform appropriate due diligence on all concentration exposures, as part of the bank's risk management policies and procedures for each STIF. In addition to standards imposed by applicable law, the portfolio and issuer qualitative standards and concentration restrictions should take into consideration market events and any deterioration in an issuer's financial condition.

#### *Section 9.18(b)(4)(iii)(F)*

Many banks process STIF withdrawal requests within a short time frame, often on the same day that the withdrawal request is received, which necessitates sufficient liquidity to meet such requests. By holding illiquid securities, a STIF exposes itself to the risk that it will be unable to satisfy withdrawal requests promptly without selling illiquid securities at a loss that, in turn,

could impair its ability to maintain a stable NAV. Moreover, illiquid securities are generally subject to greater price volatility, exposing the STIF to greater risk that its mark-to-market value will deviate from its amortized cost value. To address this concern, the final rule, consistent with the proposal, requires adoption of liquidity standards that include provisions to address contingency funding needs.

One commenter requested that the OCC clarify that the phrase "contingency funding needs" in the provision refers to contingency funding of the assets of a STIF, rather than a requirement that the STIF obtain a line of credit or similar redemption funding arrangement with a lending institution. It is the OCC's view that the contingency funding aspect of this requirement does not require a STIF to obtain a letter of credit or similar arrangement with another party. However, liquidity standards should include provisions to address contingency funding needs, delineating policies to manage a range of stress environments, establishing clear lines of responsibility, and articulating clear implementation and escalation procedures. An objective of robust liquidity standards should be to ensure that the STIF's sources of liquidity are sufficient to fund expected operating requirements under a reasonable range of contingent events and scenarios. A STIF Plan's liquidity standards should identify alternative contingent liquidity resources that can be employed under adverse liquidity circumstances. The liquidity standards should be commensurate with a STIF's complexity, risk profile, and scope of operations. The liquidity funding needs standards should be regularly tested and updated to ensure they are operationally sound and, as macroeconomic and institution-specific conditions change, the liquidity standards of a STIF's Plan should be revised to reflect these changes.

Another commenter suggested that the final rule should adopt the SEC's Rule 2a-7 prescriptive liquidity standards applicable to MMMFs. Those standards (1) require a MMMF to hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions and any commitments the MMMF has made to shareholders; (2) prohibit the acquisition of an illiquid security if the MMMF would have invested more than 5% of its total assets in illiquid securities; (3) require the MMMF to maintain a minimum daily liquidity of 10% or more of total assets; and (4) require the MMMF to maintain a weekly minimum liquidity of 30% or

more of total assets.<sup>25</sup> As discussed previously, this final rule, including the requirement that a STIF's Plan adopt liquidity standards that include provisions to address contingency funding needs, are informed by the SEC's revisions to Rule 2a-7, but differ in light of the differences between the MMMF as a publicly-offered investment product and a STIF, e.g., a bank's fiduciary responsibility to a STIF and requirements limiting STIF participation to eligible accounts under the OCC's fiduciary account regulation at 12 CFR part 9.

For these reasons, the final rule adopts the STIF Plan liquidity standards provision as proposed without change.

#### *Section 9.18(b)(4)(iii)(G)*

Consistent with the proposal, the final rule requires a bank managing a STIF to adopt shadow pricing procedures.<sup>26</sup> These procedures require the bank to calculate the extent of the difference, if any, between the mark-to-market NAV per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost value per participating interest. In the event the difference exceeds \$0.005 per participating interest,<sup>27</sup> the bank must take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF, such as ceasing fiduciary account withdrawals. The shadow pricing procedures must occur at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant.

One commenter requested that the OCC confirm that a bank administering a STIF is permitted to decide the most appropriate actions to protect participating accounts from dilution or other unfair results if the difference between mark-to-market and amortized cost per participating interest exceeds \$0.005. The OCC notes that the shadow pricing requirement does not impose any limits or requirements on actions a bank administering a STIF must take to reduce dilutions of participating interests or other unfair results to participating accounts. However, any such actions taken must not impair the safety and soundness of the bank.

<sup>25</sup> See 17 CFR 270.2a-7(c)(5).

<sup>26</sup> Shadow pricing is the process of maintaining two sets of valuation records—one that reflects the value of a fund's assets at amortized cost and the other that reflects the market value of the fund's assets.

<sup>27</sup> The final rule requires a STIF to operate with a stable NAV of \$1.00 per participating interest as a primary fund objective. If a STIF has a stable NAV that is different than \$1.00 it must adjust the reference value accordingly.

Another commenter advocated that a difference of \$0.005 between mark-to-market and amortized cost per participating interest is significant in a low interest rate environment and, therefore, a lower threshold of difference should apply. The OCC notes that, by the same logic, a higher threshold of deviation from \$1.00 might be appropriate for higher interest rate environments. However, the OCC believes that the \$0.005 trigger is widely recognized as a threshold of significance in this arena, and will function effectively as a risk management benchmark, the meaning of which will be understood by banks and STIF participants alike.

For these reasons, the proposed STIF shadow pricing procedures are adopted as final without change.

*Section 9.18(b)(4)(iii)(H)*

Consistent with the proposal, the final rule requires a bank managing a STIF to adopt procedures for stress testing the fund's ability to maintain a stable NAV for participating interests. The final rule requires the stress tests be conducted at such intervals as an independent risk manager or a committee responsible for the STIF's oversight determines to be appropriate and reasonable in light of current market conditions, but in no case shall the interval be longer than a calendar month-end basis. The independent risk manager or committee members must be independent from the STIF's investment management. The stress testing is to be based upon scenarios (specified by the bank) that include, but are not limited to, a change in short-term interest rates; an increase in participating account withdrawals; a downgrade of or default on portfolio securities; and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

The stress testing requirement provides a bank with flexibility to specify the scenarios or assumptions on which the stress tests are based, as appropriate to the risk exposures of each STIF. Banks managing STIFs should, for example, consider procedures that require the fund to test for the concurrence of multiple hypothetical events, *e.g.*, where there is a simultaneous increase in interest rates and substantial withdrawals.<sup>28</sup>

The final rule also requires a stress test report be provided to the independent risk manager or the committee responsible for the STIF's oversight. The report must include: (1) The date(s) on which the testing was performed; (2) the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market NAV calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its NAV per participating interest calculated using amortized cost to exceed \$0.005; and (3) an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.

In addition, the final rule requires that adverse stress testing results be reported to the bank's senior risk management that is independent from the STIF's investment management.

Two commenters asserted that the stress testing methodology should be left to the discretion of a bank. The requirement that the Plan adopt procedures for stress testing a STIF's ability to maintain a stable NAV per participating interest does not specify any stress testing methodology. However, as proposed, the stress testing provision requires that the stress testing be based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF.

These two commenters also suggested that the frequency of stress testing should be left to the discretion of a bank. The rule requires stress testing at least on a calendar month-end basis and at such frequencies as an independent risk manager or a committee responsible for a STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions. Thus, the monthly stress testing requirement is a floor; independent risk managers or an oversight committee, consisting of independent members as described in the proposal, have the discretion to perform more frequent stress testing. The OCC believes that monthly stress testing is an appropriate, minimum requirement to enhance a bank's sound management of a STIF.

Finally, one commenter requested that the OCC confirm that the term "independent risk manager" used in this provision may include a person, group, or function designated as an independent risk manager, but does not need to be a third party service provider. An "independent risk manager" is not required to be a third party service provider. However, as discussed previously, an independent risk manager (*e.g.*, a person) or a committee (*e.g.*, a group) responsible for the STIF's oversight must be independent from the STIF's investment management.

These stress testing procedures will provide banks with a better understanding of the risks to which STIFs are exposed and will give banks additional information that can be used for managing those risks. For these reasons, the proposed stress testing requirement is adopted as final without change.

*Section 9.18(b)(4)(iii)(I)*

Consistent with the proposal, the final rule requires banks managing STIFs to disclose information about fund level portfolio holdings to STIF participants and to the OCC within five business days after each calendar month-end. Specifically, the bank is required to disclose the STIF's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost NAVs, both with and without capital support agreements; the dollar-weighted average portfolio maturity; and dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month. The current STIF Rule does not contain a similar disclosure requirement.

Also, for each security held by the STIF, as of the last business day of the prior calendar month, the bank is required to disclose to STIF participants and to the OCC within five business days after each calendar month-end at a security level: (1) The name of the issuer; (2) the category of investment; (3) the Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier; (4) the principal amount; (5) the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (6) the final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (7) the coupon or yield; and (8) the amortized cost value.

<sup>28</sup> Where stress testing models are relied upon, a bank should validate the models consistent with the Supervisory Guidance on Model Risk Management issued by the OCC and the Board of Governors of the Federal Reserve System. See OCC Bulletin 2011-12 (Apr. 4, 2011).

Two commenters addressed the proposal's requirement that banks managing STIFs disclose fund and security level information to STIF participants and to the OCC within five business days after each calendar month-end. One commenter suggested that banks make the disclosures 30 days after each calendar month-end; the other commenter suggested 60 days after a calendar month-end. A reason one commenter cited for the 60-day disclosure delay is to be consistent with the SEC's MMMF rule disclosures, which were adopted in order to address concerns about investor confusion and alarm that could result in redemption requests that could increase deviations in a MMMF's price. While this concern may be applicable to MMMFs, which are open to retail investors, STIFs are only available to authorized fiduciary accounts. Fiduciary account participants are less likely than retail investors to become confused and alarmed by fund and security level disclosures five days after each month-end.

One commenter raised concerns related to compiling and filing accurate fund and security level disclosures within five days after calendar month-end. However, the OCC believes the information required to be disclosed is factual, simple, and brief, and, furthermore, is easily susceptible to electronic tracking and report generation so that a five-day disclosure requirement will not introduce unreasonable burden or foster an environment prone to error.

Two commenters suggested that the fund and security level disclosures should be made electronically to STIF participants and the OCC. The proposed regulation did not specify the form, *e.g.*, written or electronic, of disclosure that must be made to STIF participants or the OCC. Thus, the form of banks' disclosures, including electronic disclosures, to STIF participants is subject to banks' discretion, provided that such disclosure is reasonably accessible to STIF participants, *e.g.*, no less accessible than written paper disclosures delivered to STIF participants. In order to clarify that banks may make disclosures and notifications to the OCC's Asset Management Group, Credit and Market Division, under the final rule in an electronic format, the final rule removes the OCC's street mailing address from proposed § 9.18(b)(4)(iii)(I). The OCC will provide guidance to banks describing the process for making electronic disclosures to the agency at least 90 days prior to the effective date of the final rule.

Finally, one commenter requested that the final rule use alternative descriptive language, rather than the term "STIF participant" in this provision. The OCC believes that the term "STIF participant" is a widely understood term of art that banks use in the administration of STIFs. Furthermore, the OCC received no other requests from commenters seeking clarification of the term. Thus, the proposed use of the term "STIF participant" in § 9.18(b)(4)(iii)(I) is adopted in the final rule without change.

For the reasons discussed, the OCC adopts the fund and security level disclosures with one change. As noted, in order to preserve the flexibility for banks to make electronic disclosures to the OCC, the final rule removes the OCC's street mailing address from § 9.18(b)(4)(iii)(I).

#### *Section 9.18(b)(4)(iii)(J)*

Consistent with the proposal, the final rule requires a bank that manages a STIF to notify the OCC prior to or within one business day after certain events. Those events are: (1) Any difference exceeding \$0.0025 between the NAV and the mark-to-market value of a STIF participating interest based on current market factors; (2) when a STIF has re-priced its NAV below \$0.995 per participating interest; (3) any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants; (4) any delays or suspensions in honoring STIF participating interest withdrawal requests; (5) any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; and (6) when a national bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable NAV per participating interest.<sup>29</sup> This requirement to notify the OCC prior to or within one business day after these limited specific events will permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress.

To comply with this requirement, a bank will have to calculate the mark-to-market value of a STIF participating interest on a daily basis.

<sup>29</sup> See Interagency Policy on Banks/Thriffs Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates, OCC Bulletin 2004-2 Attachment (Jan. 5, 2004) (instructing banks that to avoid engaging in unsafe and unsound banking practices, banks should adopt appropriate policies and procedures governing routine or emergency transactions with bank advised investment funds).

One commenter suggested that the rule permit at least five business days, rather than one business day, to notify the OCC of liquidity or valuation stress, in order to provide banks with sufficient time to gather facts, determine a course of action, and prepare a complete and clear notification. As previously discussed, banks' proposed notification prior to or within one business day after limited specific events will permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress. As has been observed from the recent period of financial market turmoil, liquidity stress events occur within very short time frames thereby making a five business day or more lag for banks to provide the OCC with notification contrary to the agency's obligation to supervise the safety and soundness of banks that administer STIFs.

One commenter also requested clarification that the notification required by § 9.18(b)(4)(iii)(J) may be made to the OCC electronically. Consistent with the prior discussion of § 9.18(b)(4)(iii)(I), the final rule removes the OCC's street mailing address from proposed § 9.18(b)(4)(iii)(J) and the OCC will provide guidance to banks describing the process for making electronic notifications to the agency at least 90 days prior to the effective date of the final rule.

As discussed previously, the OCC included as part of the reportable events under the proposed rule any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants. One commenter asserted that in-kind distributions are not necessarily an indication that a STIF is experiencing liquidity or valuation stress. The commenter suggested revising § 9.18(b)(4)(iii)(J)(3) to read "[a]ny withdrawal distribution in-kind of the STIF's participating interests or segregation of portfolio participants, where such action results from the bank's efforts to reduce dilution of participating interests or other unfair results to participating accounts in the event the difference calculated pursuant to paragraph (b)(4)(iii)(G)(1) exceeds \$0.005 per participating interest." However, the OCC has decided to adopt the reporting requirement as originally proposed. While an in-kind distribution is not necessarily an indicator of stress to a STIF, it, nonetheless, is an atypical distribution that warrants regulator attention.

For the reasons discussed, the requirement that a bank administering a STIF notify the OCC prior to or within one business day after certain specified events is adopted with one minor

change from the proposal. To make clear that banks may make electronic notifications to the OCC, the final rule removes the OCC's street mailing address from § 9.18(b)(4)(iii)(J).

*Section 9.18(b)(4)(iii)(K)*

The OCC is amending the current rule to require banks managing a STIF to adopt procedures that, in the event a STIF has re-priced its NAV below \$0.995 per participating interest, the bank managing the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market NAV. Currently, the rule creates an incentive for withdrawal of participating interests if the mark-to-market NAV falls below the stable NAV because the earlier withdrawals are more likely to receive the full stable NAV payment. The OCC proposed this requirement in order to remove this incentive, as once the NAV is priced below \$0.995, all withdrawals of participating interests will receive the mark-to-market NAV instead of the stable NAV.

One commenter highlighted language in the OCC proposal requiring banks to "calculate, redeem, and sell" STIF participating interests at mark-to-market NAV once participating interests in the STIF have been re-priced below \$0.995. This commenter requested clarification whether the OCC intends to require the bank to begin liquidation of the STIF once it has re-priced its NAV below \$0.995 per participating interest. The OCC did not intend this language to require a bank to begin liquidation of a STIF. To provide clarification, § 9.18(b)(4)(iii)(K) has been revised in the final rule to require banks managing a STIF to adopt procedures that, in the event a STIF has re-priced its NAV below \$0.995 per participating interest, the bank managing the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market NAV. Use of the "calculate, admit, and withdraw" language in this provision, rather than "calculate, redeem, and sell", is more consistent with STIFs' operations and § 9.18 and clarifies that liquidation is not a required action when a STIF has re-priced its NAV below \$0.995 per participating interest. Other than this change, the proposed provision is adopted as final.

*Section 9.18(b)(4)(iii)(L)*

The final rule, consistent with the proposal, requires a bank managing a STIF to adopt procedures for suspending redemptions and initiating liquidation of a STIF as a result of redemptions. The OCC's intent in

proposing this requirement was to reduce the vulnerability of participating accounts to the harmful effects of extraordinary levels of withdrawals, which can be accomplished to some degree by suspending withdrawals. These suspensions only will be permitted in limited circumstances when, as a result of redemption, the bank has: (1) Determined that the extent of the difference between the STIF's amortized cost per participating interest and its current mark-to-market NAV per participating interest may result in material dilution of participating interests or other unfair results to participating accounts; (2) formally approved the liquidation of the STIF; and (3) facilitated the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

The OCC understands that suspending withdrawals may impose hardships on fiduciary accounts for which the ability to redeem participations is an important consideration. Accordingly, the requirement is limited to permitting suspension in extraordinary circumstances when there is significant risk of extraordinary withdrawal activity to the detriment of other participating accounts.

Similar to the discussion in § 9.18(b)(4)(iii)(I), one commenter requested that § 9.18(b)(4)(iii)(L) use the phrase "accounts invested in a STIF" rather than the term "STIF participant". As discussed previously, the OCC believes that the term "STIF participant" is a widely understood term of art that banks use in the administration of STIFs. Additionally, the OCC received no other requests from commenters seeking clarification of the term. Thus, proposed § 9.18(b)(4)(iii)(L) is adopted as final rule without change.

## V. Regulatory Analysis

### A. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. In conjunction with the notice of proposed rulemaking, the OCC submitted the information collection requirements contained therein to OMB for review. In accordance with 5 CFR 1320, OMB filed a comment on the PRA submission instructing the OCC "\* \* \*" to examine public comment in response to the NPRM and include in the supporting statement of the next

information collection request—to be submitted to OMB at the final rule stage—a description of how the OCC has responded to any public comments on the PRA submission, including comments on maximizing the practical utility of the collection and minimizing the burden." The OCC received no comments on the PRA submission and is resubmitting it with the issuance of this final rule, as instructed by OMB. The OCC has resubmitted the information collection requirements in the final rule to OMB for review and approval under 44 U.S.C. 3506 and 5 CFR part 1320. The information collection requirements are found in §§ 9.18(b)(iii)(E)–(L) of the final rule.

No comments concerning PRA were received in response to the notice of proposed rulemaking. Therefore, the hourly burden estimates for respondents noted in the proposed rule have not changed. The OCC has an ongoing interest in your comments.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–NEW, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov). You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557-NEW, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

### B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a final rule to prepare and make available a final regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 604. However, the RFA provides that an agency is not required to prepare and make available a final regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its final rule. 5 U.S.C. 605(b). For purposes of the RFA and OCC-regulated entities, a "small entity" includes banks, FSAs, and Federal branches and agencies with assets less than or equal to \$175 million and trust companies with assets less than or equal to \$7 million. 13 CFR 121.201.

This final rule will not have a significant economic impact on any small national banks or Federal branches and agencies or trust companies, as defined by the RFA. Two small national banks, which are not a substantial number of the 585 small national banks, and no FSAs or Federal branches and agencies reported management of STIFs on their required regulatory reports as of June 30, 2012. Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

### C. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

### List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

### PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

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

**Authority:** 12 U.S.C. 24 (Seventh), 92a, and 93a; 12 U.S.C. 78q, 78q-1, and 78w.

■ 2. Section 9.18 is amended by revising paragraph (b)(4)(ii) and by adding paragraph (b)(4)(iii) to read as follows:

#### § 9.18 Collective investment funds.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) *General method of valuation.*

Except as provided in paragraph (b)(4)(iii) of this section, a bank shall value each fund asset at mark-to-market value as of the date set for valuation, unless the bank cannot readily ascertain mark-to-market value, in which case the bank shall use a fair value determined in good faith.

(iii) *Short-term investment funds (STIFs) method of valuation.* A bank may value a STIF's assets on a cost basis, rather than mark-to-market value as provided in paragraph (b)(4)(ii) of this section, for purposes of admissions and withdrawals, if the Plan includes appropriate provisions, consistent with this part, requiring the STIF to:

(A) Operate with a stable net asset value of \$1.00 per participating interest as a primary fund objective;

(B) Maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds (17 CFR 270.2a-7);

(C) Accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity;

(D) Hold the STIF's assets until maturity under usual circumstances;

(E) Adopt portfolio and issuer qualitative standards and concentration restrictions;

(F) Adopt liquidity standards that include provisions to address contingency funding needs;

(G) Adopt shadow pricing procedures that:

(1) Require the bank to calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost price per participating interest, at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant; and

(2) Require the bank, in the event the difference calculated pursuant to this subparagraph exceeds \$0.005 per participating interest, to take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF;

(H) Adopt procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest that shall provide for:

(1) The periodic stress testing, at least on a calendar month basis and at such intervals as an independent risk manager or a committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions;

(2) Stress testing based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF;

(3) A stress testing report on the results of such testing to be provided to the independent risk manager or the committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management that shall include: the date(s) on which the testing was performed; the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its net asset value per participating interest calculated using amortized cost to exceed \$0.005; and an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year; and

(4) Reporting adverse stress testing results to the bank's senior risk

management that is independent from the STIF's investment management.

(I) Adopt procedures that require a bank to disclose to STIF participants and to the OCC's Asset Management Group, Credit & Market Risk Division, within five business days after each calendar month-end, the fund's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost net asset values both with and without capital support agreements; the dollar-weighted average portfolio maturity; the dollar-weighted average portfolio life maturity of the STIF as of the last business day of the prior calendar month; and for each security held by the STIF as of the last business day of the prior calendar month:

(1) The name of the issuer;  
 (2) The category of investment;  
 (3) The Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier;  
 (4) The principal amount;  
 (5) The maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(6) The final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(7) The coupon or yield; and  
 (8) The amortized cost value;

(J) Adopt procedures that require a bank that administers a STIF to notify the OCC's Asset Management Group, Credit & Market Risk Division, prior to or within one business day thereafter of the following:

(1) Any difference exceeding \$0.0025 between the net asset value and the mark-to-market value of a STIF participating interest as calculated using the method set forth in paragraph (b)(4)(iii)(G)(1) of this section;

(2) When a STIF has re-priced its net asset value below \$0.995 per participating interest;

(3) Any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants;

(4) Any delays or suspensions in honoring STIF participating interest withdrawal requests;

(5) Any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; or

(6) In those situations when a bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a

purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable net asset value per participating interest;

(K) Adopt procedures that in the event a STIF has re-priced its net asset value below \$0.995 per participating interest, the bank administering the STIF shall calculate, admit, and withdraw the STIF's participating interests at a price based on the mark-to-market net asset value; and

(L) Adopt procedures that, in the event a bank suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions, require the bank to:

(1) Determine that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market net asset value per participating interest may result in material dilution of participating interests or other unfair results to participating accounts;

(2) Formally approve the liquidation of the STIF; and

(3) Facilitate the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

\* \* \* \* \*

Dated: September 26, 2012.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2012-24375 Filed 10-5-12; 8:45 am]

**BILLING CODE 4810-33-P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 46

[Docket ID OCC-2011-0029]

RIN 1557-AD58

#### Annual Stress Test

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") which requires certain companies to conduct annual stress tests pursuant to regulations prescribed by their respective primary financial regulatory agencies. Specifically, this final rule requires national banks and Federal savings associations with total consolidated assets over \$10 billion (defined as "covered institutions") to conduct an annual stress test as prescribed by this rule.

Under the final rule covered institutions are divided into two categories: covered institutions with total consolidated assets between \$10 and \$50 billion, and covered institutions with total consolidated assets over \$50 billion. Based on these categories, covered institutions are subject to different stress test requirements and deadlines for reporting and disclosures. A key difference between these categories is that a national bank or Federal savings association that qualifies as an over \$50 billion covered institution as of October 9, 2012 must conduct the annual stress test under this final rule beginning this year; other covered institutions that qualify as \$10 to \$50 billion covered institutions are not subject to the stress test requirements under this final rule until 2013.

**DATES:** This rule is effective on October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Darrin Benhart, Deputy Comptroller, Credit and Market Risk, (202) 874-1711; Robert Scavotto, Lead International Expert, International Analysis and Banking Condition, (202) 874-4943; William Russell, National Bank Examiner, (202) 874-5224; Akhtarur Siddique, Deputy Director, Enterprise Risk Analysis Division, (202) 874-4665; Ron Shimabukuro, Senior Counsel, or Alexandra Arney, Attorney, Legislative and Regulatory Activities Division, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 165(i) of the Dodd-Frank Act<sup>1</sup> requires two types of stress testing: (1) Stress tests conducted by the company and (2) stress tests conducted by the Board of Governors of the Federal Reserve System ("Board"). Section 165(i)(2) requires certain financial companies, including national banks and Federal savings associations, to conduct stress tests and requires the Federal primary financial regulatory agency<sup>2</sup> of those financial companies to issue regulations implementing the stress test requirements. A national bank or Federal savings association must conduct a stress test if its total consolidated assets are more than \$10 billion. Under section 165(i)(2), a financial company is required to submit to the Board and to its primary financial regulatory agency a report at such time,

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 12 U.S.C. 5301(12).