DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of December 31, 2013; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Congressional Committees.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

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SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing any differences between the accounting and capital standards used by the agencies.[1] The report must be published in the **Federal Register**.

The agencies are submitting this joint report, which covers differences between their uses of accounting or capital standards existing as of December 31, 2013, pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. This report covers 2012 and 2013 and describes capital differences similar to those presented in previous reports.[2]

Since the agencies filed their first reports on accounting and capital differences in 1990, they have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.''[3] In recent years, the agencies have revised their capital standards to harmonize their regulatory capital requirements in a comprehensive manner and to align the amount of capital institutions are required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible to minimize interagency differences. Although the differences in capital standards have diminished over time significantly, a few differences remain, some of which are statutorily mandated.

Several of the differences described in this report will be resolved beginning in 2014, when revised capital rules take effect for institutions subject to the advanced approaches risk-based capital rules, and in 2015, when revised capital rules take effect for all other institutions subject to those rules. In 2012, the agencies published three notices of proposed rulemaking seeking public comment on the implementation of the Basel III capital standards,[4] a standardized approach for risk weighting assets and off-balance sheet exposures, as well as revisions to the agencies' advanced approaches rules.[5] The agencies adopted these proposals with some revisions and published the revised capital rules in the **Federal Register** in 2013 (revised capital rules).[6]

In 2012, the agencies also revised their market risk capital rules in a uniform manner to better capture positions subject to market risk, reduce pro-cyclicality in market risk capital requirements, enhance sensitivity to market risks, and increase transparency through enhanced disclosures.[7] In the revised capital rules, the agencies also expanded the scope of the market risk capital rules to include savings associations and incorporated the market risk rules into the revised regulatory capital framework.[8]

In addition to the specific differences in capital standards noted below, the

[1] Prior to 2011, the Office of Thrift Supervision (OTS) joined the agencies in submitting this annual report to Congress. Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law. 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act), transferred the powers, authorities, rights, and duties of the OTS to other federal banking agencies on July 21, 2011 (the transfer date), and the OTS was abolished 90 days later. Under Title III, the OCC assumed all functions of the OTS and the Director of the OTS relating to federal savings associations, and thus the OCC has responsibility for the ongoing supervision, examination, and regulation of federal savings associations as of the transfer date. Title III transferred all supervision, examination, and certain regulatory functions of the OTS relating to state savings associations to the FDIC and all functions relating to the supervision of any savings and loan holding company and non-depository institution subsidiaries of such holding companies to the Board. Accordingly, this report is being submitted by the OCC, Board, and FDIC.

[2] *See, e.g.,* 77 FR 75259 (December 19, 2012).

[3] 12 U.S.C. 4803(a).

[4] *See* BCBS, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (December 2010), *available at www.bis.org/publ/bcbs189.htm.*

[5] *See* 77 FR 52792 (August 30, 2012).

[6] The Board adopted the revised capital rules as final on July 2, 2013 (78 FR 62018 (October 11, 2013)); the OCC adopted the revised capital rules as final on July 9, 2013 (78 FR 62018 (October 11, 2013)); and the FDIC adopted the revised capital rules on an interim basis on July 9, 2013 (78 FR 55340 (September 10, 2013)).

[7] *See* 77 FR 53060 (August 30, 2012).

[8] *See* 78 FR 62018 (October 11, 2013) (OCC and FRB) and 78 FR 55340 (September 10, 2013) (FDIC).

agencies may have differences in how they apply certain aspects of their rules. These differences usually arise as a result of case-specific inquiries that have been presented to only one agency. Agency staffs seek to minimize these occurrences by coordinating responses to the fullest extent reasonably practicable. Furthermore, while the agencies work together to adopt and apply generally uniform capital standards, there are wording differences in various provisions of the agencies' standards that largely date back to each agency's separate initial adoption of these standards prior to 1990.

In general, however, the agencies have substantially similar capital adequacy standards.[9] These standards are based on a common regulatory framework that establishes minimum leverage and risk-based capital ratios for depository institutions (banks and savings associations).[10] The agencies view the leverage and risk-based capital requirements as minimum standards, and most institutions generally are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The agencies note that, with respect to the advanced approaches rules,[11] there are virtually no differences across the agencies' rules because the agencies adopted a joint rule establishing a common advanced approaches framework in December 2007,[12] with subsequent joint revisions.[13] Therefore, most of the risk-based capital differences described below pertain to the agencies' Basel I-based risk-based capital standards.[14]

With respect to reporting standards, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the agencies have developed the uniform Consolidated Reports of Condition and Income (Call Report) for all insured commercial banks and certain state-chartered savings banks, as well as savings associations.[15]

Differences in Capital Standards Among the Federal Banking Agencies

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA), also known as the Financial Services Modernization Act of 1999, established the framework for financial subsidiaries of banks.[16] GLBA amended the Revised Statutes to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 5136A of the Revised Statutes (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including the regulatory capital treatment applicable to equity investments in such subsidiaries. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

State member banks may have financial subsidiaries subject to the same restrictions that apply to national banks.[17] State nonmember banks may also have financial subsidiaries, but they are subject only to a subset of the statutory requirements that apply to national banks and state member banks.[18]

The agencies adopted final rules implementing their respective provisions arising from section 121 of the GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001.[19] The GLBA did not provide new authority to savings associations to own, hold, or operate financial subsidiaries, as defined, and thus the capital rules for savings associations do not contain parallel provisions.

Non-financial Subsidiaries and Subordinate Organizations of Savings Associations

Banks supervised by the agencies generally consolidate all significant majority-owned subsidiaries other than financial subsidiaries for regulatory capital purposes. For subsidiaries other than financial subsidiaries that are not consolidated on a line-by-line basis for financial reporting purposes, joint ventures, and associated companies, the parent organization's investment in each such subordinate organization is, for risk-based capital purposes, deducted from capital or assigned to the 100 percent risk-weight category, depending upon the circumstances. The Board's and the FDIC's rules also permit banks to consolidate the investment on a pro rata basis under appropriate circumstances.

The capital regulations for savings associations are different in some respects because of statutory requirements. A statutorily mandated distinction is drawn between subsidiaries, which generally are majority-owned, that are engaged in activities that are permissible for national banks, and those that are engaged in activities that are not

[9] The agencies' general risk-based capital rules are at 12 CFR part 3 (national banks) and 12 CFR part 167.6 (federal savings associations); 12 CFR parts 208 and 225, appendix A (state member banks and bank holding companies, respectively); 12 CFR part 325, appendix A (state nonmember banks); and 12 CFR part 390, subpart Z (state savings associations).

[10] 12 U.S.C. 1813(c).

[11] Prior to issuance of the revised capital rules, the agencies' advanced approaches rules were at 12 CFR part 3, appendix C (national banks) and 12 CFR part 167, appendix C (federal savings associations); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (state member banks and bank holding companies, respectively); 12 CFR part 325, appendix D (state nonmember banks); and 12 CFR part 390, subpart Z, appendix A (state savings associations).

[12] *See* 72 FR 69288 (December 7, 2007).

[13] *See* 76 FR 37620 (June 28, 2011). *See also* revised capital rules. Some minor differences remain in the application of the advanced approaches rule to savings associations, as statutorily mandated.

[14] As mentioned, the revised capital rules eliminate a majority of the non-statutory differences described in this report.

[15] Prior to 2012, the OTS required all OTS-supervised savings associations to file the Thrift Financial Report (TFR). However, in 2011, the agencies adopted revisions to the reporting requirements for savings associations, including a requirement to transition from the quarterly TFR to the quarterly Call Report, effective 2012.

[16] A national bank that has a financial subsidiary must satisfy a number of statutory requirements in addition to the capital deduction and deconsolidation requirements described in the text. The bank (and each of its depository institution affiliates) must be well capitalized and well managed. Asset size restrictions apply to the aggregate amount of the assets of the bank's financial subsidiaries. Certain debt rating requirements apply, depending on the size of the national bank. The national bank is required to maintain policies and procedures to protect the bank from financial and operational risks presented by the financial subsidiary. It is also required to have policies and procedures to preserve the corporate separateness of the financial subsidiary and the bank's limited liability. Finally, transactions between the bank and its financial subsidiary generally must comply with the Federal Reserve Act (FRA) restrictions on affiliate transactions, and the financial subsidiary is considered an affiliate of the bank for purposes of the anti-tying provisions of the Bank Holding Company Act. *See* 12 U.S.C. 24a.

[17] *See* 12 U.S.C. 335 (state member banks are subject to the ''same conditions and limitations'' that apply to national banks that hold financial subsidiaries).

[18] The applicable statutory requirements for state nonmember banks are as follows: The bank (and each of its insured depository institution affiliates) must (1) be well capitalized, (2) comply with the capital deduction and deconsolidation requirements, and (3) satisfy the requirements for policies and procedures to protect the bank from financial and operational risks and to preserve corporate separateness and limited liability for the bank. In addition, the statute requires that any transaction between the bank and a subsidiary that would be classified as a financial subsidiary generally shall be subject to the affiliate transactions restrictions of the FRA. *See* 12 U.S.C. 1831w.

[19] *See* 65 FR 12914 (March 10, 2000) (national banks); 66 FR 1018 (January 5, 2001) (state nonmember banks); 66 FR 42929 (August 16, 2001) (state member banks).

permissible for national banks.[20] When subsidiaries engage in activities that are not permissible for national banks,[21] the parent savings association must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent organization. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent organization on a line-by-line basis in accordance with generally accepted accounting principles. If a subordinate organization, other than a subsidiary, engages in activities not permissible for national banks, investments in and loans to that organization generally are deducted from the savings association's capital.[22] If a subordinate organization engages solely in permissible activities, depending on the nature and risk of the activity, investments in and loans to that organization may be assigned either to the 100 percent risk-weight category or deducted from capital. The requirements for non-financial subsidiaries remain unchanged under the revised capital rules.

Leverage Ratio Denominator

Banks supervised by the agencies use average total consolidated assets to calculate the denominator of the leverage ratio. In contrast, savings associations use quarter-end total consolidated assets. Under the rules governing the reservation of authority for savings associations, the OCC and the FDIC reserve the right to require federal and state savings associations, respectively, to compute capital ratios on the basis of average, rather than period-end, assets.

This capital difference has been eliminated under the revised capital rules, which require all banks and savings associations to calculate the denominator of the leverage ratio using average total consolidated assets.

Collateralized Transactions

The general risk-based capital rules of the Board assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by U.S. Government agencies or the central governments of countries that are members of the Organization for Economic Cooperation and Development (OECD), provided there is daily mark-to-market of collateral and maintenance of a positive margin of collateral. The OCC's rules with respect to national banks incorporate similar conditions for such collateralized claims eligible for a zero percent risk weight. However, while the Board's general risk-based capital rules require such claims to be fully collateralized, the OCC's rules governing national banks permit partial collateralization.

Under the FDIC rules for state nonmember banks and the rules for state and federal savings associations, portions of claims collateralized by cash or by securities issued or guaranteed by OECD central governments or U.S. Government agencies receive a 20 percent risk weight. However, these institutions may assign a zero percent risk weight to claims on certain qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or other OECD central governments.

The revised capital rules eliminate this capital difference and provide a common rule text to address capital requirements for collateralized transactions, as well as exposures to sovereign and public sector entities.

Noncumulative Perpetual Preferred Stock

Under the agencies' capital standards, noncumulative perpetual preferred stock is a component of tier 1 capital. The capital standards of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

As a result of these requirements, under the risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, if a bank issues perpetual preferred stock and is required to pay dividends in a form other than cash (*e.g.,* dividends in the form of stock, when cash dividends are not or cannot be paid, and when the bank does not have the option to waive or eliminate dividends), the perpetual preferred stock would not qualify as noncumulative and, therefore, would not be included in tier 1 capital. Under the capital requirements applicable to savings associations, a savings association may request supervisory approval to treat perpetual preferred stock as noncumulative if it requires the payment of dividends in the form of stock when cash dividends are not paid.

This capital difference has been eliminated under the revised capital rules which set forth revised eligibility criteria for regulatory capital instruments. Perpetual preferred stock that requires payment-in-kind (of dividends in the form of stock when cash dividends are not paid) will not be includable in tier 1 capital under the revised capital rules, subject to certain statutory exceptions.

Equity Securities of Government-sponsored Enterprises

The risk-based capital rules of the Board and the FDIC and the capital regulations governing savings associations apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs).[23] In contrast, the OCC's capital rules for national banks apply a 20 percent risk weight to all GSE equity securities.

This capital difference has been eliminated under the revised capital rules, which assign a 20 percent risk weight to an equity exposure to a Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation. In addition, the revised capital rules assign a 100 percent risk weight to preferred stock issued by a GSE. Other GSE equity exposures receive a risk weight of no less than 100 percent or are subject to deduction.

Conversion Factors for Off-balance Sheet Derivative Contracts

Under the agencies' general risk-based capital rules, the credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract is equal to the sum of the derivative contract's current credit exposure and potential future credit exposure. The potential future exposure is estimated by multiplying the notional principal amount of the contract by a credit conversion factor that is based on the type and remaining maturity of a derivative contract. The regulations of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks provide a chart illustrating the applicable credit conversion factors, as follows:

[20] *See* 12 U.S.C. 1464(t)(5).

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

[22] The definitions of subsidiary and subordinate organization are provided in 12 CFR 159.2 (federal savings associations) and 12 CFR 390.251 (state savings associations).

[23] However, Federal Home Loan Bank stock held by banking organizations as a condition of membership receives a 20 percent risk weight.

Remaining maturity	Interest rate (percent)	Exchange rate and gold (percent)	Equity (percent)	Precious metals, except gold (percent)	Other commodities (percent)
One year or less	0.0	1.0	6.0	7.0	10.0
More than one year to five years	0.5	5.0	8.0	7.0	12.0
More than five years	1.5	7.5	10.0	8.0	15.0

In contrast, the regulations governing savings associations provide a table of conversion factors that is less granular as to the types of contracts to which it applies, as well as their remaining maturity, as follows:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
One year or less	0.0	1.0
Over one year ...	0.5	5.0

This capital difference has been eliminated under the revised capital rules which require all banks and savings associations to use an identical table of credit conversion factors to determine the potential future exposure of a derivative contract.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The general risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks limit the amount of subordinated debt and intermediate-term preferred stock that may be recognized as tier 2 capital to 50 percent of tier 1 capital. Such a restriction is not imposed on savings associations; however, the agencies limit the amount of tier 2 capital to 100 percent of tier 1 capital for all banks and savings associations.

In addition, under the general risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, at the beginning of each of the last five years of the life of a subordinated debt or limited-life preferred stock instrument, the amount eligible for inclusion in tier 2 capital is reduced by 20 percent of the original amount of that instrument (net of redemptions). The regulations governing savings associations provide the option of using either the discounting approach described above or an approach that, during the last seven years of the instrument's life, allows for the full inclusion of all such instruments provided that the aggregate amount of such instruments maturing in any one year does not exceed 20 percent of the savings association's total capital.

This capital difference has been eliminated under the revised capital rules, which do not include the capital limits described above with respect to subordinated debt and limited-life preferred stock. Furthermore, the revised capital rules do not provide savings associations with alternative methodologies for the gradual de-recognition of subordinated debt and limited-life preferred stock from regulatory capital. Under the revised capital rules, all banks and savings associations must reduce the amount of an instrument eligible for inclusion in tier 2 capital by 20 percent each year, at the beginning of each of the last five years of the life of the instrument.

Tangible Capital Requirement

Under section 5(t)(2)(B) of the Home Owners' Loan Act (HOLA), savings associations are required by statute to maintain tangible capital in an amount not less than 1.5 percent of total assets.[24] This particular statutory requirement does not apply to banks. However, under the Prompt Corrective Action (PCA) framework, all insured depository institutions are considered critically undercapitalized if their tangible equity falls below 2 percent.[25] Therefore, the 1.5 percent minimum tangible capital requirement for savings associations is generally not a binding capital requirement given the more stringent PCA critically undercapitalized threshold.

This capital difference has been addressed under the revised capital rules, which are effective for all savings associations beginning in 2015. The revised capital rules define tangible capital for purposes of meeting the requirements of HOLA as the amount of tier 1 capital plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital, which mirrors the definition of ''tangible equity.''

[24] *See* 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

[25] *See* 12 U.S.C. 1831o(c)(3); *see also* 12 CFR 6.4, 12 CFR 165.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 325.105, 12 CFR 390.455 (FDIC).

Market Risk Rule

In 1996, the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, adopted rules requiring banks with significant exposure to market risk to measure and maintain capital to support that risk.[26] Since then, the agencies revised their market risk rules in a uniform manner.[27] However, the market risk framework did not apply to savings associations, as they generally did not engage in the threshold level of trading activity when the market risk rule was adopted.

This capital difference has been eliminated under the revised capital rules, which expanded the scope of the market risk rule to include state and federal savings associations beginning in 2015.

Pledged Deposits, Nonwithdrawable Accounts, and Certain Certificates

The capital regulations governing mutual savings associations permit such institutions to include in tier 1 capital pledged deposits and nonwithdrawable accounts to the extent that such

[26] *See* 61 FR 47358 (September 6, 1996).

[27] On August 30, 2012, the agencies published a revised market risk final rule that: (1) Enhances the market risk rule's sensitivity to risks that are not adequately captured under the prior market risk rule, (2) increases transparency through enhanced disclosures, and (3) does not rely on credit ratings, consistent with section 939A of the Dodd-Frank Act. *See* 77 FR 53060 (August 30, 2012). On the same day, the agencies proposed a rule that would subject federal and state savings associations to the market risk rule. *See* 77 FR 52978 (August 30, 2012). This proposed rule was finalized as part of the revised capital rules. *See also* 78 FR 62018 (October 11, 2013) (Board and the OCC); and 78 FR 55340 (September 10, 2013) (FDIC). Additional technical revisions to the market risk rule were made by the Board after the revised capital rules were finalized to ensure that the market risk rules align with the revised capital rules that become effective on January 1, 2015 (78 FR 76521). During 2014, the language in the OCC's and FDIC's respective market risk rules is slightly different than the language in the Board's market risk rule with respect to certain exposures to sovereigns and to securitizations, as well as with respect to certain aspects of the definition of the covered position. The FDIC and OCC did not make corresponding technical rule revisions to their respective market risk rules; however, they interpret their rules to align with the technical changes in the Board rule. *See* OCC Bulletin 2013–13 (May 10, 2013) (OCC). When the new market risk rule goes into effect on January 1, 2015, all three agencies will have substantively identical language in their respective market risk rules.

accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods. The regulations also recognize as tier 2 capital net worth certificates, mutual capital certificates, and income capital certificates, so long as such instruments comply with applicable regulations. The risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks do not expressly address these instruments.

This capital difference has been eliminated under the revised capital rules, which set forth substantially identical criteria across the agencies' rules that a capital instrument must meet to be included in a particular tier of capital. Mutual capital instruments may be included in regulatory capital if they meet the specified regulatory capital criteria.[28]

Assets Subject to FDIC or Federal Savings and Loan Insurance Corporation Agreements

The general risk-based capital rules of the Board, the OCC for national banks, and the FDIC for state nonmember banks generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation (FSLIC) in the 20 percent risk-weight category. The regulations governing savings associations place these assets in the zero percent risk-weight category, provided they are fully covered against capital loss and/or by yield maintenance agreements initiated by the FSLIC, regardless of any later successor agency such as the FDIC.

This capital difference was minimized in 2010 when the agencies clarified that the FDIC loss-sharing agreements with acquirers of assets from failed institutions are considered conditional guarantees for risk-based capital purposes due to contractual conditions imposed on the acquiring institution and that the guaranteed portion of assets subject to an FDIC loss-sharing agreement may be assigned a 20 percent risk weight.[29] Any such assets reported by a savings association, other than those meeting the requirements provided in 12 CFR 167.6(a)(1)(i)(F) (federal savings associations) and 12 CFR 390.466(a)(1)(i)(F) (state savings associations) may similarly receive a 20 percent risk weight.

This capital difference has been eliminated under the revised capital rules, which assign a 20 percent risk weight to all assets supported by a conditional guarantee of the U.S. government or a U.S. government agency.

Risk Weight for Modified or Restructured 1–4 First Mortgage Home Loans

The agencies' general risk-based capital rules vary for 1–4 first mortgage home loans that have been modified or restructured. In general, to qualify for a 50 percent risk weight, under each agency's rules, a first-lien mortgage loan must have been made in accordance with prudent underwriting standards and not be 90 days or more past due. However, each agency's rules also provide additional requirements for the 50 percent risk-weight category that result in different capital treatments. Accordingly, a 1–4 first mortgage home loan that has been restructured receives a 100 percent risk weight under the Board's rules and the OCC's rules for national banks. In contrast, the FDIC's rules for state nonmember banks assign a 50 percent risk weight to any modified home mortgage loan, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight. The rules for state and federal savings associations are nearly identical to the FDIC's rules for state nonmember banks.

The agencies' rules are consistent with respect to loans modified pursuant to the Home Affordable Mortgage Program (HAMP or Program) implemented by the U.S. Department of the Treasury. In 2009, the agencies together with the OTS adopted a final rule that allows banks and savings associations to risk weight HAMP loans with the same risk weight assigned to the loan prior to the modification so long as the loan continues to meet other applicable prudential criteria.[30]

This capital difference has been eliminated under the revised capital rules, which assign a 100 percent risk weight to all 1–4 mortgage loans that are modified or restructured, except for those restructured under HAMP which may continue to receive a 50 percent risk weight (provided they otherwise meet the prudential criteria for a 50 percent risk weight).

Requirements for the Zero Percent Credit Conversion Factor for Unconditionally Cancellable Commitments

The agencies' general risk-based capital rules assign a zero percent credit conversion factor (*i.e.,* no risk-based capital requirement) to unused portions of commitments (other than asset-backed commercial paper conduits) that have an original maturity of one year or less, or which are unconditionally cancellable at any time provided a separate credit decision is made before each drawing under the facility. Unused portions of retail credit card lines and related plans are deemed to be short-term commitments if the bank, in accordance with applicable law, has an unconditional option to cancel the credit card at any time.

In addition, the rules of the OCC and the rules that apply to both state and federal savings associations permit a zero percent credit conversion factor for unconditionally cancellable commitments if the bank has a contractual right to make, and in fact does make, an annual or more frequent credit review based upon the borrower's current financial condition to determine whether the lending facility should be continued. This provision results in a capital difference among the agencies' rules because it allows a national bank or savings association to assign a zero percent credit conversion factor to such commitments where the bank does not conduct a separate credit review prior to each draw, but periodically (*i.e.,* at least annually) reviews the credit condition of the borrower.

[28] Subject to certain statutory exceptions, all legacy capital instruments that do not satisfy the criteria for common equity, additional tier 1, or tier 2 capital under the revised capital rules must be phased-out of regulatory capital.

[29] *See* OCC Bulletin 2010–10 (March 2, 2010), Risk Weight for FDIC Claims and Guarantees (OCC); Supervision and Regulation Letter (SR 10–4), Clarification of the Risk Weight for Claims on or Guaranteed by the FDIC (Board); and Financial Institution Letter (FIL–7–2010), Clarification of the Risk Weight for Claims on or Guaranteed by the FDIC (FDIC).

[30] *See* 74 FR 31160 (June 30, 2009). However, consistent with the OCC's and the Board's general risk-based capital rules, if a mortgage loan becomes 90 days or more past due or carried in nonaccrual status or is otherwise restructured after being modified under the Program, the loan would be assigned a risk weight of 100 percent. Consistent with the FDIC's general risk-based capital rules, if a mortgage loan is restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets the other applicable criteria for a 50 percent risk weight. Consistent with the rules that apply to savings associations, if a mortgage loan is restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due and meets the other applicable criteria for a 50 percent risk weight.

This capital difference has been eliminated under the revised capital rules which require all banks and savings associations to apply a zero percent credit conversion factor to a commitment that is unconditionally cancellable.

Dated: April 17, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 12, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated: April 17, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

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