DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

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FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Regulation WW; Docket No. R–1537]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE 44

Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting a final rule that implements a stable funding requirement, known as the net stable funding ratio (NSFR), for certain large banking organizations. The final rule establishes a quantitative metric, the NSFR, to measure the stability of the funding profile of certain large banking organizations and requires these banking organizations to maintain minimum amounts of stable funding to support their assets, commitments, and derivatives exposures over a one-year time horizon. The NSFR is designed to reduce the likelihood that disruptions to a banking organization's regular sources of funding will compromise its liquidity position, promote effective liquidity risk management, and support the ability of banking organizations to provide financial intermediation to businesses and households across a range of market conditions. The NSFR supports financial stability by requiring banking organizations to fund their activities with stable sources of funding on an ongoing basis, reducing the possibility that funding shocks would substantially increase distress at individual banking organizations. The final rule applies to certain large U.S. depository institution holding companies, depository institutions, and U.S. intermediate holding companies of foreign banking organizations, each with total consolidated assets of $100 billion or more, together with certain depository institution subsidiaries (together, covered companies). Under the final rule, the NSFR requirement increases in stringency based on risk-based measures of the top-tier covered company. U.S. depository institution holding companies and U.S. intermediate holding companies subject to the final rule are required to publicly disclose their NSFR and certain components of their NSFR every second and fourth calendar quarter for each of the two immediately preceding calendar quarters. The final rule also amends certain definitions in the agencies' liquidity coverage ratio rule that are also applicable to the NSFR.

DATES: *Effective Date:* July 1, 2021.

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SUPPLEMENTARY INFORMATION:

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I. 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) are adopting in final form the agencies' 2016 proposal to implement a net stable funding ratio (NSFR) requirement (the proposed rule), with certain adjustments.[1] The agencies also are finalizing two proposals released subsequent to issuance of the proposed rule to revise the criteria for determining the scope of application of the NSFR requirement (tailoring proposals).[2] The Board will issue a separate proposal for notice and comment to amend its information collection under its Complex Institution Liquidity Monitoring Report (FR 2052a) to collect information and data related to the requirements of the final rule.

The final rule establishes a quantitative metric, the NSFR, to measure the stability of the funding profile of large U.S. banking organizations, U.S. intermediate holding companies of foreign banking organizations, and their depository institution subsidiaries with $10 billion or more in total consolidated assets. The final rule also requires these banking organizations to maintain minimum amounts of stable funding to support their assets, commitments, and derivatives exposures.[3] By requiring banking organizations to maintain a stable funding profile, the final rule reduces liquidity risk in the financial sector and provides for a safer and more resilient financial system.

Sections II and III of this Supplementary Information section provide background on the agencies' proposed rule and the tailoring proposals (together, the proposals). Section IV provides an overview of comments received on the proposals and significant changes to the proposals under this final rule. Section V describes the final rule's purpose, design, scope of application, and minimum requirements. The discussion of the final rule in sections VI through IX describes amendments to certain applicable definitions, the calculation of the NSFR, requirements imposed on a banking organization that fails to meet its minimum NSFR requirement, and the public disclosure requirements for U.S. depository institution holding companies and U.S. intermediate holding companies subject to the final rule. Sections X through XII describe the agencies' impact assessment, the effective date and transitions under the final rule, and certain administrative matters.

II. Background

The 2007–2009 financial crisis revealed significant weaknesses in banking organizations' liquidity risk management and liquidity positions, including how banking organizations managed their liabilities to fund their assets in light of the risks inherent in their on-balance sheet assets and off-balance sheet commitments.[4] The 2007–2009 financial crisis also revealed an overreliance on short-term, less-stable funding, and demonstrated the vulnerability of large and internationally active banking organizations to funding shocks. For example, weaknesses in funding management at many banking organizations made them vulnerable to contractions in funding supply, and they had difficulties renewing short-term funding that they had used to support longer term or illiquid assets. As access to funding became limited and asset prices fell, many banking organizations faced an increased possibility of default and failure. To stabilize the global financial markets, governments and central banks around the world provided significant levels of support to these institutions in the form of liquidity facilities and capital injections.

In response to the 2007–2009 financial crisis, the Basel Committee on Banking Supervision (BCBS) established two international liquidity standards. In January 2013, the BCBS established a short-term liquidity metric, the liquidity coverage ratio (LCR), to mitigate the risks arising when banking organizations face significantly increased net cash outflows in a period

[1] *See* "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements," 81 FR 35124 (June 1, 2016).

[2] *See* Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements, 83 FR 66024 (December 21, 2018) (domestic tailoring proposal); Changes to Applicability Thresholds for Regulatory Capital Requirements for Certain U.S. Subsidiaries of Foreign Banking Organizations and Application of Liquidity Requirements to Foreign Banking Organizations, Certain U.S. Depository Institution Holding Companies, and Certain Depository Institution Subsidiaries, 84 FR 24296 (May 24, 2019) (FBO tailoring proposal). The agencies indicated that comments regarding the NSFR proposed rule would be addressed in the context of a final rule to adopt a NSFR requirement for large U.S. banking organizations and foreign banking organizations.

[3] See further discussion of balance sheet funding in section V.C below.

[4] *See* Senior Supervisors Group, Risk Management Lessons from the Global Banking Crisis of 2008, (October 21, 2009), available at *https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2009/SSG_report.pdf.*

of stress (Basel LCR standard).[5] As a complement to the LCR, the BCBS in October 2014 established the net stable funding ratio standard (Basel NSFR standard) to mitigate the risks presented by banking organizations supporting their assets with insufficiently stable funding; the Basel NSFR standard requires banking organizations to maintain a stable funding profile over a longer, one-year time horizon.[6] The agencies have been, and remain, actively involved in the BCBS' international efforts, including the continued development and monitoring of the BCBS's framework for liquidity.

Following the 2007–2009 financial crisis, the agencies implemented several requirements designed to improve the largest and most complex banking organizations' liquidity positions and liquidity risk management practices. In 2014, the agencies adopted the LCR rule to improve the banking sector's resiliency to a short-term liquidity stress by requiring large U.S. banking organizations to hold a minimum amount of unencumbered high-quality liquid assets (HQLA) that can be readily converted into cash to meet projected net cash outflows over a prospective 30 calendar-day stress period.[7] In addition, pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [8] (Dodd-Frank Act) and in consultation with the OCC and FDIC, the Board adopted the enhanced prudential standards rule, which established general risk management, liquidity risk management, and stress testing requirements for certain bank holding companies and foreign banking organizations.[9] These reforms in the post-crisis regulatory framework did not include a requirement that directly addresses the relationship between a banking organization's funding profile and its composition of assets and off-balance commitments.[10]

III. Overview of the Proposed Rule and Proposed Scope of Application

A. The Proposed Stable Funding Requirement

In June 2016, the agencies invited comment on a proposal to implement a net stable funding requirement for the U.S. banking organizations that were subject to the LCR rule at that time.[11] The proposed rule was generally consistent with the Basel NSFR standard, with adjustments to reflect the characteristics of U.S. banking organizations, markets, and other U.S. specific considerations.[12]

The proposed rule would have required a banking organization to maintain an amount of available stable funding (ASF) equal to or greater than the banking organization's projected minimum funding needs, or required stable funding (RSF), over a one-year time horizon.[13] A banking organization's NSFR would have been expressed as the ratio of its ASF amount to its RSF amount, with a banking organization required to maintain a minimum NSFR of 1.0.[14]

Under the proposed rule, a banking organization's ASF amount would have been calculated as the sum of the carrying values of the banking organization's liabilities and regulatory capital, each multiplied by a standardized weighting (ASF factor) ranging from zero to 100 percent to reflect the relative stability of such liabilities and capital over a one-year time horizon. Similarly, a banking organization's minimum RSF amount would have been calculated as (1) the sum of the carrying values of its assets, each multiplied by a standardized weighting (RSF factor) ranging from zero to 100 percent to reflect the relative need for funding over a one-year time horizon based on the liquidity characteristics of the asset, plus (2) RSF amounts based on the banking organization's committed facilities and derivative exposures. The proposed rule also would have included public disclosure requirements for depository institution holding companies subject to the proposed rule.

B. Revised Scope of Application

The proposed rule would have applied to: (1) Bank holding companies, savings and loan holding companies without significant commercial or insurance operations, and depository institutions that, in each case, have $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposure; and (2) depository institutions with $10 billion or more in total consolidated assets that are consolidated subsidiaries of such bank holding companies and savings and loan holding companies. In addition, the Board proposed a modified NSFR requirement that would have applied to certain depository institution holding companies with total consolidated assets of $50 billion or more.[15]

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[5] *See* ''Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools'' at *https://www.bis.org/publ/bcbs238.htm.*

[6] *See* ''Basel III: the net stable funding ratio'' at *https://www.bis.org/bcbs/publ/d295.htm.* The BCBS relatedly published the net stable funding ratio disclosure standards published by the BCBS in June 2015. *See* ''Basel III: the net stable funding ratio'' (October 2014), available at *http://www.bis.org/bcbs/publ/d295.pdf;* ''Net Stable Funding Ratio disclosure standards'' (June 2015), available at *http://www.bis.org/bcbs/publ/d324.pdf.*

[7] 12 CFR part 50 (OCC); 12 CFR part 249 (Board); 12 CFR part 329 (FDIC). *See also* ''Liquidity Coverage Ratio: Liquidity Risk Measurement Standards,'' 79 FR 61440 (October 10, 2014).

[8] 12 U.S.C. 5365.

[9] *See* 12 CFR part 252. *See also* ''Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations,'' 79 FR 17240 (March 27, 2014). The Economic Growth, Regulatory Relief, and Consumer Protection Act, which became law on May 24, 2018, subsequently raised the asset thresholds for applicability of enhanced prudential standards under section 165 of the Dodd-Frank Act. *See* Public Law 115–174, 132 Stat. 1296 (2018). The Board amended the scope of application of these requirements in October 2019. *See* 84 FR 59032, (November 1, 2019).

[10] During the same period, the Board implemented requirements designed to enhance the capital positions and loss-absorbing capabilities for global systemically important banking organizations (GSIBs), which can also have the effect of improving the funding profiles of these firms. The Board adopted a risk-based capital surcharge for GSIBs in the United States that is calculated based on a bank holding company's risk profile, including its reliance on short-term wholesale funding (the GSIB capital surcharge rule). *See* 12 CFR 217 subpart H. The Board also adopted a total loss-absorbing capacity (TLAC) requirement and a long-term debt requirement (LTD) requirement (the TLAC/LTD rule) for U.S. GSIBs and the U.S. operations of certain foreign GSIBs, which requires these firms and operations to have sufficient amounts of equity and eligible long-term debt to improve their ability to absorb significant losses and withstand financial stress and to improve their resolvability in the event of failure or material distress. *See* 12 CFR 252 subparts G and P.

[11] *See* ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements,'' 81 FR 35124 (June 1, 2016).

[12] The BCBS developed the Basel NSFR standard as a longer-term balance sheet funding metric to complement the Basel LCR standard's short-term liquidity stress metric. In developing the Basel NSFR standard, the agencies and their international counterparts in the BCBS considered a number of possible funding metrics. For example, the BCBS considered the traditional ''cash capital'' measure, which compares the amount of a firm's long-term and stable sources of funding to the amount of the firm's illiquid assets. The BCBS found that this cash capital measure failed to account for material funding risks, such as those related to off-balance sheet commitments and certain on-balance sheet short-term funding and lending mismatches. The Basel NSFR standard incorporates consideration of these and other funding risks, as does this final rule.

[13] For certain depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

[14] Under the Board's proposed modified NSFR requirement, a depository institution holding company subject to a modified NSFR would have been required to maintain an NSFR of 1.0 but would have calculated such ratio using a lower minimum RSF amount in the denominator of the ratio, equivalent to 70 percent of the holding company's RSF amount as calculated under the agencies' proposed rule.

[15] Subsequent to the issuance of the proposed rule, certain foreign banking organizations with substantial operations in the United States were required to form or designate U.S. intermediate holding companies. The scope of application under the proposed rule would have included certain U.S.

Subsequent to the proposed rule, the agencies published the tailoring proposals to modify the application of the LCR rule and the proposed rule consistent with considerations and factors set forth under section 165 of the Dodd-Frank Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[16] As part of the tailoring proposals, the agencies proposed to establish four risk-based categories for determining applicability of requirements under the LCR rule and the proposed rule. The requirements would have increased in stringency based on measures of size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposures (risk-based indicators). In addition, the tailoring proposals would have removed the Board's proposed modified NSFR requirement for certain depository institution holding companies.[17]

In October 2019, the agencies adopted a final rule (tailoring final rule) that amended the scope of application of the LCR rule so that it applies to certain U.S. banking organizations and U.S. intermediate holding companies of foreign banking organizations, each with $100 billion or more in total consolidated assets, together with certain of their depository institution subsidiaries.[18] The tailoring final rule applies LCR requirements on the basis of the four risk-based categories determined by the risk profile of the top-tier banking organization, including a depository institution that is not a subsidiary of a depository institution holding company.[19] The effective date of the revisions to the LCR rule's scope was December 31, 2019.[20]

bank holding company subsidiaries of foreign banking organizations.

[16] Public Law 115–174, 132 Stat. 1296 (2018).

[17] The tailoring proposals also would have removed the LCR rule's modified LCR requirement that at the time applied to certain depository institution holding companies with total consolidated assets of $50 billion or more.

[18] 84 FR 59230 (November 1, 2019). In a change from the tailoring proposals, the tailoring final rule applied LCR requirements to a U.S. intermediate holding company of a foreign banking organization on the basis of risk-based indicators measured for the U.S intermediate holding company and not the foreign banking organization's combined U.S. operations.

[19] A ''top-tier banking organization'' means the top-tier bank holding company, U.S. intermediate holding company, savings and loan holding company, or depository institution domiciled in the United States.

[20] The tailoring final rule noted that comments regarding the NSFR proposal would be addressed in the context of any final rule to adopt a NSFR requirement for large U.S. banking organizations and U.S. intermediate holding companies. 84 FR at 59235.

IV. Summary of Comments and Overview of Significant Changes to the Proposals

The agencies received approximately 30 comments on the proposed rule, as well as approximately 20 comments related to the NSFR rule in response to the tailoring proposals. Commenters included U.S. and foreign banking organizations, trade groups, public interest groups, and other interested parties. Agency staff also met with some commenters at their request to discuss their comments on the proposed rule and the tailoring proposals.[21] Although many commenters supported the goal of improving funding stability, many commenters expressed concern regarding the overall proposal and criticized specific aspects of the proposed rule.

A number of commenters argued that the proposed rule was unnecessary because it would target risks already addressed by existing regulations, such as the LCR rule. Other commenters expressed concern regarding the design and calibration of the proposed rule. These commenters requested clarification on the conceptual underpinnings of the NSFR, requested additional quantitative support for the proposed ASF and RSF factors, and argued that the proposed rule did not satisfy Administrative Procedure Act (APA) requirements because it provided insufficient support for its design and calibration. Some commenters criticized the proposed rule as not being appropriately tailored for implementation in the United States and argued that the proposed rule was more stringent than the Basel NSFR standard such that it could disadvantage U.S. banking organizations relative to their foreign competitors. Relatedly, certain commenters requested that the agencies conform the final rule to the European Union's implementation of the Basel NSFR standard (EU NSFR rule) in order to minimize potential adverse effects on U.S. banking organizations.[22]

[21] Summaries of these meetings are available on the agencies' public websites. *See https://www.regulations.gov/docket?D=OCC-2014-0029* (OCC), *https://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=R%2D1537&doc_ver=1* (Board), and *https://www.fdic.gov/regulations/laws/federal/2016/2016-net_stable-funding-ratio-3064-ae44.html* (FDIC).

[22] The European Union (EU) implementation of the NSFR requirement, effective 2021, includes targeted adjustments from the Basel NSFR standard in order to reflect EU specificities generally consistent with the EU implementation of the Basel LCR standard. The EU's NSFR requirements also include targeted adjustments to support sovereign bond markets. *See* Regulation (EU) 2019/876 of the European Parliament and the Council, May 20, 2019, *available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0876* (EU NSFR rule).

Some commenters expressed concern that the proposed rule could result in increased costs to banking organizations and the financial system that would exceed the proposed rule's benefits.[23] Specifically, some commenters argued that the proposed rule could increase funding and compliance costs, which could cause banking organizations to withdraw from or reduce the scale of certain business activities with low margins, including certain capital markets-related activities. According to the commenters, this could have the effect of tightening credit and increasing borrowing costs for households and businesses in the United States. Commenters also argued that the funding and compliance costs of the proposed rule could increase financial stability risk by shifting certain financial intermediation activities from the banking sector to less regulated ''shadow banking'' channels. Commenters also expressed concern that the proposed rule could have pro-cyclical effects, for example, by incentivizing banking organizations to restrict lending to improve their NSFRs during periods of stress.

Additionally, many commenters requested changes to specific elements of the proposed rule. For example, commenters recommended the agencies assign higher ASF factors for certain liabilities, such as certain types of deposits, and lower RSF factors for certain categories of assets and committed facilities. Some commenters recommended changes to the proposed rule's treatment of derivatives, particularly the treatment of variation margin and the treatment of potential valuation changes in a derivatives portfolio. In addition, a number of commenters requested that the agencies modify the proposed rule to assign zero percent RSF and ASF factors to certain assets and liabilities commenters viewed as interdependent such that the specific, identifiable assets are funded by the specific, identifiable liabilities of an equal or similar tenor and, therefore, present little or minimal funding risk. Finally, some commenters requested that the agencies delay implementation of the NSFR requirement to allow banking organizations additional time to build internal reporting systems and comply with disclosure requirements.

[23] The agencies received a number of comments that were not specifically responsive to the proposed rule but more generally requested that the agencies assess the combined costs of post-crisis regulations on the availability of credit and the economy.

The agencies received a number of comments requesting the agencies reconsider the proposed rule's scope of application. Specifically, many commenters argued that the proposed thresholds for application were arbitrary and insufficiently risk-sensitive and requested the agencies further tailor the scope of the proposed rule. The agencies also received a number of comments on the appropriateness of the revised scope of application in the tailoring proposals.

As discussed throughout this Supplementary Information section, the final rule retains the general design for the NSFR calculation and calibrates minimum requirements to the risk profiles of banking organizations in a manner consistent with the tailoring final rule. However, the final rule includes a number of modifications, including:

- The final rule assigns a zero percent RSF factor to unencumbered level 1 liquid asset securities and certain short-term secured lending transactions backed by level 1 liquid asset securities (see section VII.D of this Supplementary Information section).
- The final rule provides more favorable treatment for certain affiliate sweep deposits and non-deposit retail funding (see section VII.C of this Supplementary Information section).
- The final rule permits cash variation margin to be eligible to offset a covered company's current exposures under its derivatives transactions even if it does not meet all of the criteria in the agencies' supplementary leverage ratio rule (SLR rule).[24] In addition, variation margin received in the form of rehypothecatable level 1 liquid asset securities also would be eligible to offset a covered company's current exposures (see section VII.E of this Supplementary Information section).
- The final rule reduces the amount of a covered company's gross derivatives liabilities that will be assigned a 100 percent RSF factor (see section VII.E of this Supplementary Information section).

V. The Final Rule's Purpose, Design, Scope of Application, and Minimum Requirements

A. Purpose of the Final Rule

The NSFR is designed to address risks that are inherent in the business of banking. Banking organizations perform maturity and liquidity transformation,[25] which is an important financial intermediation process that contributes to efficient resource allocation and credit creation. To conduct maturity and liquidity transformation and meet the long-term credit needs of businesses and households, banking organizations also must address the short-term liquidity preferences of funds providers. These transformation activities create a certain inherent level of risk to banking organizations, the U.S. financial system, and the broader economy caused by banking organizations' potential overreliance on unstable funding sources relative to the composition of their balance sheets. Such overreliance could potentially result in the failure of banking organizations, disruptions to asset prices, and reduction in the provision of credit to households and businesses.

A banking organization may mitigate these risks by having funding sources that are appropriately stable over time. Because short-term funding generally tends to be less expensive than longer-term funding, banking organizations have incentives to fund their longer-term or less-liquid assets with less stable, shorter-term liabilities. While this approach may benefit short-term earnings, it may lead to imbalances between how a banking organization chooses to fund its assets and the funding it may need to maintain the assets over time, as well as increases in liquidity and funding risk arising from potential customer and counterparty runs and a more interconnected financial sector. In turn, this creates a funding risk for banking organizations, the financial system, and the broader economy. The final rule requires large banking organizations to avoid excessively funding long-term and less-liquid assets with short-term or less-reliable funding and thus reduces the likelihood that disruptions in a banking organization's regular funding sources would compromise its funding stability and liquidity position.

The final rule establishes a minimum NSFR requirement that is applicable on a consolidated basis to certain top-tier banking organizations with total consolidated assets of $100 billion or more, together with certain depository institution subsidiaries (together, covered companies). Consistent with the proposed rule, the final rule requires a covered company to calculate an NSFR based on the ratio of its ASF amount to its RSF amount and maintain an NSFR equal to or greater than 1.0 on an ongoing basis.[26] In addition, the final rule, like the proposed rule, includes public disclosure requirements for U.S. depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations that are subject to the final rule.

B. Comments on the Need for the NSFR Requirement

Banking organizations have improved their liquidity risk management practices and liquidity positions since the 2007–2009 financial crisis, including by holding larger liquidity buffers, avoiding excessive reliance on very short-term unstable wholesale funding sources, and improving their internal controls and governance structures surrounding liquidity risk management. The NSFR requirement aims to preserve these improvements and help position covered companies to act as resilient financial intermediaries through potential future periods of instability. The agencies received a number of comments arguing that the proposed rule is unnecessary because other elements of the agencies' regulatory framework already sufficiently address liquidity and funding risk at covered companies.[27] Some commenters also argued that the agencies should not apply an NSFR requirement because many covered companies have improved their current funding profiles relative to the period leading up to the 2007–2009 financial crisis. By contrast, one commenter supported the proposed rule, asserting that it would be an important complement to the LCR rule because it would address funding stability and

[24] 12 CFR 3.10(c)(4) (OCC); 12 CFR 217.10(c)(4) (Board); 12 CFR 324.10(c)(4) (FDIC). In addition, the final rule includes a new provision to exclude assets received by a covered company as variation margin under derivative transactions from the treatment of rehypothecated assets that are off-balance sheet assets in accordance with U.S. generally accepted accounting principles (GAAP).

[25] To conduct financial intermediation, banking organizations obtain resources that are currently surplus to the needs of certain parts of the economy (funds providers) and lend them to other parts of the economy that currently need those resources (users of funds). Funds providers generally prefer to supply their resources on a short-term basis with easy access to their funds (liquid resources); for example, household savings. Users of funds often need these resources on a long-term basis and in ways that make such resources difficult to convert to cash (illiquid resources); for example, building factories or capital for business growth. Maturity and liquidity transformation refers to the process of bridging the competing needs of funds providers and users of funds.

[26] ASF factors are described in section VII.C, RSF factors are described in section VII.D, and the derivatives RSF amount is described in section VII.E of this Supplementary Information section.

[27] Commenters provided examples, including the LCR rule; the Board's enhanced prudential standards rule; the TLAC/LTD rule; the GSIB capital surcharge rule (which includes a measure of weighted short-term wholesale funding), SLR rule, and other capital requirements; single counterparty credit limits; mandatory clearing requirements and margin requirements for non-cleared swaps and non-cleared security-based swaps; and Board and FDIC supervisory guidance relating to liquidity in connection with resolution planning.

maturity mismatch more broadly and over a longer time horizon.

The final rule is intended to complement and reinforce other elements of the agencies' regulatory framework that strengthen financial sector resiliency by addressing risks that are not directly addressed by the agencies' other regulatory measures. For example, the NSFR rule provides an important complement to the LCR rule, which addresses the risk of increased net cash outflows over a 30-calendar day period of stress by requiring banking organizations to hold HQLA that can be readily converted to cash. While addressing short-term cash-flow related risks is a core component of a banking organization's liquidity risk management, a banking organization could comply with the LCR requirement and still fund its long-term or illiquid assets and commitments with short-term liabilities not sufficiently stable to preserve these assets over an extended period.[28] The final rule further complements the LCR rule by mitigating the risk of a banking organization concentrating funding just outside the LCR's 30-day window. The final rule also complements requirements related to firm-specific measures of funding risk under the Board's enhanced prudential standards rule by providing a standardized measure of the stability of a banking organization's funding profile, which would promote greater comparability of funding structures across banking organizations and improve transparency and market discipline through public disclosure requirements.[29] With respect to the other rules and guidance commenters cited as sufficiently addressing liquidity and funding risk, these elements of the agencies' regulatory framework do not directly address balance sheet funding risks for covered companies on a going-concern basis. [30]

Reliance on less-stable sources of funding may require a banking organization to repay or replace its funding more often and make it more exposed to sudden funding market disruptions. Potential loss of funding can restrict a banking organization's ability to support its assets and commitments over the long term, generating both safety and soundness and financial stability risks. The final rule is designed to mitigate such risks by directly increasing the funding resilience of subject banking organizations. The final rule mitigates risks to U.S. financial stability by improving the capacity of banking organizations to continue to support their assets and lending activities across a range of market conditions. A covered company that sufficiently aligns the stability of its funding sources with its funding needs based on the liquidity characteristics of its assets and commitments is better positioned to avoid asset fire sales and continue to function as a financial intermediary in the event of funding or asset market disruptions. As a result, a covered company will be better positioned to continue to operate and lend, which promotes more stable and consistent levels of financial intermediation in the U.S. economy across economic and market conditions.

As a standardized metric, the NSFR also promotes greater comparability across covered companies and foreign banks subject to substantially similar requirements in other jurisdictions and facilitates supervisory assessments of vulnerability. Through public disclosure requirements, the NSFR rule also promotes greater market discipline through enhanced transparency.[31] In these ways, a standardized long-term funding measure, such as the NSFR, is intended to work in tandem with internal models-based measures to provide a more robust and complete framework to monitor and manage funding and liquidity risks of covered companies.

C. The NSFR's Conceptual Framework, Design, and Calibration

A number of commenters questioned the conceptual framework and design of the proposed rule, as well as its overall analytical basis and the calibrations of specific components. In particular, commenters argued that the agencies did not provide sufficient justification or data analysis to support the proposed calibration of the NSFR rule's relevant factors. Some commenters questioned whether the calibrations in the proposed rule reflected a one-year period of stress or whether the calibration was intended to reflect different ''business-as-usual'' conditions.[32] A number of commenters also argued that if the proposed rule was not calibrated based on the same stress assumptions as the LCR rule, the proposed rule should not incorporate elements and definitions from the LCR rule. Some commenters also requested that the agencies reconsider elements of the proposed rule that they believed to be more conservative than the LCR rule. In addition, several commenters argued that the proposed rule was focused on commercial banking and was therefore not sensitive enough to the different business models of covered companies, such as custody banks and banking organizations significantly involved in capital markets. Another commenter stated that the NSFR is a static measure and does not take into account actions a firm may take in the future to address funding risk. As addressed in sections VII.C and VII.D of this Supplementary Information section, the agencies also received a number of comments on the proposed values of ASF factors and RSF factors where the commenter's concern was predicated on the design of the NSFR. For example, commenters described the value of certain ASF factors as conservative based on the assumption that the values represented cash-flow amounts and commenters therefore made direct comparison to factors used in the LCR rule. In light of these comments, the agencies are clarifying in this Supplementary Information section the conceptual basis for the NSFR design under the final rule.

1. Use of an Aggregate Balance Sheet Measure and Weightings

The NSFR's conceptual design builds on commonly used assessments of balance sheet funding.[33] The NSFR is a standardized measure of a banking organization's funding relative to its assets and commitments. Consistent with the Basel NSFR standard, the final

[28] Cash flow projections, liquidity stress testing, and liquidity buffer requirements for certain covered holding companies under the Board's enhanced prudential standards rule complement the LCR rule by addressing cash flow risks with additional firm-specific granularity and across additional time horizons, including a one-year planning horizon. These requirements do not directly address balance sheet funding risks.

[29] *See* 12 CFR 252.35 and 12 CFR 252.157.

[30] The final rule reflects that regulatory capital elements and long-term debt required under the agencies' regulatory capital rule, the Board's GSIB capital surcharge rule, and the TLAC/LTD rule provide stable funding by virtue of the long-term or perpetual tenor of such regulatory capital elements and long-term debt. The Board's GSIB capital surcharge rule and the tailoring final rule include a measure of historic funding composition, weighted short-term wholesale funding, but this measure does not measure or directly address funding risk. The weighted short-term wholesale funding measure is based on a banking organization's average use of short-term funding sources over the prior year but does not reflect a banking organization's assets or the banking organization's use of longer-term funding sources.

[31] Public disclosure requirements are not required for non-standardized measurements of liquidity risk required under the Board's enhanced prudential standards rule.

[32] Certain commenters also expressed concerns about the descriptions by the BCBS of the Basel NSFR standard between 2009 and 2014 and the opportunities to comment on certain elements of the international standard. Commenters argued that the agencies should remove elements of the proposed rule or re-open the comment period because, in these commenters' view, the public was unable to comment on the inclusion of certain elements in the Basel NSFR standard.

[33] *See supra* note 12.

rule conceptually draws on supervisory and industry-developed funding risk management measures, with modifications to account for material funding risks and policy considerations.[34] Supervisors and industry stakeholders such as credit rating agencies and equity analysts routinely assess the funding profiles of banking organizations through comparisons of the compositions of the banking organization's assets and liabilities.[35] The NSFR's design as a ratio of weighted liabilities and regulatory capital to weighted assets and commitments is consistent with these approaches. Using a ratio measure is appropriate for measuring and addressing funding risks because it provides a holistic assessment of a banking organization's funding profile based on the aggregate composition of the banking organization's balance sheet and commitments rather than on individual assets or liabilities.

The final rule takes into account the differing risk characteristics of a covered company's various assets, liabilities, and certain off-balance sheet commitments and applies different weightings (ASF and RSF factors) to reflect these risk characteristics. Under the final rule, ASF and RSF factors are used to determine the numerator and denominator of the NSFR and reflect, respectively, the stability of funding, and the need for assets and commitments to be supported by such funding over a range of market conditions, each as assessed under the final rule. As described in sections VII.C and VII.D of this Supplementary Information section, the final rule uses broad categories of liabilities and assets to assess relative stability and funding needs, respectively. These weightings make the NSFR assessment risk sensitive by differentiating between types of assets and types of liabilities.

While the NSFR is a simplified and standardized metric, meeting the NSFR minimum requirement of 1.0 provides evidence that a covered company has, in aggregate, a sufficient amount of stable liabilities and regulatory capital to support over a one-year time horizon its aggregate assets and commitments based on the liquidity characteristics of such aggregate assets and commitments.[36] Given the size, complexity, scope of activities, and interconnectedness of covered companies, a covered company with an NSFR of less than 1.0 may face an increased likelihood of liquidity stress or of having to dispose of illiquid assets, and may be less well positioned to maintain its level of financial intermediation over various market conditions.

Commenters expressed concerns that application of RSF factors to specific assets has the effect of imposing a requirement on covered companies to issue additional long-dated liabilities to fund such assets. The final rule does not prescribe the method by which a covered company must meet its minimum requirement. Under the final rule, the NSFR requirement reflects the aggregate balance sheet of a covered company, and the final rule does not apply separate minimum funding requirements to individual assets, legal entities, or business lines represented on the balance sheet. For example, a covered company that has an NSFR of 1.0 and increases its holding of certain long-dated assets is not required to issue additional long-dated liabilities under the final rule but, rather, has discretion on how to continue to meet its minimum requirement, including by changing its overall asset composition.

2. Use of a Simplified and Standardized Point-in-Time Metric

Many commenters expressed concerns or suggestions that related to the level of granularity in the NSFR's conceptual design or that the NSFR was a point-in-time measure. For example, commenters suggested the NSFR include additional RSF and ASF factors tailored to specific products and activities.[37] Commenters similarly expressed concerns about the number of residual maturity categories used in the NSFR. A number of commenters criticized the design of the NSFR as a static metric arguing that the measurement of the funding risk of a covered company's aggregate balance sheet should consider actions that banking organizations may undertake in the future.

In response to these concerns, the agencies note that a broad comparison of the stability of a covered company's funding relative to the liquidity characteristics of its assets achieves the final rule's funding risk-mitigation objectives. To limit the burden on covered companies and to maximize the comparability of the metric between each covered company and other international banking organizations, the NSFR is designed as a simplified metric that uses a small number of categories of assets, exposures, liabilities, counterparty types, and residual maturity buckets to achieve its objective. While the balance sheets of large banking organizations reflect a complex variety of transactions and business activities, additional granularity could be burdensome to covered companies relative to the goals of the NSFR requirement. The NSFR was designed holistically and introducing additional granularity could require recalibration of certain other elements. For example, the incorporation of additional RSF factors may require other RSF factors to be adjusted upward, as they currently reflect an aggregate view of the level of stable funding required for the entire set of assets or off-balance sheet commitments in a given category. Additionally, to the extent possible, the metric utilizes the carrying values of assets and liabilities on a covered company's balance sheet under U.S. Generally Accepted Accounting Principles (GAAP) and limits the need for additional valuations.

In response to comments that the NSFR is not sensitive to the different business models of covered companies, the agencies note that the NSFR is designed to allow comparison across covered companies and other international firms, and to minimize differences in how liquidity characteristics of liabilities and assets are evaluated by covered companies. As a standardized metric, the final rule is constructed to ensure a sufficient amount of stable funding across all covered companies, regardless of their business models. The NSFR generally does not differentiate by a banking organization's business model, its lines of business, or the purpose for which individual assets or liabilities are held on its balance sheet. For example, the NSFR treats securities held on a covered company's balance sheet based on the securities' credit risk and market characteristics regardless of whether such securities are held as long-term investments, as hedging instruments, or as market making inventory. While the composition of banking organizations' balance sheets varies based on business models and the services provided to customers, the NSFR is not focused on

[34] For example, the final rule takes into account policy considerations such as externalities associated with an unstable funding structure that can affect the safety and soundness of other banking organizations and U.S. financial stability and an interest in maintaining financial intermediation of covered companies across economic and market conditions.

[35] For example, supervisors and industry analysts compare compositions of assets and liabilities though the use of a loans-to-deposits ratio or by defining a measure of ''noncore'' funding dependency.

[36] As described in section V.E.3 of this Supplementary Information section, the final rule applies an adjustment factor to the denominator of the ratio to reflect the risk profile of a covered company.

[37] *See* sections VII.C, VII.D and VII.E of this Supplementary Information section.

any particular business model (for example, commercial banking), as suggested by commenters.

Like most prudential requirements, the NSFR is a measure of a covered company's condition at a point in time and by design does not consider the broad variety of actions that management may take in the future. As a general principle, the agencies do not speculate about future transactions, contingencies, or potential managerial remediation steps that the covered company may take.[38]

3. Use of a Time Horizon

Certain commenters questioned the NSFR's design in respect to its time horizon. While the NSFR measures a banking organization's balance sheet and commitments at a point in time, the assessment of adequate funding considers the stability of, and the need for, funding with reference to a general one-year time horizon and a range of market conditions. The measurement incorporates contractual maturities but generally does not reflect expectations about the year following the calculation date.[39] Rather, consistent with the Basel NSFR standard, the NSFR calibrations seek to reflect resilient credit intermediation to the real economy and general behaviors by banking organizations and their counterparties.

The use of a time horizon for the assessment of funding imbalances is appropriate because the residual maturities of liabilities and assets of a covered company at the calculation date are, among other characteristics, indicative of the liabilities' stability and the assets' need for funding, respectively. For example, liabilities that are due to mature in the short term will generally provide less stability to a banking organization's balance sheet than longer-term liabilities. Similarly, certain short-dated assets maturing in less than one year should require a smaller portion of funding to be maintained over a one-year time horizon because banking organizations may allow such assets to mature without replacing them. The choice of a one-year time horizon is also consistent with traditional accounting and supervisory measures of short-term and long-term financial instruments and exposures.

4. Stress Perspectives and Using Elements From the LCR Rule

A number of commenters requested clarification on the extent to which the NSFR calibrations incorporated stress assumptions. Consistent with the complementary designs of the Basel LCR and NSFR standards, the final rule is designed differently from, and to be complementary to, the LCR rule. Unlike the LCR, which compares immediately available sources of cash to potential stressed cash outflows over a 30-calendar day period, the NSFR is not a cash-flow coverage metric, and ASF and RSF amounts are not cash-flow amounts. While ASF factors take into account the characteristics of liabilities that influence relative funding stability across a range of market conditions, the values of ASF factors do not represent liability outflow rates. Similarly, while RSF factors take into account the liquidity characteristics of assets that generally influence their need for funding over a one-year horizon, the values of RSF factors do not reflect the monetization value of assets. In response to comments that the values of factors used in the LCR rule imply that ASF or RSF factors were incorrectly calibrated, it is important to note that comparisons of the values of ASF or RSF factors under the final rule to the values of outflow and inflow rates used in the LCR rule are not indicative of the relative conservatism of the requirements under both rules.[40]

Further, the final rule is not designed to function as a one-year liquidity stress test, and therefore its ASF and RSF factors are not assigned based on, or intended to directly translate to, assumed cash inflows and outflows over a one-year period of stress. Rather, the final rule is intended to serve as a balance-sheet metric, and ASF and RSF factors reflect, respectively, the relative stability of funding and the need for funding based on the liquidity characteristics of assets and commitments, each across a range of economic and financial conditions.[41] Funding and liquidity characteristics of liabilities and assets under stress conditions are therefore relevant to, but not determinative of, ASF and RSF factors. As a result, ASF and RSF factor calibrations take into account potential effects of stress on the stability of funding and liquidity characteristics of assets and commitments, but are not calibrated to require a covered company to retain a buffer against a stress period of one year, as discussed in sections VII.C and VII.D of this Supplementary Information section.

Although the NSFR generally is not calibrated to the stress assumptions of the LCR rule, it nevertheless shares certain common elements and definitions with the complementary LCR where such consistency is helpful. The alignment of the final rule with the structure and design of the LCR rule, where appropriate, aims to improve efficiency and limit compliance costs to covered companies by allowing them more efficiently to implement the two requirements. In response to commenters' concerns that sharing definitions and elements with the LCR rule inappropriately incorporates stress assumptions into the NSFR requirement, the agencies note that many shared elements and defined terms are independent of stress assumptions.[42] Moreover, to the extent that the final rule incorporates definitions of the LCR rule, their usage in the final rule generally reflects assumptions that are specific to the final rule.[43] Finally, while the final rule is not calibrated based on a one-year stress, some considerations of conservatism are still relevant. For example, as discussed in section VII.B of this Supplementary Information section, the final rule generally applies the same assumptions for determining maturity as the LCR rule because conservative assumptions regarding the maturity of funding relative to the duration of asset holdings are appropriate for assessing the risks presented by mismatches in balance sheet funding.

5. Analytical Basis of Factor Calibrations and Supervisory Considerations

Several commenters argued that the agencies did not sufficiently rely on empirical analysis to inform various portions of the proposed rule. Other commenters argued that the agencies

[38] As noted above, the point-in-time NSFR complements forward-looking assessments of risk, such as a covered company's internal liquidity stress testing practices.

[39] As described below, calculation date means any date on which a covered company calculates its NSFR. *See* section VI.A.1 of this Supplementary Information section.

[40] *See* sections VII.C and VII.D of this Supplementary Information section.

[41] The LCR rule compares cash-generating resources (*i.e.,* the HQLA amount) to cash needs (total net cash outflows) in a 30-day stress. The final rule compares sources of stable funding (ASF amount) to the need for stable funding (RSF amount), each calibrated over a 12-month horizon and across a range of market conditions.

[42] For example, the definitions of "general obligation," "affiliate," and "company" do not incorporate an assumption of stress.

[43] For example, the final rule applies the same ASF factor to certain forms of funding from a financial sector entity that mature in six months or less, regardless of whether such funding is in the form of a secured funding transaction or unsecured wholesale funding, whereas the LCR rule generally treats these categories of funding separately for purposes of determining applicable outflow amounts. *See* 12 CFR 50.32(h) and (j) (OCC); 12 CFR 249.32(h) and (j) (Board); 12 CFR 329.32(h) and (j) (FDIC).

did not sufficiently disclose the quantitative data and analyses on which the agencies relied.

As explained in detail in sections VII.C and VII.D of this Supplementary Information section, the liabilities within an ASF factor category generally exhibit similar levels of funding stability and the assets within an RSF factor category generally exhibit similar liquidity characteristics. In addition, there is a sufficient number of ASF factor and RSF factor categories in the final rule to differentiate among the funding risks presented by the assets, commitments, and liabilities covered by the NSFR. The ASF and RSF factors as calibrated for these categories of liabilities and assets, and as applied under the Basel NSFR standard to similar categorizations, are generally appropriate for U.S. implementation.[44] However, as discussed below, the final rule departs from the Basel NSFR standard where doing so would support important domestic policy objectives. The agencies regularly review their regulatory framework, including liquidity requirements, to ensure it is functioning as intended and will continue to assess the NSFR's calibration under the final rule. A more specific discussion of the agencies' analysis is provided in sections VII.C and VII.D of this Supplementary Information section, which discuss the comments received on the calibration of ASF and RSF factors.

Consistent with the proposed rule and as noted above, certain ASF and RSF factor assignments in the final rule take into account policy considerations relating to the safety and soundness of covered companies and U.S. financial stability.[45] For example, the assignment of a zero percent ASF factor to wholesale funding from financial sector entities that matures within six months generally reflects supervisory concerns related to the financial stability risks related to overreliance on this source of funding by large interconnected banking organizations. In calibrating the factors, the agencies also considered behavioral and operational factors that can affect funding stability or asset liquidity, such as reputational incentives that could cause a covered company to maintain lending to certain counterparties.[46]

In response to commenters' assertion that the agencies failed to disclose quantitative data and analyses used to support the proposed rule, the agencies note that they disclosed in the proposed rule material that was available and reliable. In the instances in which the agencies cited data in support of the proposed rule, the agencies identified that data, acknowledged the shortcomings of the available data, and invited input from the public. In developing the final rule, the agencies have considered the comments received.

D. Adjusting Calibration for the U.S. Implementation of the NSFR

As noted above, the final rule is based on the general framework of the Basel NSFR standard. Some commenters argued that the agencies should not adopt the proposed rule, or should modify certain elements of the proposed rule, because the Basel NSFR standard is an internationally negotiated standard that was not properly tailored to reflect U.S. financial, legal, and market conditions. By contrast, a number of commenters argued that the final rule should be more consistent with the Basel NSFR standard, particularly with respect to elements that would be more stringent under the proposed rule than the Basel NSFR standard.

In developing the proposed and final rules, the agencies considered the Basel NSFR standard as well as financial, legal, market, and other considerations specific to the United States. Basing the final rule on the general framework of the Basel NSFR standard helps promote competitive equity with respect to covered companies and other large, internationally active banking organizations in other jurisdictions, facilitate regulatory consistency across jurisdictions, and ensure a minimum level of resiliency across the global financial system. Where appropriate, the final rule differs from the Basel NSFR standard to reflect specific characteristics of U.S. markets, practices of U.S. banking organizations and domestic policy objectives.[47]

E. NSFR Scope and Minimum Requirement Under the Final Rule—Full and Reduced NSFR

1. Proposed Minimum Requirement and the Tailoring Final Rule

In the tailoring proposals, the agencies re-proposed the scope of application of the NSFR proposed rule. The tailoring proposals would have established four categories of requirements—Category I, II, III, and IV—that would have been used to tailor the application of the NSFR requirement based on the risk profile of a top-tier banking organization as measured by the risk-based indicators.[48] Covered companies subject to Category I and II requirements would have been subject to the full requirements of the proposed rule (full NSFR). Under Category III or Category IV, however, covered companies would have been subject to further tailored NSFR requirements based on the top-tier banking organization's level of weighted short-term wholesale funding. Specifically, a covered company that meets the criteria for Category III with $75 billion or more in average weighted short-term wholesale funding would have been subject to the full NSFR requirement. By contrast, banking organizations in Category III with less than $75 billion in average weighted short-term wholesale funding, or in Category IV with $50 billion or more in average weighted short-term wholesale funding, would have been required to comply with a reduced NSFR (reduced NSFR) requirement, calibrated at a level equivalent to between 85 and 70 percent of the full NSFR requirement.[49] Banking organizations in Category IV with less than $50 billion in weighted short-term wholesale funding would not have been subject to an NSFR requirement. In addition, a depository institution subsidiary of a covered company meeting the criteria of Category I, II, or III would have been required to comply with the NSFR requirement to which its parent covered company was subject if the depository institution subsidiary's total consolidated assets were $10 billion or greater. Depository institution subsidiaries with less than $10 billion in total consolidated assets, as well as depository institution subsidiaries of covered companies meeting the criteria of Category IV, would not have been required to comply with an NSFR requirement.

The tailoring final rule adopted these categories, with certain changes, for purposes of the LCR rule and the agencies' capital rule. Under the tailoring final rule, Category I requirements apply to U.S. global systemically important banks (GSIBs)

[44] Supervisory experience is informed in part through confidential data obtained through the FR 2052a report.

[45] *See* sections VII.C and VII.D of this Supplementary Information section.

[46] *See* section VII of this Supplementary Information section.

[47] Notable divergences in the final rule from the Basel NSFR standard include the treatment of level 1 liquid asset securities, certain short-term secured lending transactions backed by level 1 liquid assets, variation margin in derivatives transactions, and non-deposit retail funding.

[48] *See* section III.B of this Supplementary Information section. In the tailoring proposals, the proposed scope of application for the NSFR was the same as that proposed for the LCR rule.

[49] As noted above, the tailoring proposals would have removed the Board's modified LCR and modified NSFR requirement because the reduced LCR and reduced NSFR would be better designed for assessing liquidity and funding risks for banking organizations in Categories III and IV.

and any of their depository institution subsidiaries with $10 billion or more in consolidated assets. Category II requirements apply to top-tier banking organizations,[50] other than U.S. GSIBs, with $700 billion or more in consolidated assets or $75 billion or more in average cross-jurisdictional activity, and to their depository institution subsidiaries with $10 billion or more in consolidated assets. Category III requirements apply to top-tier banking organizations that have $250 billion or more in consolidated assets, or that have $100 billion or more in consolidated assets and also have $75 billion or more in (1) average nonbank assets, (2) average weighted short-term wholesale funding, or (3) average off-balance sheet exposure, that are not subject to Category I or II requirements. Category III requirements also apply to depository institution subsidiaries of these top-tier banking organizations, each with $10 billion or more in consolidated assets. Category IV requirements apply to top-tier depository institution holding companies or U.S. intermediate holding companies that in each case have $100 billion or more in consolidated assets and $50 billion or more in average weighted short-term wholesale funding that are not subject to Category I, II or III requirements.

Under the tailoring final rule, covered companies in Category I and II, or in Category III with $75 billion or more in average weighted short-term wholesale funding are subject to the full requirements of the LCR rule. All other covered companies in Category III and covered companies in Category IV with $50 billion or more in average weighted short-term wholesale funding are subject to a reduced LCR requirement calibrated at 85 percent and 70 percent, respectively. The calibration approaches outlined in the tailoring proposals and tailoring final rule were designed to better align the regulatory requirements of banking organizations with their risk profiles, taking into account their size and complexity, as well as their potential impact on systemic risk.

The final rule adopts the risk-based category approach used in the tailoring final rule for purposes of applying the NSFR. The application of the NSFR requirements to specific entities based on their tailoring category is discussed further below.

[50] *See supra* note 19.

2. Applicability of the Final Rule to U.S. Intermediate Holding Companies and Use of the Risk-Based Indicators

The tailoring proposals would have applied liquidity requirements to foreign banking organizations based on the risk profile of their combined U.S. operations. Specifically, the proposed NSFR requirements would have applied to a foreign banking organization based on the combined risk profile of its U.S. intermediate holding company and any U.S. branches or agencies, as measured by the risk-based indicators.[51]

Most commenters argued that the NSFR requirement should apply directly to a U.S. intermediate holding company of a foreign banking organization based on the U.S. intermediate holding company's risk profile. Some commenters further asserted that no NSFR requirement should be imposed on U.S. intermediate holding companies in view of the application of the NSFR under home country standards to the top-tier foreign parent. These commenters argued that the application of an NSFR requirement to U.S. intermediate holding companies is inconsistent with the principles of national treatment and equality of competitive opportunity because mid-tier U.S. bank holding companies of a similar size and risk profile would not be subject to an NSFR requirement but rather would be reflected in the NSFR applied at the top-tier consolidated U.S. parent. Other commenters argued that the liquidity requirements that apply to foreign banking organizations' U.S. operations, such as internal liquidity stress testing and liquidity risk management standards, and total loss-absorbing capacity (TLAC) instruments issued by U.S. intermediate holding companies make the application of the NSFR rule unnecessary for such companies. In addition, some commenters argued that U.S. intermediate holding companies should not be subject to the NSFR rule until after the agencies have conducted an impact analysis. By contrast, other commenters supported the proposed application of an NSFR requirement to a U.S. intermediate holding company based on the risk profile of the combined U.S. operations of the foreign banking organization.

[51] The tailoring proposals also sought comment on whether standardized liquidity requirements, such as the LCR and NSFR, should apply to the U.S. branches and agencies of a foreign banking organization to complement the internal liquidity stress testing standards that currently apply to these entities. As described in the tailoring final rule, the Board continues to consider whether to develop and propose for implementation a standardized liquidity requirement with respect to the U.S. branches and agencies of foreign banking organizations. *See* 84 FR at 59257. Any such requirement would be subject to notice and comment as part of a separate rulemaking process.

A U.S. intermediate holding company poses risks in the United States similar to domestic banking organizations of a similar size and risk profile, even if the parent foreign banking organization is subject to an NSFR requirement in its home jurisdiction. The LCR rule, the Board's enhanced prudential standards rule, and the final rule apply to applicable U.S. banking organizations on a global consolidated basis and incorporate certain liquidity risks posed by mid-tier holding companies and their subsidiaries.[52] For this reason, such requirements do not apply directly to mid-tier holding companies on a standalone basis. Consistent with the LCR rule and the Board's enhanced prudential standards rule, the final rule applies to a U.S. intermediate holding company of a foreign banking organization because of the risks it presents to the U.S. financial system on a consolidated basis. However, the final rule does not apply liquidity or funding requirements to a subsidiary holding company of a U.S. intermediate holding company of a foreign banking organization. Further, for the reasons described in section V.A of this Supplementary Information section, the NSFR requirement is a complement to the LCR rule and other regulatory requirements for banking organizations that can present material risks to the U.S. financial system. In light of these concerns, the agencies are applying an NSFR requirement to U.S. intermediate holding companies.

In addition, consistent with the scope of application of the LCR rule, the final rule applies the NSFR requirement to a U.S. intermediate holding company based on the risk profile of the U.S. intermediate holding company, rather than on the combined U.S. operations of the foreign banking organization.[53] Specifically, the final rule applies a full NSFR or reduced NSFR requirement to a U.S. intermediate holding company under the risk-based categories based on measures of the U.S. intermediate holding company's risk-based indicators. This approach helps to enhance the efficiency of NSFR requirements relative to the proposal, because stable funding requirements that apply to a U.S. intermediate holding company are based on the U.S.

[52] The consolidated risks posed by U.S. banking organizations to the U.S. financial system also include risks derived from foreign-based branches and subsidiaries.

[53] *See supra* note 18.

intermediate holding company's risk profile.

3. NSFR Minimum Requirements Under the Final Rule: Applicability and Calibration

A number of commenters argued that the re-proposed scope of applicability of the NSFR requirement was too stringent. Some commenters argued that smaller regional banking organizations should not be subject to the NSFR rule and that NSFR requirements for Category IV banking organizations should be eliminated. By contrast, other commenters argued that the tailoring proposals would tailor NSFR requirements in a way that would weaken the safety and soundness of large banking organizations and increase risks to U.S. financial stability. Some commenters argued that full NSFR requirements should apply to all covered companies until after the final rule has been effective for a sufficiently long period of time for the agencies to evaluate its efficacy. Other commenters advocated for further tailoring of the NSFR requirements.

For the reasons discussed below, the final rule generally retains the NSFR requirements described under the tailoring proposals. The final rule adopts a reduced NSFR requirement calibrated to 85 percent of the full NSFR requirement for Category III banking organizations with less than $75 billion in weighted short-term wholesale funding, and to 70 percent of the full NSFR requirement for Category IV banking organizations with $50 billion or more in weighted short-term wholesale funding.[54] Consistent with the tailoring proposals, depository institution subsidiaries with less than $10 billion in total consolidated assets would not be subject to an NSFR requirement. Moreover, no NSFR requirement applies at the subsidiary depository institution-level under Category IV.

a) NSFR Requirements Under Category I

Consistent with the scope of application of the LCR rule, the tailoring proposals would have applied full NSFR requirements to covered companies that meet the criteria for Category I. The agencies did not receive comments on the application of the NSFR requirement under Category I and are finalizing this aspect as proposed.

b) NSFR Requirements Under Category II

The tailoring proposals would have applied the full NSFR requirement to covered companies that meet the criteria for Category II. Some commenters argued that Category II should include a reduced NSFR requirement to reflect the lower risk profile of Category II banking organizations relative to those in Category I. Specifically, these commenters argued certain banking organizations in Category II present relatively lower stable funding risks than Category I banking organizations due to such banking organizations' concentration in custody activities and use of operational deposits.

Similar to U.S. GSIBs and their large depository institution subsidiaries, banking organizations that meet the criteria for Category II provide material levels of financial intermediation within the United States or internationally, and the NSFR helps to ensure that such banking organizations have appropriate funding to be in a position to sustain the necessary intermediation activities over a range of conditions. Additionally, the failure or distress of banking organizations that meet the criteria for Category II could impose significant costs on the U.S. financial system and economy. For example, any very large or global banking organization, including one that has a significant custody business, that is subject to asset fire sales resulting from funding disruptions is likely to transmit distress on a broader scale because of the greater volume of assets it may sell and the number of its counterparties across multiple jurisdictions. Similarly, a banking organization with significant international activity is more exposed to the risk of ring-fencing of funding resources by one or more jurisdictions. Ring-fencing may hamper the movement of funding, regardless of the level of custody business. More generally, the overall size of a banking organization's operations, material transactions in foreign jurisdictions, and the use of overseas funding sources add complexity to the management of the banking organization's funding profile. For these reasons, the agencies are adopting the proposal to apply the full NSFR requirement to Category II banking organizations.

c) NSFR Requirements Under Category III

As described above, the tailoring proposals would have differentiated NSFR requirements in Category III based on whether the level of average weighted short-term wholesale funding of a banking organization was at least $75 billion and sought comment on the calibration of the reduced NSFR requirement.

Some commenters argued that Category III banking organizations with less than $75 billion in average weighted short-term wholesale funding should not be subject to a reduced NSFR requirement. By contrast, many commenters expressed support for a reduced NSFR requirement under Category III, and generally recommended that such requirement be calibrated to 70 percent of the full NSFR requirement, consistent with the calibration of the Board's previously proposed modified NSFR requirement. In addition, several of these commenters argued that the reduced NSFR requirement should apply only to holding companies.

To improve the calibration of a banking organization's minimum ASF amount relative to its funding profile and its potential risk to U.S. financial stability, the final rule differentiates between banking organizations based on their category and their reliance on short-term wholesale funding. As discussed in the tailoring final rule, ongoing reliance on short-term, wholesale funding can make a banking organization more vulnerable to safety and soundness and financial stability risks. Accordingly, under the final rule, a banking organization subject to Category III standards with average weighted short-term wholesale funding of $75 billion or more is subject to the full NSFR requirement.

A banking organization subject to Category III standards with average weighted short-term wholesale funding of less than $75 billion is subject to a reduced NSFR requirement calibrated at 85 percent of the full NSFR requirement. An 85 percent calibration is appropriate for these banking organizations because they are less likely to contribute to a systemic event relative to similarly sized banking organizations that have a greater reliance on short-term wholesale funding and therefore, are more complex, and whose distress or failure is more likely to have greater systemic impact.

As a general matter, the alignment of the reduced NSFR with the Board's initially proposed modified NSFR

[54] Under the final rule, a banking organization applies the appropriate adjustment factor to its calculated RSF amount (required stable funding adjustment percentage), by multiplying its RSF amount by its required stable funding adjustment percentage. Banking organizations subject to the full NSFR requirement apply a 100 percent required stable funding adjustment percentage. Banking organizations subject to a reduced NSFR requirement apply an 85 or 70 percent required stable funding adjustment percentage.

would not be appropriate because each of these requirements was designed to address different risk profiles. The Board designed the modified NSFR for smaller U.S. holding companies with less complex business models and more limited potential impact on U.S. financial stability compared to banking organizations that would be subject to the reduced NSFR requirement.[55]

d) NSFR Requirements Under Category IV

Under the tailoring proposals, a Category IV banking organization with average weighted short-term wholesale funding of $50 billion or more would have been required to comply with a reduced NSFR requirement of between 70 and 85 percent. However, the reduced NSFR requirement under Category IV would not have applied to standalone depository institutions or at the level of a subsidiary depository institution.

Some commenters argued that all banking organizations subject to Category IV should be subject to an NSFR requirement and that the requirement could be further modified or simplified for these organizations, as appropriate. In contrast, other commenters argued for the removal of any NSFR requirement for all banking organizations subject to Category IV.

For a banking organization with total consolidated assets of at least $100 billion and less than $250 billion, average weighted short-term wholesale funding of $50 billion or more demonstrates a material reliance on short-term, generally uninsured funding from more sophisticated counterparties, which can make a banking organization more vulnerable to large-scale funding runs, generating both safety and soundness and financial stability risks. Accordingly, such a banking organization is relatively more vulnerable to the funding stability risks addressed by the reduced NSFR requirement relative to similarly sized banking organizations that rely more heavily on stable funding such as retail deposits and have traditional balance sheet structures. The application of the NSFR requirement, albeit at a reduced level, is therefore appropriate for these banking organizations given their lower potential impact on systemic risk.

The final rule calibrates the minimum reduced NSFR requirement under Category IV at a level equivalent to 70 percent of the minimum level required under Category I and II. The difference between the 85 percent reduced NSFR calibration in Category III and the reduced 70 percent LCR calibration in Category IV reflects the differences in risk profiles of banking organizations subject to each respective requirement. The 70 percent calibration recognizes that these banking organizations are less complex and smaller than other banking organizations subject to more stringent requirements under the final rule and would likely have more modest systemic impact than larger, more complex banking organizations if they experienced funding disruptions. Banking organizations that are not subject to Category I, II or III requirements and that have average weighted short-term wholesale funding of less than $50 billion are not subject to an NSFR requirement under the final rule. Depository institution subsidiaries of banking organizations subject to Category IV requirements are not subject to an NSFR requirement.

4. Applicability to Depository Institution Subsidiaries

As described above, the tailoring proposals would have applied the same NSFR requirement to top-tier banking organizations subject to Category I, II, or III standards and to their subsidiary depository institutions with $10 billion or more in total consolidated assets.

Although a number of commenters generally supported the application of consistent requirements for U.S. depository institutions holding companies and their depository institution subsidiaries, many commenters requested that the agencies eliminate the application of the NSFR requirement to depository institutions that are consolidated subsidiaries of covered companies. These commenters stated that the NSFR rule should recognize that the holding company structure in the United States allows for banking organizations to manage liquidity across the broader corporate group and provides firms with flexibility regarding where liquidity is held within the corporate structure. These commenters also argued that an NSFR requirement for a consolidated depository institution is unnecessary in view of the supervisory monitoring and prudential limits applicable to the depository institution's funding structure, as well as the source of strength requirements that obligate the parent to remediate any funding deficiencies at a subsidiary depository institution. Alternatively, these commenters suggested that the agencies should rely on their supervisory authority to ensure stable funding for depository institutions. The commenters also requested that, if the agencies apply the NSFR requirement to depository institutions, an exemption should apply to depository institutions that comprise 85 percent or more of the assets of the consolidated organization. Commenters supporting such an approach stated that the costs of separately applying an NSFR at the subsidiary depository institution-level would outweigh any benefits.

The proposed treatment would have aligned with the agencies' longstanding policy of applying similar standards to holding companies and their depository institution subsidiaries. Large depository institution subsidiaries play a significant role in a banking organization's funding structure, and in the operation of the payments system. Such entities should have sufficient amounts of stable funding to meet their funding needs rather than be overly reliant on their parents or affiliates. In addition, these large subsidiaries generally have access to deposit insurance coverage and, as a result, application of standardized funding requirements would help to reduce the potential for losses to the FDIC's deposit insurance fund. Accordingly, the final rule maintains the application of an NSFR requirement to covered depository institution subsidiaries as proposed.

VI. Definitions

The proposed rule would have shared definitions with the LCR rule and would have been codified in the same part of the Code of Federal Regulations as the LCR rule for each of the agencies.[56] The proposed rule also would have revised certain of the existing definitions under the LCR rule and adopted new definitions for purposes of both the LCR and NSFR rules. The agencies received a number of comments regarding the proposed definitions.

One commenter argued that certain of the LCR rule's definitions are flawed and should not be used for purposes of the NSFR rule because they are the result of an internationally negotiated standard that was not properly calibrated to reflect U.S. market conditions or U.S. banking organizations' practices. As discussed in section V.C of this Supplementary Information section, to the extent that the final rule incorporates definitions

[55] The Board's initially proposed modified NSFR applied to depository holding companies with between $50 billion and less than $250 billion in total assets whereas the tailoring proposal would have applied Category III requirements to banking organizations that either have $250 billion or more in total assets or have $100 billion or more in total assets as well as heightened levels of off-balance sheet exposure, nonbank assets, or weighted short-term wholesale funding.

[56] 12 CFR part 50 (OCC); 12 CFR part 249 (Board); 12 CFR part 329 (FDIC).

also used in the LCR rule, their usage in the final rule generally reflects assumptions specific to the final rule. The agencies also note that these common definitions include defined terms that are not included in the Basel LCR standard, but are specific to U.S. markets and banking organizations. For example, the definitions for certain types of brokered deposits and collateralized deposits are not included in the Basel LCR standard or the Basel NSFR standard. In addition, the final rule has tailored certain definitions, such as the definition of ''operational deposit,'' for the U.S. market. The use of common definitions across the regulatory framework, as appropriate, helps to minimize compliance costs, facilitate comparability across banking organizations, and reduce regulatory burden. Comments regarding specific defined terms are discussed below. For ease of convenience, the following discussion refers to § ____.3 of the LCR rule, even though the definitions found in § ____.3 will apply to both the LCR rule and final rule.

A. Revisions to Existing Definitions

The proposed rule would have amended the following definitions that were included in § ____.3 of the LCR rule: ''calculation date,'' ''collateralized deposits,'' ''committed,'' ''covered nonbank company,'' ''operational deposit,'' ''secured funding transaction,'' ''secured lending transaction,'' and ''unsecured wholesale funding.''

1. Revised Definitions for Which the Agencies Received no Comments

The proposed rule would have amended the existing definition of ''calculation date,'' ''committed,'' and ''covered nonbank company'' in § ____.3 of the LCR rule. The agencies received no comments on the changes to these definitions and are adopting these revised definitions as proposed.

Calculation date. The final rule amends to the definition of ''calculation date'' in § ____.3 of the LCR rule to include any date on which a covered company calculates its NSFR for purposes of § ____.100 of the final rule.

Committed. The definition of ''committed'' in § ____.3 of the LCR rule provides the criteria under which a credit facility or liquidity facility is considered committed for purposes of the LCR rule. To more clearly reflect the intended meaning of ''committed,'' the final rule, consistent with the proposed rule, amends the definition to state that a credit or liquidity facility is committed if it is not unconditionally cancelable under the terms of the facility. Consistent with the agencies' risk-based capital rule, the final rule defines ''unconditionally cancelable'' to mean that a covered company may refuse to extend credit under the facility at any time, including without cause (to the extent permitted under applicable law).[57] For example, a credit or liquidity facility that permits a covered company to refuse to extend credit only upon the occurrence of a specified event (such as a material adverse change) would not be considered unconditionally cancelable, and therefore the facility would be considered ''committed'' under the final rule. Conversely, a credit or liquidity facility that the covered company may cancel without cause would be considered unconditionally cancelable because the covered company may refuse to extend credit under the facility at any time, and therefore the facility would not be considered ''committed.'' For example, credit card lines that are cancelable without cause (to the extent permitted under applicable law), as is generally the case, are not considered committed under the amendment to the definition.

Covered nonbank company. Consistent with the proposed rule, the final rule revises the definition of ''covered nonbank company'' to clarify that if the Board requires a company designated by the Financial Stability Oversight Council (FSOC) for Board supervision to comply with the LCR rule or the final rule, it will do so through a rulemaking that is separate from the LCR rule and the final rule or by issuing an order.

2. Revised Definitions for Which the Agencies Received Comments

The agencies received comments on the following proposed amendments to existing definitions that are included in § ____.3 of the LCR rule: ''collateralized deposit,'' ''operational deposit,'' ''secured funding transaction,'' ''secured lending transaction,'' and ''unsecured wholesale funding.''

Collateralized Deposit. The proposed rule would have amended the definition of ''collateralized deposit'' to include those deposits of a fiduciary account collateralized as required under state law, as applicable to state member and nonmember banks and state savings associations. In addition, the proposed rule would have amended the definition to include those deposits of a fiduciary account held at a covered company for which a depository institution affiliate of the covered company is a fiduciary and that the covered company has opted to collateralize pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for federal savings associations).

The agencies received two comments regarding the definition of ''collateralized deposit.'' One commenter supported the proposed amendment to include fiduciary deposits collateralized as required under state law, as applicable to state member banks, state nonmember banks, and state savings associations. The other commenter requested that the agencies revise the definition to include secured sweep repurchase arrangements, which the commenter described as arrangements that allow a customer's balances to be temporarily ''swept'' out of a deposit account and into a secured non-deposit funding arrangement with the covered company. The commenter argued that secured sweep repurchase arrangements are distinct from other secured funding transactions, including wholesale funding offered by a broker-dealer, because they are typically tied to operational accounts and involve an automated sweep of corporate client funds into a secured sweep repurchase account, thus posing, in the commenter's view, less liquidity risk. The commenter argued that secured sweep repurchase arrangements are similar to secured deposit funding because the arrangements are offered as part of a broader business relationship between a covered company and a customer and, therefore, should not be subject to the unwind provisions in § ____.21 of the LCR rule.

The final rule adopts the amended definition of ''collateralized deposit'' as proposed with an adjustment to expressly include deposits of a fiduciary account collateralized pursuant to state law requirements for which a covered company's depository institution affiliate is a fiduciary. The agencies defined ''collateralized deposit'' to identify a narrow set of secured funding transactions that should not be subject to the unwind provision in the LCR rule for a covered company when determining its HQLA amount.[58] The agencies excluded such deposits from the unwind provision based on their unique characteristics, including, among other things, that such deposits ''are required to be collateralized under applicable law'' and that ''the banking relationship associated with collateralized deposit can be different in nature from shorter-term repurchase and

[57] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[58] *See* § ____.21 of the LCR rule. Certain secured funding transactions other than collateralized deposits are used in calculating adjusted liquid asset amounts for determining the adjusted excess HQLA amount under the LCR rule.

reverse repurchase agreements.'' [59] The revised definition includes deposits of a fiduciary account collateralized pursuant to state law requirements or at the covered company's discretion pursuant to 12 CFR 9.10(c) (for national banks) or 12 CFR 150.310 (for federal savings associations) in order to provide consistent treatment to deposits that are subject to collateralization requirements or have been collateralized. Additionally, temporary secured sweep repurchase arrangements, including those offered part of a broader business relationship, that will mature in 30 calendar days or less of an LCR calculation date may affect a covered company's excess HQLA amount similar to other wholesale secured funding transactions conducted by a broker-dealer and do not qualify for the treatment afforded to collateralized deposits.

Operational Deposit. The proposed rule would have amended the definition of ''operational deposit'' to include both deposits received by the covered company in connection with operational services provided by the covered company and deposits placed by the covered company in connection with operational services received by the covered company. The proposed rule also would have amended this definition to clarify that only deposits can qualify. Further, because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule's less-than-six-month maturity category and generally within the LCR rule's 30-calendar-day period. Further, because operational deposits are limited to accounts that facilitate short-term transactional cash flows associated with operational services, operational deposits also should only have short-term maturities, falling within the proposed rule's less-than-six-month maturity category and generally within the LCR rule's 30-calendar-day period. Notwithstanding the proposed revisions to this definition, the treatment of operational deposits under §§ ____.32 and ____.33 of the LCR rule would have remained the same.

The agencies received a number of comments regarding the proposed definition of ''operational deposit.'' Some commenters requested removal of the limitation that operational deposits cannot be provided by non-regulated funds. These commenters argued that a deposit placed at a covered company by a non-regulated fund for the provision of operational services would have similar liquidity risks as a deposit placed by a regulated fund for the same operational purposes.[60] One commenter argued that the exclusion of deposits placed by a non-regulated fund lacks a clear policy rationale and is unduly strict towards the custody bank business model. The commenter also argued that this exclusion is more stringent than the treatment of operational deposits in the Basel LCR standard. The commenter expressed concern that retaining this exclusion could undermine the current trend among non-regulated funds of separating the safekeeping and administration of their investment assets from their trading and financing activities. A commenter also asserted this exclusion is unnecessary because the risk associated with operational deposits from non-regulated funds is addressed sufficiently by the exclusion of deposits provided in connection with a covered company's provision of prime brokerage services.

One commenter argued that the definition of ''operational deposit'' should not be limited to deposits. The commenter suggested instead that the definition should be revised to include non-deposit unsecured wholesale funding that matures within the LCR rule's 30-day time horizon, in order to include arrangements that allow an operational customer's balances to be temporarily swept out of a deposit account into non-deposit products until such time as the funds are needed to meet operational demands. The commenter argued that excluding such arrangements from the definition of ''operational deposit'' could underrepresent the amount of a covered company's funding that is associated with the provision of operational services over the LCR rule's 30-day time horizon.

Operational deposit are deposits necessary for the covered company to provide operational services, as that term is defined in § ____.3 of the LCR rule, to the wholesale customer or counterparty providing the deposit.[61] Among other things, the definition requires compliance with certain operational requirements of § ____.4 of the LCR rule in order for a deposit to be recognized as an operational deposit (operational requirements).

The exclusion of deposits provided by non-regulated funds is appropriate because, in general, non-regulated funds tend to be sophisticated and are more likely than many other types of counterparties to engage in higher-risk trading strategies involving leverage, which may result in higher cash needs due to collateral calls and less stable deposit balances during certain market conditions. In comparison to non-financial wholesale counterparties or regulated financial sector entities, it is also more likely that operational activities at a non-regulated fund would be impacted by the performance of the fund's investment or trading activity that relies upon prime brokerage services, and thus it would be more difficult to separate its deposit balances that are necessary to maintain operational activities from its balances that support trading and investment activities that rely on prime brokerage services (even if these services are provided by different entities of a covered company). As a result, deposits from non-regulated funds may present heightened funding risk relative to deposits from other counterparties.

In addition, operational deposit balances swept out of a deposit account and into non-deposit products will not be eligible to be considered ''operational deposits''. The LCR rule provides that in order to be recognized as an operational deposit, any excess amount not linked to operational services must be excluded.[62]

As the preamble to the LCR rule noted, operational deposits are assigned a lower outflow rate under the LCR rule compared to other short-term wholesale funding due to the perceived stability arising from the relationship between a covered company and a depositor, the necessity of the deposit for the provision of operational services, and the switching costs associated with moving such deposits.[63] In contrast, excess funds, including funds that are swept into non-deposit products until funds are needed to meet operational demands, are not necessary for the provision of operational services and therefore do not exhibit these

[59] 79 FR at 61473.

[60] *See* § ____.4(b)(6) of the LCR rule; 79 FR at 61501. This section provides that operational deposits do not include deposits that are provided in connection with the covered company's provision of prime brokerage services, which include operational services provided to a non-regulated fund. Section ____.3 of the LCR rule defines a ''non-regulated fund'' as any hedge fund or private equity fund whose investment adviser is required to file SEC Form PF (Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors), other than a small business investment company as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*).

[61] *See* 79 FR at 61498.

[62] *See* § ____.4(b)(5) of the LCR rule.

[63] *See* 79 FR at 61497–502.

characteristics.[64] Furthermore, the LCR rule excludes from operational deposits those deposits held in an account that is designed to incentivize customers to maintain excess funds in the account through increased revenue, reduction in fees, or other economic incentives.[65] Because the sweep arrangements described by the commenter are typically used to increase returns on deposits, the continued exclusion of these sweep arrangements from the definition of ''operational deposit'' is consistent with this treatment.

For these reasons, the final rule adopts the amended definition of ''operational deposits'' as proposed.

Secured Funding Transaction and Secured Lending Transaction. The proposed rule would have revised the definitions of ''secured funding transaction'' and ''secured lending transaction'' to clarify that (i) the transactions must be secured by a lien on securities or loans, rather than secured by a lien on other assets; (ii) the definitions include only transactions with wholesale customers or counterparties, and (iii) securities issued or owned by a covered company do not constitute secured funding or lending transactions.[66]

One commenter recommended amending the definitions of ''secured funding transaction'' and ''secured lending transaction'' by replacing ''securities'' with ''financial assets'' in order to broaden the forms of collateral that may be used in transactions that meet the definitions. Specifically, the commenter argued that short-term debt, commercial paper, gold, and certain other assets should be permitted forms of collateral because they effectively reduce the risk associated with secured transactions. The same commenter also requested that the definition of ''secured lending transaction'' be expanded to include certain transactions with retail customers, and, in particular, open-maturity loans to retail customers collateralized by customer securities, such as a margin loan. The commenter asserted that a securities-based loan to a retail counterparty has similar characteristics to an open-maturity reverse repurchase agreement with a wholesale counterparty, including that the transaction is fully secured by the borrower's collateral, the lender has a legal right and operational ability to close out the loan upon default by the counterparty and sell the collateral to offset the lender's credit exposure, and the maturity of the loan extends each day that a notice of termination is not provided.

Under the LCR rule, the cash flows associated with secured funding and secured lending transactions take into account the relative liquidity of the cash and marketable collateral that will be exchanged at the maturity of the transaction and recognize that collateral in the form of HQLA securities tends to be the most liquid. By contrast, collateral that is not generally traded in liquid markets, including property, plant, and equipment, may provide limited liquidity value, particularly relative to the LCR rule's time horizon. While collateral that is not in the form of securities or loans may serve to mitigate credit risk, in the agencies' experience, the cash flows on lending secured by such collateral, including the likelihood of renewing the lending at maturity, depend to a greater degree on the characteristics of the counterparty rather than the collateral, thus making the liquidity risk associated with such arrangements more akin to that of unsecured lending. Accordingly, such lending transactions should not necessarily receive a 100 percent inflow rate under the LCR rule; rather, the inflow rate should depend on the characteristics of the borrower, which more accurately reflect the likelihood that a covered company will be able to realize inflows from or roll over some or all of the loan during a period of significant stress. In contrast to their contributions to total net cash outflows under the LCR rule, the contributions of secured loan assets and secured funding liabilities to the funding risk of a covered company's aggregate balance sheet generally depend on their maturities and counterparty characteristics and the final rule generally treats secured and unsecured wholesale transactions similarly.

In addition, while there is no defined term ''securities'' in the LCR rule, the agencies are clarifying that a funding transaction that is not a security, is conducted with a wholesale customer or counterparty, and is secured under applicable law by a lien on third-party short-term debt or commercial paper provided by a covered company would qualify as a secured funding transaction. Similarly, a lending transaction that is not a security, is conducted with a wholesale customer or counterparty, and is secured under applicable law by a lien on third-party short-term debt or commercial paper provided by the wholesale customer or counterparty would qualify as a secured lending transaction. However, secured funding and lending transactions where the collateral is in the form of gold or other commodities would not meet the definition of a secured funding transaction or secured lending transaction. These assets exhibit an increased volatility in market value and there are logistical factors associated with holding and liquidating these assets as compared to loans and securities.[67]

The final rule adopts the amended definitions of ''secured funding transaction'' and ''secured lending transaction'' as proposed. Under the final rule, the definitions of ''secured funding transaction'' and ''secured lending transaction'' include only transactions with wholesale customers or counterparties. Secured lending transactions do not include secured lending to a retail customer or counterparty, such as a retail margin loan. For purposes of the LCR rule generally, secured lending transactions categorize certain lending to a wholesale customer or counterparty where the expectation is that the transaction may mature in the near term with the covered company receiving cash from the counterparty and being required to return collateral to the counterparty.[68] In contrast, the treatment of retail exposures generally reflects the agencies' expectation that a covered company will need to maintain a portion of retail lending even during stress, regardless of collateralization.[69] As noted above, RSF factors assigned to unencumbered loans to retail and wholesale customers and counterparties under the final rule reflect their maturity and counterparty, rather than collateralization, and the RSF factors assigned to secured retail lending are the same as for secured lending to non-financial sector wholesale counterparties. As a result, the final rule, like the proposed rule, categorizes secured lending to a retail customer or counterparty separately from secured lending transactions with wholesale customers or counterparties for

[64] *See* 79 FR at 61500.

[65] *See* § ____.4(b)(4) of the LCR rule.

[66] As noted in § ____.3 of the LCR rule and the proposed rule, the definition of ''secured funding transaction'' also includes repurchase agreements and securities lending transactions, and the definition of ''secured lending transaction'' also includes reverse repurchase agreements and securities borrowing transactions, as these transactions result in the equivalent of a lien, securing the cash leg of the transaction, that gives the asset borrower priority over the asset in the event the covered company or the counterparty, as applicable, enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

[67] The LCR rule for similar reasons does not include gold bullion as a level 1 liquid asset. *See* 79 FR at 61456.

[68] *See* 79 FR at 61513.

[69] *See* 79 FR at 61512.

purposes of assigning RSF factors under the NSFR requirement.[70]

Finally, under the final rule securities issued or owned by a covered company do not constitute secured funding or lending transactions. For example, asset-backed securities issued by a special purpose entity that a covered company consolidates on its balance sheet are not secured funding transactions. Similarly, securities owned by a covered company where contractual payments to the covered company are collateralized are not secured lending transactions.

Unsecured wholesale funding. The proposed rule would have amended the definition of ''unsecured wholesale funding'' to mean a liability or general obligation of a covered company to a wholesale customer or counterparty that is not a secured funding transaction. The agencies received one comment regarding this proposed definition. The commenter asserted that, although ''asset exchange'' is separately defined in the LCR rule, an asset exchange could nonetheless fall under the definition of ''unsecured wholesale funding'' because it could be viewed as a liability or general obligation that is not a secured funding transaction if entered into with a wholesale customer or counterparty.

The final rule adopts the amended definition of ''unsecured wholesale funding'' as proposed with an adjustment to expressly exclude asset exchanges. Under the final rule, secured funding with a wholesale counterparty that does not meet the revised definition of ''secured funding transaction'' generally meets the definition of ''unsecured wholesale funding.'' However, consistent with the agencies' intent to provide a special framework for asset exchanges, the definitions of ''unsecured wholesale funding'' and ''unsecured wholesale lending'' in the final rule have been revised to exclude asset exchanges.[71]

3. Other Definitions and Requirements for Which the Agencies Received Comments

Given that the definitions in the LCR rule would apply to the final rule, the proposed rule also requested comment as to whether any other existing definitions or terms should be amended. The agencies received several comments requesting revisions and clarifications to other definitions in the LCR rule that the agencies did not propose to amend.

Credit and liquidity facility. One commenter requested that the agencies provide examples of a lending commitment that would qualify as a ''credit facility'' or ''liquidity facility'' under the rules. Section ____.3 of the LCR rule defines ''credit facility'' to mean a legally binding agreement to extend funds if requested at a future date, including a general working capital facility such as a revolving credit facility for general corporate or working capital purposes.[72] Other examples of credit facilities may include a letter of credit, home equity line of credit, or any other legally binding agreement to extend funds if requested at a future date that is not included in the definition of ''liquidity facility.''

Section ____.3 of the LCR rule defines ''liquidity facility'' to mean a legally binding written agreement to extend funds at a future date to a counterparty that is made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding. The definition of ''liquidity facility'' further clarifies that it includes an agreement to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from, any structure, program, or conduit in the event that funds are required to repay maturing asset-backed commercial paper.[73] Other examples of liquidity facilities include agreements related to non-asset backed commercial paper programs, secured financing transactions, securities investment vehicles, and conduits that, in each case, meet the requirements of the liquidity facility definition in § ____.3 of the LCR rule. The LCR rule requires a facility that has characteristics of both credit and liquidity facilities to be classified as a liquidity facility.

In addition, a commenter asked the agencies to clarify the treatment of (1) commercial paper backstop facilities where the customer has no commercial paper currently outstanding and (2) facilities that are expected to be cancelled without funding, such as an unfunded bridge lending facility in connection with a capital markets issuance. A commercial paper backstop facility may meet the definition of a liquidity facility because the purpose of the facility is to provide liquidity support in the future, if needed, regardless of whether the customer currently has any commercial paper outstanding or not. The determination of whether such a facility is ''committed'' likewise would not be impacted by the fact that the customer has no amount of commercial paper outstanding, but would depend on whether it was ''unconditionally cancelable'' as described above.[74] With respect to an unfunded bridge lending facility in connection with a capital markets issuance, the facility may be considered a credit facility if its sole purpose is to provide working capital to the issuer prior to the capital markets issuance. If, however, the unfunded bridge lending facility's purpose at least partially includes providing funds in the event that the issuer cannot otherwise refinance its outstanding liabilities prior to the capital market issuance, then the facility would likely meet the definition of a liquidity facility. Whether a facility meets the definition of a credit or liquidity facility at a calculation date is not influenced by expectations regarding its future cancellation. In addition, the determination of whether such a facility is ''committed'' at a calculation date depends on whether it was ''unconditionally cancelable,'' and would not be impacted by the likelihood of its cancellation.

Retail customer or counterparty. Section ____.3 of the LCR rule defines ''retail customer or counterparty'' to include a living or testamentary trust that: (i) Is solely for the benefit of natural persons; (ii) does not have a corporate trustee; and (iii) terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years, if applicable under state law. One commenter suggested changing the definition of ''retail customer or counterparty'' to account for certain trusts, such as common trust arrangements with corporate trustees that the commenter viewed as akin to a natural person. The commenter suggested that a natural person's direct or indirect power to control a trust's investment is a better measure for assessing whether a trust should be treated for purposes of the LCR and NSFR rule as a retail customer or counterparty. The commenter suggested that a natural person's direct

[70] *See* section VII.D of this Supplementary Information section.

[71] In addition to the unique treatment of asset exchanges in § ____.102(c) of the final rule, asset exchanges are also subject to special treatment pursuant to § ____.106(d). These treatments are discussed further in section VII.D.4 of this Supplementary Information section.

[72] A credit facility does not include a legally binding written agreement to extend funds at a future date to a counterparty made for the purpose of refinancing the debt of the counterparty when it is unable to obtain a primary or anticipated source of funding, which is included in the definition of ''liquidity facility.''

[73] A liquidity facility excludes facilities that are established solely for the purpose of general working capital, such as revolving credit facilities for general corporate or working capital purposes.

[74] The undrawn amount of the facility would be determined under § ____.32(e)(2) of the LCR rule and § ____.106(a)(2) of the final rule.

or indirect power to control a trust's investment is a better measure for assessing whether a trust should be treated for purposes of the LCR and NSFR rules as a retail customer or counterparty.

The agencies expect that, as a class, living and testamentary trusts with corporate trustees are more likely to exhibit behavioral traits and sophistication comparable to those of a wholesale rather than retail customer or counterparty, even if a natural person has indirect authority over the trustee or complementary power to direct the trust's investment activity.[75] For example, despite the authority of a natural person to direct the trustee's investment, a corporate trustee would be more likely to act for the trust in the manner of a financial counterparty. The final rule does not include any change to the definition of ''retail customer or counterparty.''

Liquid and readily-marketable. Under the LCR rule, certain assets must be liquid and readily-marketable in order to be included as HQLA by a covered company. This requirement is intended to ensure that assets included as HQLA exhibit a level of liquidity that would allow a covered company to convert them into cash during times of stress in order to meet its obligations when other sources of liquidity may be reduced or unavailable. Under the LCR rule, an asset is liquid and readily-marketable if it is traded in an active secondary market with more than two committed market makers, a large number of committed non-market maker participants on both the buying and selling sides of transactions, timely and observable market prices, and a high trading volume.

The agencies received several comments and requests for clarification on this definition. Several commenters suggested that the liquid and readily-marketable criteria are unduly difficult to satisfy. One commenter stated that banking organizations have had difficulty collecting the data necessary to demonstrate that securities meet these criteria, and that the cost of collecting data for certain securities that are widely accepted as being liquid and readily-marketable outweighs the benefits. Several commenters requested additional clarification concerning what is required by each of the elements of the liquid and readily-marketable standard. For example, commenters requested clarification for how to determine that a market maker is ''committed,'' that there is a ''large'' number of market participants, and that the trading volume for a security is ''high.'' Commenters expressed concern that relatively new types of securities and securities that are preferred by investors utilizing a ''buy and hold'' strategy, including securities of the highest credit quality that have strong demand at primary issuance, may not meet the criteria. Commenters also expressed concern that there appears to be no widely accepted or straightforward method for assessing these criteria.

Commenters also provided alternative methods to establish that a security is liquid and readily-marketable. Several commenters suggested that certain asset classes should be presumed to be liquid and readily-marketable without further analysis if they meet certain criteria. For example, commenters suggested that certain securities should be presumed to be liquid and readily-marketable, including (i) securities backed by the full faith and credit of the United States, including agency securities, (ii) debt issues of foreign sovereigns that meet certain risk weight and other criteria, and (iii) U.S. equities included in the Russell 1000 index. These commenters also suggested that securities presumed to be liquid and readily-marketable could be assessed annually or more frequently to ensure that they are liquid and readily-marketable. Another commenter suggested that a security should be deemed liquid and readily-marketable if a firm can demonstrate that the 30-day trading volume for the security exceeds the firm's holdings of that security, or that there has been a purchase in the market for each offer to sell the security. One commenter suggested that securities should be considered liquid and readily-marketable if other securities issued by the same issuer or guaranteed by the same credit protection provider have already been deemed liquid and readily-marketable.

The LCR rule's definition of ''liquid and readily-marketable'' is intended to complement other restrictions on the assets that can potentially be included in HQLA. Within the universe of possible HQLA, the criteria in the definition are not overly prescriptive given the divergence of trading frequency and practices. Suggestions to more narrowly define these criteria would be difficult to apply because of the different market structures for different asset classes. In response to commenters' requests for clarification, this Supplementary Information section describes the agencies' general expectations regarding how assets may satisfy the definition's criteria.

The agencies do not expect covered companies to conduct the liquid and readily-marketable analysis on a daily basis. However, the agencies expect that covered companies monitor the securities included as HQLA and conduct the analysis periodically, especially following a change in market conditions. Covered companies should be able to demonstrate that they have an appropriate process to regularly review that each security meets the liquid and readily-marketable requirements and that they do in fact perform this analysis.

The LCR rule defines ''liquid and readily-marketable'' to mean that a given security is traded in an active secondary market that satisfies four conditions. The first condition is that the active secondary market must have more than two committed market makers. The presence of committed market makers is an important characteristic of liquid securities markets, to ensure that trades within the market will be fulfilled on an ongoing basis. A covered company generally may treat a market maker as committed if the market maker has a history of trading the security in a substantial volume, particularly during times of stress. As with the other criteria necessary for a security to be liquid and readily-marketable, once the covered company makes an initial determination that a security has more than two committed market makers, a periodic review is adequate to confirm the continued presence of committed market makers. The second condition is that the active secondary market must have a large number of non-market maker participants acting as buyers and sellers of the security. The agencies generally will consider a security to satisfy this requirement if the majority of the trading volume for the security involves non-market maker participants. It also may be possible to satisfy this requirement for securities traded in secondary markets where most trades are between market makers if there are a large number of non-market maker participants. The third condition is that the active secondary market must have timely and observable market prices. The agencies generally expect that securities that trade regularly and at prices that are quoted daily can be considered to meet this requirement. The fourth condition is that the active secondary market must have a high trading volume. The analysis should take into account the depth of the market across a range of time periods.

[75] Subsequent to the proposal, the agencies issued in October 2017 frequently asked questions related to the LCR rule, including discussion of corporate trustees. *See https://www.federalreserve.gov/supervisionreg/topics/liquidity-coverage-ratio-faqs.htm.*

Operational Requirements for HQLA. One commenter suggested that the agencies eliminate the operational requirement that firms periodically monetize a sample of their HQLA held as eligible HQLA through an outright sale or pursuant to a repurchase (LCR monetization requirement). The commenter argued that if a security already satisfies the agencies' liquid and readily-marketable standard, then it is unnecessary to also sell the security to demonstrate its liquidity to determine that it is eligible HQLA. The commenter also suggested that the agencies accept proof that a security has been used to secure a loan from a Federal Home Loan Bank (FHLB) to satisfy the LCR monetization requirement. The LCR rule has separate definitions for ''High-quality liquid assets'' and ''Eligible HQLA'' for distinct purposes under the LCR rule. The agencies are retaining the LCR monetization requirement in order to ensure a covered company's continued access to funds providers and the effectiveness of its processes for monetization. While satisfaction of the liquid and readily-marketable criteria indicates that a covered company should be able to monetize a security, actual monetization confirms the security's marketability and confirms that the covered company maintains adequate processes for monetizing the security.

3. Other Definitions and Requirements for Which the Agencies Did Not Receive Comments

As noted above in section VI.A.3 of this Supplementary Information section, the proposed rule also requested comment as to whether any other existing definitions or terms in § ____.3 of the LCR rule should be amended. Although the agencies did not receive specific requests to change the definition of ''brokered deposit,'' several commenters expressed concern that the FDIC's interpretation of ''brokered deposit'' is overly broad. The final rule amends certain of the definitions related to brokered deposits in § ____.3 to improve clarity and consistency with the FDIC's brokered deposit framework.[76]

Section ____.3 previously defined a brokered deposit to mean any deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) (FDI Act) and includes a reciprocal brokered deposit and a brokered sweep deposit. The final rule amends this definition by adding a reference to the FDIC's regulations and eliminating the reference to reciprocal brokered deposits and brokered sweep deposits because not all reciprocal and sweep deposits are brokered deposits under section 29 of FDI Act and the FDIC's implementing regulations.[77]

For this reason, the final rule also renames ''brokered sweep deposit'' to ''sweep deposit'' and ''reciprocal brokered deposit'' to ''brokered reciprocal deposit'' wherever these terms appear. These clarifications are important in light of ongoing FDIC efforts to update the classification of brokered deposits. Under the final rule, the term ''sweep deposit'' includes deposits that are brokered deposits as well as deposits that are not brokered deposits. The term ''reciprocal brokered deposits'' only includes deposits that are classified as brokered deposits.

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The changes to these definitions are only intended to clarify the scope of the definitions, not substantively alter the definitions or changes the applicable outflow or inflow amounts in the LCR rule. Because these changes are technical in nature and merely improve the clarity of these definitions in the LCR and NSFR rules, the agencies have determined that it is unnecessary to provide notice or the opportunity to comment prior to adopting these changes to these definitions related to brokered deposits.

B. New Definitions

The proposed rule would have added several new definitions: ''carrying value,'' ''encumbered,'' ''NSFR regulatory capital element,'' ''NSFR liability,'' and ''QMNA netting set,'' and ''unsecured wholesale lending.''

1. New Definitions for Which the Agencies Received no Comments

The agencies received no comments on the proposed definitions of ''carrying value,'' ''encumbered,'' ''NSFR regulatory capital element,'' ''NSFR liability,'' and ''QMNA netting set,'' and the final rule adopts these definitions as proposed.

The final rule defines ''carrying value'' to mean the value on a covered company's balance sheet of an asset, NSFR regulatory capital element, or NSFR liability, as determined in accordance with GAAP. The final rule includes this definition because RSF and ASF factors generally are applied to the carrying value of a covered company's assets, NSFR regulatory capital elements, and NSFR liabilities. By relying on values based on GAAP, the final rule aims to ensure consistency in the application of the NSFR requirement across covered companies and limit operational compliance costs because covered companies already prepare financial reports in accordance with GAAP. This definition is consistent with the definition used in the agencies' regulatory capital rules.[78]

The final rule's definition of ''encumbered'' uses the criteria for an ''unencumbered'' asset found in § ____.22(b) of the LCR rule. The definition does not include any substantive changes to the concept of encumbrance included in the LCR rule. The final rule uses this definition in place of the criteria enumerated in § ____.22(b) of the LCR rule. The addition of this definition is necessary to apply the concept of encumbrance in §§ ____.106(c) and (d) of the final rule, which are discussed in sections VII.D of this Supplementary Information section.

Additionally, the final rule defines ''NSFR regulatory capital element'' to mean any capital element included in a covered company's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, as those terms are defined

[76] The FDIC separately published a proposal in February 2020 to modernize its brokered deposit regulations, which would establish a new framework for analyzing whether deposits placed through deposit placement arrangements qualify as brokered deposits (FDIC brokered deposit proposal). Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 FR 7453 (February 10, 2020). In addition, in 2019 the FDIC published a final rule amending its brokered deposit regulations to conform with changes to section 29 of the Federal Deposit Insurance Act (FDI Act) made by section 202 of EGRRCPA related to reciprocal deposits. *See* Limited Exception for a Capped Amount of Reciprocal Deposits From Treatment as Brokered Deposits, 84 FR 1346, 1349 (February 4, 2019), *technical amendment at 84 FR 15095 (April 15, 2019).*

[77] In 2019, the FDIC published a final rule implementing section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296–1368 (2018), codified at 12 U.S.C. 1831f. 84 FR 1346 (February. 4, 2019). Section 202 amends section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions. Additionally, a third party whose primary purpose is not the placement of funds with depository institutions is not a deposit broker, meaning deposits placed or facilitated by such a person are not brokered deposits.

[78] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

in the agencies' risk-based capital rule, prior to the application of capital adjustments or deductions set forth in the agencies' risk-based capital rule.[79] This definition excludes any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § ____.22 of the agencies' risk-based capital rule or that is being phased out of tier 1 or tier 2 capital pursuant to subpart G of the agencies' risk-based capital rule.[80] The term ''NSFR regulatory capital element'' includes both equity and liabilities under GAAP that meet the requirements of the definition. This definition of ''NSFR regulatory capital element'' generally aligns with the definition of regulatory capital in the agencies' risk-based capital rule, but does not include capital deductions and adjustments.[81] As a result, the final rule requires assets that are capital deductions (such as goodwill) to be included in the determination of required stable funding, as discussed in section VII.D of this Supplementary Information section.

Further, the final rule defines ''NSFR liability'' to mean any liability or equity reported on a covered company's balance sheet that is not an ''NSFR regulatory capital element.'' The term ''NSFR liability'' primarily refers to balance sheet liabilities but may include equity because some equity may not qualify as an ''NSFR regulatory capital element.'' The definitions of ''NSFR liability'' and ''NSFR regulatory capital element,'' taken together, should cover the entirety of the liability and equity side of a covered company's balance sheet.

Finally, the final rule defines ''QMNA netting set'' to refer to a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement (QMNA),[82] and is netted under the QMNA.[83] QMNA netting sets include, in addition to non-cleared derivative transactions, a group of cleared derivative transactions (that is, a group of derivative transactions that have been entered into with, or accepted by, a central counterparty (CCP)) if the applicable governing rules for the group of cleared derivative transactions meet the definition of a QMNA. The term ''QMNA netting set'' is used in the calculation of a covered company's stable funding requirement attributable to its derivative transactions, as discussed in section VII.E of this Supplementary Information section.

2. New Definitions for Which the Agencies Received Comments

Unsecured wholesale lending. The proposed rule would have added a definition of ''unsecured wholesale lending'' to mean a liability or general obligation of a wholesale customer or counterparty to the covered company that is not a secured lending transaction. Similar to the comment received regarding the revised definition of ''unsecured wholesale funding,'' a commenter noted that an asset exchange could be viewed as a liability or general obligation that is not a secured lending transaction if entered into with a wholesale customer and treated as unsecured wholesale lending under the LCR and NSFR rules. For the reasons discussed above in respect to the definition of ''unsecured wholesale funding,'' the agencies are revising the definition of ''unsecured wholesale lending'' to exclude asset exchanges.[84] The final rule otherwise adopts the definition of ''unsecured wholesale lending'' as proposed.

VII. NSFR Requirement Under the Final Rule

A. Rules of Construction

The proposed rule would have included rules of construction in § ____.102 relating to how items recorded on a covered company's balance sheet would be reflected in the covered company's ASF and RSF amounts.

1. Balance-Sheet Values

As noted above, a covered company generally would have determined its ASF and RSF amounts based on the carrying values of its on-balance sheet assets, NSFR regulatory capital elements, and NSFR liabilities as determined under GAAP. For off-balance sheet assets, the proposed rule would have included a rule of construction in § ____.102(a) specifying that, unless otherwise provided, a transaction or exposure that is not recorded on the balance sheet of a covered company would not be assigned an ASF or RSF factor and, conversely, a transaction or exposure that is recorded on the balance sheet of the covered company would be assigned an ASF or RSF factor. While the proposed rule generally would have relied on balance sheet carrying values, it would have provided a separate treatment for derivative transactions and the undrawn amount of commitments. The proposed rule also would have included adjustments to account for certain rehypothecated off-balance sheet assets.

The agencies received several comments regarding the treatment of securitization exposures. Two commenters requested that all or certain securitization exposures that are included on a covered company's balance sheet pursuant to GAAP be excluded from a covered company's NSFR.[85] The commenters argued that the assets and liabilities of the securitization vehicle are not owned or owed, respectively, by the covered company or that the securitization vehicle normally has no legal obligation to make payments when the cash flow from the assets underlying the securitization is insufficient. As an alternative to this exclusion, one of the commenters suggested that the assets collateralizing the securitization should be assigned an RSF factor to match the ASF factor assigned to the securities issued. This commenter also argued that where the covered company provides a liquidity facility to support an asset-backed commercial paper (ABCP) conduit, the NSFR rule should treat the ABCP conduit as a third-party securitization and assign a 5 percent RSF factor to the committed liquidity facility.

During the 2007–2009 financial crisis, a number of banking organizations provided funding support for securitization exposures, even if the banking organization did not include the exposures on its balance sheet. In response to these events, changes were made to GAAP that now require firms to include certain securitization

[79] *See* 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[80] Tier 2 capital instruments that have a remaining maturity of less than one year are not included in regulatory capital. *See* 12 CFR 3.20(d)(1)(iv) (OCC); 12 CFR 217.20(d)(1)(iv) (Board); 12 CFR 324.20(d)(1)(iv) (FDIC); *see also* 12 CFR 3.300 (OCC); 12 CFR 217.300 (Board); 12 CFR 324.300 (FDIC).

[81] The definition of ''NSFR regulatory capital element'' includes allowances for loan and lease losses (ALLL) to the same extent as under the risk-based capital rule. *See* 12 CFR 3.20(d)(3) (OCC); 12 CFR 217.20(d)(3) (Board); 12 CFR 324.20(d)(3) (FDIC).

[82] Each QMNA netting set must meet each of the conditions specified in the definition of ''qualifying master netting agreement'' under § ____.3 of the LCR rule and the operational requirements under § ____.4(a) of the LCR rule.

[83] A QMNA may identify a single QMNA netting set (for which the agreement creates a single net payment obligation and for which collection and posting of margin applies on an aggregate net basis) or it may establish multiple QMNA netting sets, each of which would be separate from and exclusive of any other QMNA netting set or derivative transaction covered by the QMNA.

[84] Under the LCR rule, a covered company should continue to look to § ____.33(f) for the appropriate methodology for determining inflows with respect to asset exchanges.

[85] For example, commenters requested the exclusion of securitizations that are ''traditional securitizations'' under the agencies' regulatory capital rules and meet the operational requirements of risk transfer under those rules, or certain asset-backed commercial paper (ABCP) conduits.

exposures on their balance sheets.[86] GAAP's requirements for including securitization exposures on a firm's balance sheet are based, in part, on whether the firm exercises control of those exposures. As discussed in section V.C of this Supplementary Information section, the NSFR is designed to assess the consolidated balance sheet of a covered company and using GAAP both promotes consistency in the application of the NSFR across covered companies and limits operational costs associated with compliance. In addition, if a covered company meets the requirements under GAAP for including securitization exposures on-balance sheet, it may be exposed to funding obligations generated by those exposures. Therefore, it is appropriate to require stable funding for securitization exposures that are reflected on-balance sheet in accordance with GAAP.

In response to the request of one commenter that the rule not assign RSF factors to assets of an on-balance sheet securitization that meets (1) the definition of ''traditional securitization'' under the agencies' regulatory capital rules and (2) the operational requirements of risk transfer under those rules, the agencies note that the operational requirements include the requirement that the exposures are not reported on the firm's consolidated balance sheet under GAAP.[87] As a result, the commenter's requested treatment would not result in the exclusion of any on-balance sheet securitizations from a covered company's NSFR. Regardless of the accounting treatment of particular securitization transactions, all securitizations carry liquidity risks, including unexpected funding needs. Covered companies may experience reputational pressure to support securitization transactions that they are associated with. The final rule accordingly does not include the commenter's requested exclusion.

2. Netting of Certain Transactions

The proposed rule would have included a rule of construction in § ____.102(b) that describes the treatment of receivables and payables that are associated with secured funding transactions, secured lending transactions, and asset exchanges with the same counterparty that the covered company has netted against each other. The agencies did not receive any comments regarding these netting criteria and are finalizing these netting criteria as proposed.

For purposes of determining the carrying value of these transactions, GAAP permits a covered company, when the relevant accounting criteria are met, to offset the gross value of receivables due from a counterparty under secured lending transactions by the amount of payments due to the same counterparty under secured funding transactions (GAAP offset treatment). The final rule requires a covered company to satisfy these GAAP accounting criteria and the criteria applied in § ____.102(b) before it can treat the applicable receivables and payables on a net basis for the purposes of the NSFR requirement.

Section ____.102(b) of the final rule applies the same netting criteria specified in the agencies' SLR rule.[88] These criteria require, first, that the offsetting transactions have the same explicit final settlement date under their governing agreements. Second, the criteria require that the right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding. Third, the criteria require that under the governing agreements the counterparties intended to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where the transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of the transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement.

3. Treatment of Securities Received in an Asset Exchange by a Securities Lender

The proposed rule would have included a rule of construction in § ____.102(c) specifying that when a covered company, acting as a securities lender, receives a security in an asset exchange, includes the value of the security on its balance sheet, and has not rehypothecated the security received, the covered company is not required to assign an RSF factor to the security it has received and is not permitted to assign an ASF factor to any liability to return the security.

The agencies received two comments relating to this section of the proposed rule. One commenter asserted that § ____.102(c), together with § ____.106(d),[89] of the proposed rule would be inconsistent with the Basel NSFR standard by assigning RSF factors to assets not included on the balance sheet of a covered company under GAAP. In response to the comment, the agencies note that § ____.102(c) of the proposed rule, would not have applied to assets excluded from a covered company's balance sheet under GAAP; it would have applied only to the carrying value of assets received in an asset exchange that the covered company includes on its balance sheet.

The other commenter argued that the proposed rule should apply a different treatment for asset exchanges more generally because, according to the commenter, the proposed rule did not sufficiently recognize the funding value of assets received in an asset exchange. In particular, this commenter argued that the rule should assign an ASF factor to the value of the asset received in an asset exchange, based on the type of asset and the remaining maturity of the asset exchange. The commenter asserted that such treatment would also better align with the LCR rule, which under certain circumstances allows a covered company to include in its HQLA amount an asset received in an asset exchange and may take into account both the assets received and provided for purposes of assigning inflow or outflow rates. The commenter further argued that the proposed rule's treatment of asset exchanges would incentivize covered companies to rehypothecate assets received in an asset exchange, which the commenter argued would increase systemic risk.

The NSFR assesses the adequacy of a covered company's funding stability based on the covered company's balance sheet at a point in time. A covered company, acting as a securities lender, retains the security on its balance sheet. Since the covered company is the owner of the provided security, it is appropriate for the covered company to retain stable funding for that security, even in cases where the liquidity characteristics of the asset that the

[86] For example, GAAP may require consolidation where a covered company retains a controlling financial interest in the securitization structure.

[87] *See* 12 CFR 41(a)(1) (OCC); 12 CFR 217.41(a)(1) (Board); 12 CFR 324.41(a)(1) (FDIC).

[88] 12 CFR 3.10(c)(4)(ii)(E)(1) through (3) (OCC); 12 CFR 217.10(c)(4)(ii)(E)(1) through (3) (Board); 12 CFR 324.10(c)(4)(ii)(E)(1) through (3) (FDIC).

[89] Section ____.106(d) of the proposed rule would have addressed certain assets received by a covered company in an asset exchange and not included on the covered company's balance sheet, as well as certain other off-balance sheet assets rehypothecated by a covered company. Comments regarding that provision are discussed in section VII.D.4 of this Supplementary Information section.

covered company provides are less favorable relative to the asset it receives in the asset exchange. Unlike the LCR, the NSFR is not a cash flow coverage metric and, where the asset received has not been rehypothecated, the availability of the received asset as a source of liquidity is not considered in the design of the NSFR, even in cases where the received asset is recorded on a covered company's balance sheet.

The final rule adopts the proposed treatment for securities received in an asset exchange by a covered company acting as a securities lender. This provision is intended to neutralize differences across accounting frameworks and maintain consistency across covered companies, and is consistent with the treatment of security-for-security transactions under the SLR rule.[90] Because the final rule does not require stable funding for the securities received, it does not treat the covered company's obligation to return these securities as stable funding and does not permit a covered company to assign an ASF factor to this obligation. If, however, the covered company, acting as the securities lender, sells or rehypothecates the securities received, the final rule requires the covered company to assign the appropriate RSF factor or factors under § ____.106 to the proceeds of the sale or, in the case of a pledge or rehypothecation, to the securities themselves if such securities remain on the covered company's balance sheet.[91] Similarly, the covered company must assign a corresponding ASF factor to the NSFR liability associated with the asset exchange, for example, with an obligation to return the security received.

B. Determining Maturity

The proposed rule would have assigned ASF and RSF factors to a covered company's NSFR liabilities and assets based in part on the maturity of each NSFR liability or asset. Section ____.101 of the proposed rule would have incorporated the maturity assumptions in §§ ____.31(a)(1) and (2) of the LCR rule to determine the maturities of a covered company's NSFR liabilities and assets. For example, the proposed rule would require a covered company to apply the earliest possible maturity date to an NSFR liability (which would be assigned an ASF factor) and the latest possible maturity date to an asset (which would be assigned an RSF factor), taking into account any notice periods or options that may modify the maturity date.

A commenter argued that the proposed rule's maturity assumptions provide a less risk-sensitive approach than the Basel NSFR standard, stating that the Basel NSFR standard does not require the assumption that a liability matures according to its earliest possible maturity date, but provides supervisors with discretion regarding assumptions about the exercise of certain options based on reputational factors and market expectations. Another commenter posited that the NSFR rule should not assume that a covered company would exercise a ''clean-up'' call option with respect to a securitization at the earliest possible date.[92] Instead, the commenter argued that the NSFR rule should require a covered company to identify the securitizations that are likely to have a clean-up call option maturing over the next year and to reasonably evaluate whether the covered company intends to exercise that option.

The final rule incorporates the maturity assumptions of the LCR rule as proposed. The final rule requires a covered company to identify the maturity date of its NSFR liabilities and assets in a conservative manner by applying the earliest possible maturity date to an NSFR liability and the latest possible maturity date to an asset. The final rule generally also requires a covered company to take a conservative approach when determining maturity with respect to any notice periods and with respect to any options, either explicit or embedded, that may modify maturity dates. For example, a covered company is required to treat an option to reduce the maturity of an NSFR liability or an option to extend the maturity of an asset as if it will be exercised on the earliest possible date.

The final rule treats an NSFR liability that has an ''open'' maturity (*i.e.,* the NSFR liability has no maturity date under § ____.101 and may be closed out on demand) as maturing on the day after the calculation date. For example, an ''open'' repurchase transaction or a demand deposit placed at a covered company is treated as maturing on the day after the calculation date. To ensure consistent use of terms in the final rule and LCR rule and to avoid ambiguity between perpetual instruments and transactions (*i.e.,* the instrument or transaction has no contractual maturity date and may not be closed out on demand) and open maturity instruments and transactions, the final rule amends § ____.31 of the LCR rule to use the term ''open'' instead of using the phrase ''has no maturity date.'' This change has no substantive impact on the LCR rule. The final rule treats a perpetual NSFR liability (such as perpetual securities issued by a covered company) as maturing one year or more after the calculation date.

The final rule treats each principal amount due under a transaction, such as separate principal payments due under an amortizing loan, as a separate transaction for which the covered company would be required to identify the date on which the payment is contractually due and apply the appropriate ASF or RSF factor based on that maturity date. This treatment ensures that a covered company's ASF and RSF amounts reflect the timing of the contractual maturities of a covered company's liabilities and assets, rather than treating the full principal amount as though it were due on one date (such as the last contractual principal payment date). For example, if funding provided by a counterparty to a covered company requires two contractual principal repayments, the first due less than six months from the calculation date and the second due one year or more from the calculation date, only the principal amount that is due one year or more from the calculation date is assigned a 100 percent ASF factor, which is the factor assigned to liabilities that have a maturity of one year or more from the calculation date. The liability for the contractual principal repayment due within six months represents a less stable source of funding and is therefore assigned a lower ASF factor.

For deferred tax liabilities that have no maturity date, the maturity date under the final rule is the first calendar day after the date on which the deferred tax liability could be realized.

Because the maturity assumptions in § ____.101 of the final rule apply only to NSFR liabilities and assets, the final rule does not apply the LCR rule's maturity assumptions to a covered company's NSFR regulatory capital elements. Unlike NSFR liabilities, which have varying maturities, NSFR regulatory capital elements are longer-term by definition, and as such, the proposed rule would have assigned a

[90] 12 CFR 3.10(c)(4)(ii)(A) (OCC); 12 CFR 217.10(c)(4)(ii)(A) (Board); 12 CFR 324.10(c)(4)(ii)(A) (FDIC).

[91] If the assets received by the securities lender have been rehypothecated but remain on the covered company's balance sheet, these collateral securities would have been assigned an RSF factor under § ____.106(c) to reflect their encumbrance. For the treatment of rehypothecated off-balance sheet assets, *see* section VII.D.4 of this Supplementary Information section.

[92] The commenter's discussion referred to contractual provisions whereby an originating banking organization or servicer has the option to exercise a ''clean-up'' call by repurchasing the remaining securitization exposures once the amount of the underlying asset exposures or outstanding securitization exposures falls below a specified amount.

100 percent ASF factor to all NSFR regulatory capital elements.

The final rule's incorporation of the above maturity assumptions provides for consistent determination of maturities across covered companies, which improves comparability and standardization of the NSFR. In addition, these assumptions reflect an appropriate degree of conservatism regarding the timing of when an asset or NSFR liability will mature, which helps to support a covered company's funding resiliency across a range of economic and financial conditions. This approach is also consistent with a provision in the Basel NSFR standard that one commenter argued would be more risk-sensitive. This standard provides that for funding with options exercisable at the discretion of a firm subject to a jurisdiction's NSFR requirement, national supervisors should take into account reputational factors that may pressure a firm not to exercise the option. Given the possibility and variability of reputational considerations with respect to many forms of funding, in addition to the considerations discussed above, the final rule incorporates the LCR rule maturity assumptions as proposed.

With respect to the treatment of securitization clean-up call options, these options are generally features of securitizations with terms greater than one year and are generally exercisable near the end of the term. Instead of providing for firm specific evaluations of the likelihood of exercising a clean-up call option as commenters suggested, the final rule employs standardized assumptions to all firms to facilitate comparability across firms. The maturity assumptions of the LCR rule and final rule, however, do not require all clean-up call options to be exercised at the earliest possible date. Section ____.31(a)(1)(iii)(A) of the LCR rule, applicable to the NSFR through § ____.101 of the final rule, provides that a covered company must treat an option to reduce the maturity of an obligation as though it will be exercised at the earliest possible date, except where the original maturity of the obligation is greater than one year and the option does not go into effect for a period of 180 days following the issuance of the instrument. If that condition is met, then the maturity of the obligation will be the original maturity date at issuance under both the LCR rule and the final rule.

C. Available Stable Funding

1. Calculation of the ASF Amount

Section ____.103 of the proposed rule would have established the requirements for a covered company to calculate its ASF amount, which would have equaled the sum of the carrying values of the covered company's NSFR regulatory capital elements and NSFR liabilities, each multiplied by an ASF factor assigned in § ____.104 or § ____.107(c).[93]

In the proposed rule, ASF factors would have been assigned based on the relative stability of each category of NSFR regulatory capital element or NSFR liability relative to the NSFR's one-year time horizon. In addition, § ____.108 of the proposed rule would have provided that a covered company may include in its ASF amount the ASF of a consolidated subsidiary only to the extent that the funding of the subsidiary supports the RSF amount of the subsidiary or is readily available to support RSF amounts of the covered company outside the consolidated subsidiary.[94] The agencies received no comments on the calculation of the ASF amount and are adopting such calculation as proposed.

Comments regarding the proposed assignment of ASF factors and specific contractual and funding-related features of a number of NSFR regulatory capital elements and NSFR liabilities are described below.

2. Characteristics for Assignment of ASF Factors

For the purpose of assigning ASF factors, the proposed rule would have categorized NSFR regulatory capital elements and NSFR liabilities into five broad categories based on their tenor, the type of funding, and the type of funding counterparty. The proposed rule would have applied the same ASF factor in each category to reflect the relative stability of a covered company's NSFR regulatory capital elements and NSFR liabilities over a one-year time horizon. ASF factors would have been scaled from zero to 100 percent, with a zero percent weighting representing the lowest relative stability and a 100 percent weighting representing the highest relative stability.

For operational simplicity, the proposed rule would have grouped NSFR regulatory capital elements and NSFR liabilities into one of four maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months (ASF maturity categories). One commenter expressed concern that the ASF maturity categories are arbitrary and may lead a covered company to unnecessarily adjust its funding profile to align with the ASF maturity categories rather than its actual funding needs. This commenter recommended that the ASF factor framework provide more granular maturity categories (*e.g.,* monthly residual maturity categories), which would be more risk-sensitive.

The agencies did not receive general comments on the proposed approach to differentiate ASF factors based on different funding types and counterparties, although some comments were received on the proposed categories of ASF and are discussed below. However, some commenters suggested that, for purposes of measuring the stand-alone NSFR of a covered company that is a depository institution subsidiary of another covered company, ASF factors should be higher or subject to a floor where the counterparty providing the funding is an affiliated insured depository institution. For example, one commenter suggested that the ASF factor for funding provided by an affiliated depository institution should be no less than 95 percent, particularly where the affiliated depository institution has an ASF amount in excess of its RSF amount when measured on a stand-alone basis. These commenters argued that a higher ASF factor would be appropriate because funding provided by an affiliated depository institution is more stable than funding from non-affiliated sources. These commenters also asserted that special treatment for funding transactions between affiliated insured depository institutions in the final rule would be consistent with the treatment of affiliates in the U.S. bank regulatory framework, such as the treatment of affiliates in sections 23A and 23B of the Federal Reserve Act,[95] the Board's Regulation W,[96] and cross-guarantee liability provisions in the FDI Act.[97] Commenters also suggested that special treatment could be limited to institutions that would qualify for the

[93] ASF factors would have been assigned to NSFR regulatory capital elements and NSFR liabilities under § ____.104, except for NSFR liabilities relating to derivatives. As discussed in section VII.E of this Supplementary Information section, certain NSFR liabilities relating to derivative transactions would not have been considered stable funding for purposes of a covered company's NSFR calculation and would have been assigned a zero percent ASF factor under § ____.107(c) of the proposed rule.

[94] *See* section VII.F of this Supplementary Information section.

[95] 12 U.S.C. 371c and 12 U.S.C. 371c–1.

[96] 12 CFR part 223.

[97] 12 U.S.C. 1815(e).

''sister bank exemption'' in section 223.41(b) of Regulation W.[98]

The final rule generally adopts the proposed rule's approach to assigning ASF factors subject to certain modifications and clarifications that are discussed below in this Supplementary Information section. The final rule treats funding to be relatively less stable if there is a greater likelihood that a covered company would need to replace or repay it over a one-year time horizon. As in the proposed rule, the final rule assigns an ASF factor to NSFR regulatory capital elements and NSFR liabilities based on three characteristics relating to the stability of the funding: (1) Funding tenor, (2) funding type, and (3) counterparty type. As discussed below, certain ASF factor assignments under the final rule reflect additional policy considerations.

a) Funding Tenor

For purposes of assigning ASF factors, the final rule assigns a higher ASF factor to funding that has a longer remaining maturity (or tenor) than shorter-term funding because, funding that by its terms has a longer tenor is more stable relative to a one-year horizon and should be less susceptible to short-term rollover risk. Specifically, the assignment of a higher ASF factor reflects the relatively decreased likelihood that a firm in the near term would need to replace funding that has a longer tenor, or if necessary, monetize assets at a loss to repay the funding in comparison to funding of a shorter tenor. The need to replace funding or monetize assets could adversely impact a firm's liquidity position or generate negative externalities for other market participants. Longer-term funding, therefore, generally would provide greater stability across all market conditions. For operational simplicity, and consistent with the proposed rule, the final rule groups the tenor of NSFR regulatory capital elements and NSFR liabilities into one of the four ASF maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months. These ASF maturity categories are consistent with the design principles described in section V of this Supplementary Information section and the Basel NSFR standard. They are also generally consistent to other approaches used for reflecting the role of residual maturities in other agencies' regulations and supervisory approaches.[99]

The purpose of the ASF maturity categories is to categorize NSFR regulatory capital elements and NSFR liabilities in a simple manner based on the relative stability of such funding. Although the categories may result in some greater cliff effects between groups than more granular categories (*e.g.,* one-month maturity categories), including more granular categories would increase complexity and result in a metric that is more difficult to monitor and supervise.[100] The final rule generally treats funding with a remaining maturity of one year or more as the most stable and short-term funding as less stable. In this manner, the final rule incentivizes a covered company to maintain a stable funding profile by utilizing funding, such as equity and long-term debt, that matures beyond the NSFR's one-year time horizon. The final rule generally treats funding that matures in six months or more but less than one year as less stable than regulatory capital and long-term debt because a covered company would need to replace or repay such funding before the end of the NSFR's one-year time horizon. Funding with a remaining maturity of less than six months or an open maturity is generally treated as less stable because a covered company may need to replace or repay it in the near term.

b) Funding Type

The final rule recognizes that certain types of funding, such as certain types of deposits, tend to be more stable than other types of funding, independent of their tenor. For example, as described below in this Supplementary Information section, the final rule assigns a higher ASF factor to stable retail deposits relative to other retail deposits, due in large part to the presence of full deposit insurance coverage and other stabilizing features, such as another established relationship with the depository institution,[101] that increase the likelihood of a counterparty continuing the funding across a broad range of market conditions. Similarly, the final rule assigns a higher ASF factor to operational deposits provided to a covered company than to certain other forms of short-term wholesale deposits, as discussed below in this Supplementary Information section. In a manner consistent with the proposed rule, the final rule takes into account the characteristics of funding type on funding stability when assigning ASF factors.

c) Counterparty Type

The final rule assigns ASF factors by taking into account the type of counterparty that provides the funding, using the same counterparty type classifications as the LCR rule: (1) Retail customers or counterparties, (2) wholesale customers or counterparties that are not financial sector entities, and (3) financial sector entities.[102]

Consistent with the proposed rule, the final rule considers the differences in funding provided by retail and wholesale customers or counterparties when assigning ASF factors. Retail customers or counterparties (including small businesses) typically maintain long-term relationships with covered companies and their deposits may consist of larger numbers of accounts with smaller balances relative to wholesale depositors. Retail customers or counterparties are generally less likely to move deposits over a one-year time horizon than wholesale depositors. In contrast, wholesale depositors are more likely to move deposits over a one-year time horizon for business or investment reasons. Therefore, the final rule treats most types of deposit funding provided by retail customers or counterparties as more stable than deposit funding provided by wholesale customers or counterparties.

In addition, wholesale customers and counterparties that are not financial sector entities typically maintain balances with covered companies to support their non-financial activities, such as production and physical investment, which tend to be less correlated to short-term financial market fluctuations than activities of financial sector entities. Therefore, non-financial wholesale customers or counterparties are more likely than financial sector

[98] 12 CFR 223.41(b).

[99] For example, the Board's GSIB capital surcharge rule includes generally similar categories for the maturities of average wholesale funding, including short-term wholesale funding, with remaining maturities of one year or more and six months or more but less than one year.

[100] The agencies note that adoption of the final rule does not preclude covered companies from using other metrics to manage funding risks and conduct internal stress testing over various time horizons that may include, among other things, more granular maturity categories.

[101] For example, another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor.

[102] Under § ____.3 of the LCR rule, the term ''retail customer or counterparty'' includes individuals, certain small businesses, and certain living or testamentary trusts. The term ''wholesale customer or counterparty'' refers to any customer or counterparty that is not a retail customer or counterparty. The term ''financial sector entity'' refers to a regulated financial company, identified company, investment advisor, investment company, pension fund, or non-regulated fund, as such terms are defined in § ____.3 of the LCR rule. The final rule incorporates these definitions. For purposes of determining ASF and RSF factors assigned to liabilities, assets, and commitments where counterparty type is relevant, the final rule treats an unconsolidated affiliate of a covered company as a financial sector entity.

entities to continue to provide funding to a covered company over a one-year horizon.

Further, differences in business models and liability structures tend to make short-term funding provided by financial sector entities less stable than similar funding provided by non-financial wholesale customers or counterparties. Financial sector entities are typically less reliable funding providers than non-financial wholesale customers or counterparties due, in part, to their financial intermediation activities. Financial sector entities tend to be more sensitive to market fluctuations that could cause them to reduce their general level of funding provided to a covered company. Furthermore, the increased interconnectedness between financial sector entities means that there is a higher correlation of risks across the financial sector that may adversely impact the stability of short-term funding provided by a financial sector entity. Therefore, the final rule treats most short-term funding that is provided by financial sector entities as less stable than similar types of funding provided by non-financial wholesale customers or counterparties.

Further, as a general matter, an affiliation would not necessarily improve the funding stability of the covered company. Banking organizations that generally rely on funding from financial sector affiliates may have similar balance sheet funding risks to those that generally rely on funding of the same tenor from non-affiliates. An affiliated depository institution that is providing funding to a covered company may have a business model, liability structure, sensitivity to market fluctuations, degree of financial sector interconnectedness, or other characteristics that are similar to unaffiliated financial sector entities. While funding relationships with affiliates may provide a banking organization with additional flexibility in the normal course of business, ongoing reliance on contractually short-term funding from affiliates may present risks that are similar to funding from non-affiliate sources, particularly during stress. Therefore, the final rule's treatment of funding from affiliated sources consistent with non-affiliate funding provides a more appropriate measure of balance sheet funding risk.

The agencies also are not convinced that the ASF factors applicable to funding provided by an affiliated insured depository institution should be higher in cases where the affiliated funds provider has an ASF amount in excess of its RSF amount when calculated on a standalone basis. The comparison of ASF to RSF amounts is informative of the overall funding position of a banking organization, taking into account its entire balance sheet, lending commitments, and derivative exposures. However, the balance sheet funding position of an affiliated insured depository institution at a calculation date does not necessarily imply that the institution is generally more likely to continue to provide funds to a covered company than an unaffiliated funding provider. The agencies note that the specific legal provisions cited by commenters (*e.g.,* sections 23A and 23B of the Federal Reserve Act, the Board's Regulation W, and the FDI Act) address different policy considerations than the NSFR and do not suggest that funding from affiliates is more stable than funding received from non-affiliates.

While comprehensive data on the funding of covered companies by counterparty type is limited, the agencies' analysis of available data confirmed the agencies' expectation of funding stability differences across counterparty types.[103] Prior to issuing the proposed rule, the agencies reviewed information collected on the Consolidated Reports of Condition and Income (Call Report), Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Securities and Exchange Commission (SEC) Financial and Operational Combined Uniform Single Report (FOCUS Report) over the period beginning December 31, 2007, and ending December 31, 2008, in combination with more recent FR 2052a report data, and supervisory information collected in connection with the LCR rule. In addition, the agencies reviewed supervisory information collected from depository institutions for which the FDIC was appointed as receiver in 2008 and 2009. Although the NSFR requirement is designed to measure the stability of a covered company's funding profile across all market conditions and would not be specifically based on a particular market stress environment, the agencies considered a period of stress for purposes of evaluating the relative effects of counterparty type on funding stability. Because a covered company under normal conditions may adjust funding across counterparty types for any number of reasons, focusing on periods of stress allowed the agencies to evaluate general differences in stability by counterparty type.

The agencies' analysis of available public and supervisory information shows that, during 2008, funding from financial sector entities exhibited less stability than funding provided by non-financial wholesale counterparties, which in turn exhibited less stability than insured retail deposits. For example, Call Report data on insured deposits, deposit data from the FFIEC 002, and broker-dealer liability data reported on the FOCUS Report showed higher withdrawals in wholesale funding than retail deposits over this period. The agencies' analysis of supervisory data from a sample of large depository institutions for which the FDIC was appointed as receiver in 2008 and 2009 also indicated that, during the periods leading up to receivership, funding provided by wholesale counterparties was significantly less stable, showing higher average total withdrawals, than funding provided by retail customers and counterparties.

3. Categories of ASF Factors

Based on the tenor, funding type and counterparty type characteristics described above, the agencies categorized NSFR regulatory capital elements and NSFR liabilities into five broad categories and assigned a single ASF factor in each category, as shown in Table 1 below. The types of funding grouped together in each category generally displays relatively similar stability as compared to funding in a different category. The value of the ASF factor is calibrated to reflect the relative distinctions between categories and the general composition of balance sheet liabilities, and is generally consistent with the Basel NSFR standard to promote comparability across jurisdictions and the supervisory assessment of the aggregate funding position of covered companies.

[103] Prior to the 2007–2009 financial crisis, covered companies did not consistently report or disclose detailed liquidity information. On November 17, 2015, the Board adopted the revised FR 2052a to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

TABLE 1—CATEGORIES OF NSFR REGULATORY CAPITAL ELEMENTS AND LIABILITIES BASED ON THEIR CHARACTERISTICS AND RESULTING ASF FACTORS

Tenor	Counter-party type	Funding type	NSFR regulatory capital and liabilities	ASF factor percent
One year or more	All	All	NSFR regulatory capital elements and long-term NSFR liabilities.	100
Any tenor	Retail	Fully insured	Stable retail deposits and certain affiliate sweep deposits	95
		Not fully insured	Other non-brokered retail deposits and certain affiliate sweep deposits.	90
	Retail brokered	Fully insured	Brokered reciprocal deposits	....
One year or more	....	All	Other brokered deposits not held in a transactional account.	
Less than one year	Wholesale	Non-operational *	Unsecured funding provided by, and secured funding transactions with, a counterparty that is not a financial sector entity or central bank.	50
Six months but less than one year.	Financial or central bank	Non-operational	Unsecured wholesale funding provided by, and secured funding transactions with, a financial sector entity or central bank.	....
	All	Securities	Securities issued by a covered company	....
	Retail brokered	All	Retail brokered deposits *other than* brokered reciprocal deposits, sweep deposits, or transactional deposits.	....
Any tenor	....	....	Transactional retail brokered deposits	....
		Not fully insured	Brokered reciprocal deposits	....
	Retail	All	Non-affiliate sweep deposits Retail funding that is not a deposit or security.	
	Wholesale	Operational	Operational deposits	....
Less than six months	Retail brokered	Any	Certain short-term retail brokered deposits	0
	Financial or central bank	Non-operational	Short-term funding from a financial sector entity or central bank.	....
	All	Securities	Securities issued by a covered company	....
		Other	Trade date payables	....
Any tenor **	All	Derivative	NSFR derivatives liability amount	....

* That is, not an operational deposit.
** The derivative treatment nets derivative transactions with various maturities.

a) 100 Percent ASF Factor

Section ____.104(a) of the proposed rule would have assigned a 100 percent ASF factor to NSFR regulatory capital elements, as defined in § ____.3 of the proposed rule, and described in section VI.B of this Supplementary Information section. The proposed rule also would have assigned a 100 percent ASF factor to NSFR liabilities that have a remaining maturity of one year or more from the calculation date, other than funding typically provided by retail customers or counterparties. This category would have included debt or equity securities issued by a covered company that have a remaining maturity of one year or more.

In the proposed rule, the agencies requested comment on whether long-term debt securities issued by a covered company where the company is the primary market maker of such securities should be assigned an ASF factor other than 100 percent (for example, between 95 and 99 percent) to recognize the risk that a covered company may buy back these debt securities. One commenter supported the proposed assignment of a 100 percent ASF factor to such securities on the basis that a lower ASF is unnecessary because the NSFR is not a stress metric. The agencies did not receive other comments regarding treatment of the NSFR regulatory capital elements and NSFR liabilities that mature one year or more from the calculation date not provided by retail customers or counterparties.

The final rule assigns a 100 percent ASF factor to NSFR regulatory capital elements and NSFR liabilities that mature one year or more from the calculation date as proposed. NSFR regulatory capital elements and non-retail long-term liabilities that do not mature during the NSFR's one-year time horizon represent the most stable form of funding under the final rule because they are not susceptible to rollover risk during the NSFR's timeframe. Similarly, and as noted by the commenter, there is reduced risk, absent stress conditions, that a covered company will face pressure to buy back its long-term debt securities in significant quantities during the NSFR's one-year time horizon as compared to other liabilities on its balance sheet.

The agencies received comments requesting assignment of a 100 percent ASF factor to certain other NSFR liabilities, which are discussed in more detail below.

b) 95 Percent ASF Factor

Section ____.104(b) of the proposed rule would have assigned a 95 percent ASF factor to stable retail deposits held at a covered company.[104] The assignment of a 95 percent ASF factor would have reflected that such deposits generally provide a highly stable source of funding for covered companies.

Some commenters requested that the final rule assign a 95 or 100 percent ASF factor to certain retail deposits that do not meet the definition of ''stable retail deposits,'' but are subject to contractual restrictions that make it less likely the deposits would be redeemed earlier than their contractual term. For example, some commenters suggested that the NSFR rule assign a 100 percent ASF factor to a retail deposit, such as a certificate of deposit, with a remaining maturity greater than one year if the covered company or its consolidated depository institution does not maintain a secondary market for the deposit, or if the contract contained provisions restricting redemption only to certain specified events, such as death or

[104] Section ____.3 of the LCR rule defines a ''stable retail deposit'' as a retail deposit that is entirely covered by deposit insurance and either (1) is held by the depositor in a transactional account or (2) the depositor that holds the account has another established relationship with the covered company such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the covered company demonstrates, to the satisfaction of the appropriate Federal banking agency, would make the withdrawal of the deposit highly unlikely during a liquidity stress event.

determination of mental incapacity of the depositor.

The final rule assigns a 95 percent ASF factor to deposits that meet the definition of ''stable retail deposit'' as proposed. Relative to liabilities in the 100 percent ASF category, stable retail deposits either have no contractual restriction on withdrawal within a one-year period or there is some likelihood that covered companies may permit withdrawals despite contractual restrictions within the one-year horizon. Although some evidence suggests that these deposits are highly stable, they are not as stable as funding for which there is greater certainty of maturity outside the NSFR one-year horizon. Therefore, an ASF factor that is only slightly lower than that assigned to NSFR regulatory capital elements and long-term NSFR liabilities is appropriate because stable retail deposits are nearly as stable over the NSFR's one-year time horizon as NSFR regulatory capital elements and long-term NSFR liabilities under § ____.104(a) of the final rule.

The remaining maturity of stable retail deposits does not affect the assignment of an ASF factor under the final rule because the stability of retail deposits is more closely linked to counterparty and funding type characteristics. As noted in the preamble to the proposed rule, the combination of full deposit insurance coverage, the depositor's relationship with the covered company, and the costs of moving transactional or multiple accounts to another institution substantially reduce the likelihood that retail depositors will withdraw stable retail deposits in significant amounts over a one-year time horizon.[105] Maturity or other contractual provisions restricting redemption are less relevant, for example, because a covered company may permit withdrawal of a retail term deposit for business and reputational reasons in the event of a depositor's early withdrawal request despite the absence of a contractual requirement to permit such a withdrawal within the NSFR's one-year time horizon. Generally, other categories of funding that do not have the features of stable retail deposits are not as stable and therefore assigned to a lower ASF factor category in the final rule.

Under the proposal, affiliated brokered sweep deposits deposited in accordance with a contract with a retail customer or counterparty and where the entire amount of the deposit is covered by deposit insurance would have been assigned a 90 percent ASF factor.[106] Commenters requested that similar types of deposits be assigned a higher ASF factor, claiming that these deposits have historically evidenced stability across a range of market conditions.

In a change from the proposal, the final rule also assigns a 95 percent ASF factor to affiliate sweep deposits where the entire amount of the sweep deposit is covered by deposit insurance and where a covered company has demonstrated to the satisfaction of its appropriate Federal banking agency that withdrawal of the deposit is highly unlikely to occur during a liquidity stress event. A sweep deposit arrangement places deposits at one or more banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority ''waterfall.'' Within the waterfall structure, affiliates tend to be the first to receive deposits and the last from which deposits are withdrawn. Because of this priority relationship with an affiliate, a covered company is more likely to receive and maintain a steady stream of sweep deposits provided by a retail customer or counterparty across a range of market conditions. The priority relationship with an affiliate results in a deposit relationship that is reflective of an overall relationship with the underlying retail customer or counterparty where these deposits generally exhibit a stability profile associated with deposits directly from retail customers. This affiliate relationship combined with the presence of full deposit insurance coverage reduces the likelihood that retail depositors will withdraw these deposits in significant amounts over a one-year time horizon. Given these stabilizing characteristics, some affiliate sweep deposits from retail customers may provide similar funding stability across a range of market conditions as stable retail deposits, particularly if there are contractual features or costs that substantially reduce the likelihood that an affiliate sweep deposit will be withdrawn over a one-year time horizon. In light of this possibility, the final rule assigns a 95 percent ASF factor to any fully insured affiliate sweep deposit from a retail customer or counterparty that the covered company demonstrates is highly unlikely to be withdrawn during a liquidity stress event. For the same reasons as the agencies described in connection with this final rule, the agencies are considering making similar changes to the treatment of affiliate sweep deposits in the LCR in a separate rulemaking.

c) 90 Percent ASF Factor

While stable retail deposits and certain fully-insured retail affiliate sweep deposits, regardless of tenor, have the highest stability characteristics for deposits under the final rule, other non-brokered retail deposits and certain retail brokered deposits have a combination of deposit insurance, counterparty relationship, and tenor characteristics that provide relatively less stability than stable retail deposits and are assigned a slightly lower ASF factor of 90 percent.

(i) Other Non-Brokered Retail Deposits

Section ____.104(c) of the proposed rule would have assigned a 90 percent ASF factor to retail deposits that are neither stable retail deposits nor retail brokered deposits. This category would have included retail deposits that are not fully insured by the FDIC or are insured under non-FDIC deposit insurance systems. The agencies did not receive comments on this aspect of the proposed rule, and the final rule assigns a 90 percent ASF factor to these other retail deposits as proposed.

As discussed above in section VII.C.2 of this Supplementary Information section, retail customers and counterparties tend to provide deposits that are more stable than funding provided by other types of counterparties. However, deposits provided by retail customers and counterparties that are not fully covered by FDIC deposit insurance are assigned a lower ASF factor than the ASF factor assigned to stable retail deposits because of the elevated risk that depositors will withdraw funds if they become concerned about the condition of the bank, in part, because the depositor will have no guarantee that uninsured funds will promptly be made available through established and timely intervention and resolution protocols. In addition, deposits that are neither held in a transactional account nor from a customer that has another relationship with a covered company tend to be less stable than stable retail deposits because

[105] *See* section VII.C.2.b of this Supplementary Information section.

[106] Under § ____.3 of the LCR rule, a ''brokered sweep deposit'' previously was defined to mean a deposit held at a covered company by a customer or counterparty through a contractual feature that automatically transfers to the covered company from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred. As discussed in section VI.A.4 of this Supplementary Information section, the final rule amends § ____.3 to replace ''brokered sweep deposit'' with the term ''sweep deposit'' because not all sweep deposits are brokered, for example, if they meet the terms of the primary purpose exception under section 29 of the FDI Act and the FDIC's brokered deposit regulations.

the depositor is less reliant on the services of the covered company. Therefore, the assigned ASF factor reflects the somewhat greater likelihood of withdrawal for those deposits that are not stable retail deposits. Similar to stable retail deposits and for the same reasons, the remaining maturity of these retail deposits does not affect the assignment of an ASF factor under the final rule.

(ii) Affiliate Sweep Deposits, Fully Insured Brokered Reciprocal Deposits, and Certain Longer-Term Retail Brokered Deposits

Section ____.104(c) of the proposed rule would have assigned a 90 percent ASF factor to the following three categories of brokered deposits [107] provided by retail customers or counterparties: (1) A reciprocal brokered deposit where the entire amount is covered by deposit insurance,[108] (2) an affiliated brokered sweep deposit where the entire amount of the deposit is covered by deposit insurance,[109] and (3) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more.[110] Other types of brokered deposits would have been assigned lower ASF factors under the proposed rule.[111]

A commenter argued that brokered deposits are not inherently unstable and should receive similar treatment as non-brokered retail deposits. Several commenters suggested that retail brokered deposits with a remaining maturity of one year or more be assigned a 100 percent ASF factor. Commenters argued that assigning these long-term retail brokered deposits an ASF factor of 100 percent would align with the Basel standard and recognize the more significant role of this funding source in the U.S. financial system relative to other jurisdictions. The commenters further argued that covered companies can expect to rely on these deposits for funding over the NSFR's one-year time horizon given their maturity and because depositors are generally not permitted to withdraw such deposits except under narrow circumstances and usually not without a significant penalty. The commenters also argued that depositors are less likely to accelerate the maturity of their brokered deposits outside of a stress scenario. Commenters also expressed concern that the FDIC's interpretation of ''brokered deposit'' is overly broad and reflects policy concerns, such as rapid deposit expansion and improper deposit management that are not relevant for purposes of determining the appropriate treatment of such products for regulatory liquidity and stable funding requirements.

Except in the cases described below where brokered deposits have certain stabilizing features, the typical characteristics of brokered deposits support assigning a lower ASF factor for retail brokered deposits than the ASF factor assigned to stable or other retail deposits. Specifically, deposits that are placed by a deposit broker are typically at higher risk of being withdrawn over a one-year period as compared to a retail deposit placed directly by a retail customer or counterparty. As noted, the FDIC has issued a proposal revising its brokered deposits framework [112] and expects the finalization of this proposal will address some concerns that the FDIC's existing interpretations are overly broad.

Additionally, statutory restrictions on certain brokered deposits can make this form of funding less stable than other deposit types across a range of market environments. Specifically, a covered company that becomes less than ''well capitalized'' [113] is subject to restrictions on renewing or rolling over funds obtained directly or indirectly through a deposit broker.[114]

For these reasons, the final rule generally assigns a lower ASF factor to retail brokered deposits to reflect their reduced stability in comparison to other forms of retail deposits. However, consistent with the proposal, the final rule applies a 90 percent ASF factor to the following retail brokered deposits that have certain stabilizing characteristics: (1) A brokered reciprocal deposit provided by a retail customer or counterparty, where the entire amount of the deposit is covered by deposit insurance; and (2) a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and has a remaining maturity of one year or more. In a change from the proposal, the final rule assigns a 90 percent ASF factor to any affiliate sweep deposit that does not meet all of the requirements for affiliate sweep deposits to be assigned a 95 percent ASF factor, which includes affiliate sweep deposits that are not fully covered by deposit insurance.[115] Each of these types of deposits is discussed below.

Brokered reciprocal deposits. The reciprocal nature of a brokered reciprocal deposit provided by a retail customer or counterparty means that a deposit placement network contractually provides a covered company with the same amount of deposits that it places with other depository institutions. As a result, and because the deposit is fully insured, the retail customers or counterparties providing the deposit tend to be less

[107] A ''brokered deposit'' previously was defined in § ____.3 of the LCR rule as a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)), and includes reciprocal brokered deposits and brokered sweep deposits. In the final rule, the agencies have amended the definition to mean a deposit held at the covered company that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker, as that term is defined in section 29(g) of the FDI Act (12 U.S.C. 1831f(g)) and the FDIC's regulations. *See* section VI.A.4 of this Supplementary Information section.

The agencies note that the ASF factors assigned to retail brokered deposits are based solely on the stable funding characteristics of these deposits over a one-year time horizon. The assignment of ASF factors is not intended to reflect other impacts of these deposits on a covered company, such as their effect on a company's probability of failure or loss given default, franchise value, or asset growth rate or lending practices.

[108] A ''reciprocal brokered deposit'' previously was defined in § ____.3 of the LCR rule as a brokered deposit that the covered company receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the covered company (as agent for the depositors) places the same amount with other depository institutions through the network and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members. The final rule renames the term ''reciprocal brokered deposit'' to ''brokered reciprocal deposit'' to avoid confusion and use terminology consistent with other regulations. *See* 12 CFR 327.8(q).

[109] *See supra* note 106. Typically, these transactions involve securities firms or investment companies that transfer (''sweep'') idle customer funds into deposit accounts at one or more banks. An affiliate sweep deposit is deposited in accordance with a contract between the retail customer or counterparty and the covered company, a controlled subsidiary of the covered company, or a company that is a controlled subsidiary of the same top-tier company of which the covered company is a controlled subsidiary.

[110] Under the final rule, the agencies removed from the definition of ''brokered deposit'' references to deposits defined as either a ''reciprocal brokered deposit'' or ''brokered sweep deposit'' in § ____.3 of the LCR rule. This revision reflects modifications made to these terms under the final rule, as discussed in section VI.A.4 of this Supplementary Information section. *See supra* note 107.

[111] These other types of brokered deposits are discussed in sections VII.C.3.d and VII.C.3.e of this Supplementary Information section.

[112] 85 FR 7453.

[113] As defined in section 38 of the FDI Act, 12 U.S.C. 1831o.

[114] *See* 12 U.S.C. 1831f.

[115] Section ____.104(d)(7) of the proposed rule would have assigned a 50 percent ASF factor to a brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance and without regard to whether a covered company could demonstrate to the satisfaction of its appropriate Federal banking agency that a withdrawal of such deposit is highly unlikely to occur during a liquidity stress event.

likely to withdraw it than other types of deposits that are assigned a lower ASF factor.

Affiliate sweep deposits. As described above in section VII.C.3.b of this Supplementary Information section, within the waterfall structure of sweep deposit arrangements, affiliates tend to be the first to receive deposits and the last from which deposits are withdrawn. With this priority relationship with an affiliate, a covered company is more likely to receive and maintain a steady stream of sweep deposits across a range of market conditions. Based on the reliability of this stream of sweep deposits the final rule treats sweep deposits received from affiliates as more stable than sweep deposits received from non-affiliates and more similar to other types of retail deposits. The final rule takes into account that the priority relationship with an affiliate results in a deposit relationship that is reflective of an overall relationship with the underlying retail customer where these deposits generally exhibit a stability profile associated with deposits directly from retail customers or counterparties, even if the deposits are not fully covered by deposit insurance.

Certain longer-term brokered deposits. For a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, which is not held in a transactional account and that has a remaining maturity of one year or more, the contractual term makes it a more stable source of funding than other types of deposits that are assigned a lower ASF factor. However, these brokered deposits are not assigned an ASF factor higher than 90 percent, as requested by certain commenters, because a covered company may be more likely to permit withdrawal of retail brokered deposits in the event of an early withdrawal request by the depositor, for reputational or franchise reasons, despite the absence of contractual requirements to permit withdrawal within the NSFR's one-year time horizon.

d) 50 Percent ASF Factor

The final rule assigns an ASF factor of 50 percent to most forms of wholesale funding with residual maturities of less than one year, certain retail brokered deposits that do not have the stabilizing characteristics described above, and non-deposit retail funding. For wholesale funding, the 50 percent ASF factor recognizes that funding that contractually matures in less than one year is less stable than longer term wholesale funding relative to the NSFR time horizon. The likelihood that maturing wholesale funding will be renewed generally depends on counterparty relationship characteristics, with financial sector entities being less likely than non-financial sector entities to renew their provision of funding. In addition, the final rule assigns the 50 percent ASF factor to all wholesale operational deposits, regardless of contractual maturity or counterparty, reflecting the provision of operational services. The 50 percent ASF factor applied to certain retail brokered deposits and to retail funding that is not a deposit or security reflect the counterparty relationship characteristics and the extent to which the retail funding has other stabilizing characteristics.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Counterparty That is Not a Financial Sector Entity or Central Bank and With Remaining Maturity of Less Than One Year

Sections ____.104(d)(1) and (2) of the proposed rule would have assigned a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof). The proposed rule would have assigned this ASF factor because covered companies generally will need to roll over or replace funding with these characteristics during the NSFR's one-year time horizon.

Several commenters also requested that the NSFR assign a higher ASF factor to public sector entity deposits, including public deposits that must be collateralized and collateralized corporate trust deposits. These commenters argued that these public sector entity collateralized deposits are more stable than most other wholesale deposits because, among other things, the deposit relationship is connected to longer-term relationships between a covered company and the public sector entity, the relationship is often acquired through prescribed bidding processes, and the deposits frequently are secured by HQLA. These commenters also argued that assigning a higher ASF factor to collateralized deposits would be consistent with the LCR rule, which assigns a lower outflow rate to such deposits compared to other forms of wholesale funding. The commenters recommended that the agencies revise the ASF factor for such deposits to one minus the RSF factor applicable to the underlying collateral. One commenter advocated assigning a 95 percent ASF factor (or an alternative factor slightly lower than 95 percent) to public sector entity deposits in excess of FDIC deposit insurance limits if the deposit is privately insured or fully collateralized by an FHLB letter of credit. The commenter argued that such features would lower the likelihood of withdrawal for these types of funds, including during times of stress.

Other commenters requested a higher ASF factor for FHLB advances because, in their view, FHLB advances are stable, reliable and fully secured, and the FHLBs have a proven track record of providing liquidity. For example, one commenter recommended assigning an ASF factor of 80 percent to FHLB advances with maturities of six months or more but less than one year.

The treatment of wholesale deposits in the final rule includes consideration of counterparty relationships. As compared to retail customers or counterparties, wholesale customers or counterparties may be motivated to a greater degree by return and risk of an investment, tend to be more sophisticated and responsive to changing market conditions, and often employ personnel who specialize in the financial management of the counterparty. As a result, wholesale customers or counterparties are more likely to withdraw their funding than a retail customer or counterparty. Further, FDIC deposit insurance coverage does not mitigate these motivations and sophistication characteristics to increase the stability of funding provided by a wholesale customer or counterparty sufficient to warrant an ASF factor higher than 50 percent.

The NSFR's application to a covered company's aggregate balance sheet generally does not involve differentiation between secured and unsecured liabilities and, by design, the NSFR treats the liquidity characteristics of collateral differently from the LCR rule. Although collateralization may reduce credit risk in the event of default, funding stability is influenced more by tenor, funding type and counterparty relationship characteristics. The fact that certain deposits placed by public sector entities are required to be collateralized for their contractual term does not mitigate the risk that a public sector entity may not renew such funding upon maturity. The final rule treats the collateralization of FHLB advances in the same fashion. Additionally, ASF and RSF factor values are not intended to be values of, respectively, cash outflow amounts as in the LCR rule or market haircuts of assets used as collateral. Accordingly, it would not be appropriate for the type of collateral, nor the RSF factor assigned to such assets, to determine the ASF factor assigned to a collateralized deposit, as suggested by commenters.[116]

The final rule also treats the maturity characteristics of FHLB advances consistent with other wholesale funding. Although the FHLBs served as a source of liquidity during the 2007–2009 financial crisis, covered companies generally may need to renew maturing funding from these entities across a range of market conditions. The FHLB system also conduct maturity transformation in obtaining the system's funding from investors. Similar to other wholesale counterparties, the FHLB system responds to events and market conditions in different ways than retail counterparties and could be sensitive to fluctuations in market conditions, which make funding already obtained from FHLBs less stable than retail deposits and other forms of funding that are assigned higher ASF factors. As a result, distinguishing FHLB advances from other types of wholesale funding would be at odds with the goal of the NSFR, which is to provide a standardized measure to ensure appropriate stable funding of covered companies relative to their assets and commitments.

For the reasons discussed above, the final rule assigns an ASF factor of 50 percent for a secured funding transaction or unsecured wholesale funding (including a wholesale deposit) that, in each case, matures less than one year from the calculation date and is provided by a wholesale customer or counterparty that is not a central bank or a financial sector entity (or a consolidated subsidiary thereof), as proposed. Funding from FHLBs and public sector entity deposits that have a residual maturity of less than one year from the calculation date are included in this category.

Unsecured Wholesale Funding Provided by, and Secured Funding Transactions With, a Financial Sector Entity or Central Bank With Remaining Maturity of Six Months or More, but Less Than One Year

Sections ____.104(d)(3) and (4) of the proposed rule would have assigned a 50 percent ASF factor to a secured funding transaction or unsecured wholesale funding that matures six months or more but less than one year from the calculation date and is provided by a financial sector entity or a consolidated subsidiary thereof, or a central bank.[117] The proposed rule would therefore have treated funding from central banks consistently with funding from financial sector entities.

The agencies did not receive comments on this aspect of the proposed rule, and the final rule adopts this provision as proposed. In assigning a 50 percent ASF factor, the final rule treats secured funding transactions and unsecured funding that each have a remaining maturity of six months or more but less than one year, and are conducted with financial sector counterparties and central banks, the same as similar types of funding from other wholesale customers and counterparties.

Securities Issued by a Covered Company With Remaining Maturity of Six Months or More, but Less Than One Year

Section ____.104(d)(5) of the proposed rule would have assigned a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date.

The agencies received no comments on this provision of the proposed rule. Consistent with the proposed rule, the final rule assigns a 50 percent ASF factor to securities issued by a covered company that mature in six months or more, but less than one year, from the calculation date. This treatment is appropriate because funds providers that are investors in securities issued by covered companies include, among others, financial sector entities and the relationship of the funds provider to a covered company generally will have characteristics that make such funding less stable than other types of funding received from retail customers or counterparties.[118] Further, due to the operation of secondary markets, a covered company may not be aware of the nature of the current investor in a security issued by a covered company and requiring a covered company to apply an ASF factor based on counterparty type would be operationally complex.

Operational Deposits

Section ____.104(d)(6) of the proposed rule would have assigned a 50 percent ASF factor to operational deposit funding, including operational deposits from financial sector entities. Operational deposits would include both (i) unsecured wholesale funding in the form of deposits and (ii) collateralized deposits that, in each case, are necessary for the provision of operational services, such as clearing, custody, or cash management services.[119]

Commenters requested that the final rule assign operational deposits a higher ASF factor (*e.g.,* one commenter recommended an ASF factor of between 60 and 75 percent) because moving operational deposits to a different institution is expensive, time consuming, and risky.[120] In support of this request, a commenter stated that changing custody service providers can take between six and twelve months and can significantly disrupt a company's essential payment, clearing, and settlement functions. Another commenter argued that depositors are unlikely to move their operational deposits from a covered company because of other relationships the depositor has with the covered company, particularly when the covered company is a regional banking institution. By contrast, one commenter noted that operational deposits can be withdrawn from a covered company by a customer within the NSFR's one-year time horizon and therefore do not warrant a higher ASF factor.

Commenters also asserted that the proposed rule's treatment of operational deposits was inconsistent with the treatment of operational deposits under the LCR rule, and argued that this type of funding is more stable than suggested by the treatment in the LCR rule or the proposed rule based on historical experience, evidenced in the empirical data, and the results of internal stress testing. These commenters contended that the proposed treatment of operational deposits would compound the already punitive treatment of operational deposits under the LCR rule. A commenter also argued that the proposed treatment of operational

[116] Additionally, as discussed in section VII.D of this Supplementary Information section, the final rule applies lower RSF factors to HQLA on a covered company's balance sheet relative to certain less liquid assets, including HQLA used for, or available for, the collateralization of public sector entity deposits, consistent with the treatment of encumbered assets described below.

[117] *See supra* note 102.

[118] Securities issued by a covered company that have a remaining maturity of one year or more receive an ASF factor of 100 percent. *See* section VII.C.3.a of this Supplementary Information section.

[119] The agencies note that the methodology that a covered company would have used to determine whether and to what extent a deposit is operational for the purposes of the proposed rule must be consistent with the methodology used for the purposes of the LCR rule. *See* § ____.3 of the LCR rule for the full list of services that qualify as operational services and § ____.4(b) of the LCR rule for additional requirements for operational deposits. Consistent with the proposed rule, the methodology for determining an operational deposit under the final rule is the same as the methodology used for the LCR rule.

[120] Comments about the definition of operational deposits are discussed in section VI.A of this Supplementary Information section.

deposits could penalize the business of custody banks.

The final rule applies an ASF factor of 50 percent to operational deposits as proposed. By definition, operational deposits are essential for the ongoing provision of operational services by a covered company to a wholesale depositor. The final rule therefore applies the ASF factor for operational deposits based on the operational relationship with the depositor rather than the contractual tenor of the funding or the type of wholesale counterparty. The level of operational deposits from a given funds provider may vary over time based on the customer's needs and, consistent with other wholesale funding that matures within one year that is assigned a 50 percent ASF factor, is not contractually guaranteed for the NSFR's one-year horizon. Further a counterparty could successfully restructure how it obtains various operational services and could place some or all of its operational deposits with another financial institution over a one-year time horizon. The 50 percent ASF factor also recognizes that the stability of short-term operational and non-operational deposits from financial counterparties are not identical because switching operational service providers may be difficult and have associated costs that are not present with non-operational deposits.

As discussed in section V.C of this Supplementary Information section, ASF factors are not directly comparable to outflow rates assigned in the LCR rule or other cash flow risk assessments, such as internal liquidity stress testing. While there are some barriers to withdrawing operational deposits, such as switching costs, operational deposits are not as stable as those forms of funding that are assigned a higher ASF factor in the final rule.

In response to commenters' concern that the proposed treatment of operational deposits is especially impactful to the custody banks business model, which place greater reliance on operational deposits than other business models, the agencies note the NSFR rule is meant to apply a single minimum standard to all covered companies regardless of business model, in order to improve resiliency and comparability of funding profiles for all covered companies. Accordingly, the NSFR assigns ASF factors and RSF factors to categories of liabilities and assets based on the characteristics of those liabilities and assets rather than their prevalence in certain business models.

Other Retail Brokered Deposits

Section ____.104(d)(7) of the proposed rule would have assigned a 50 percent ASF factor to most categories of brokered deposits provided by retail customers or counterparties that do not include the additional stabilizing features described under § ____.104(c) and summarized above. Specifically, retail brokered deposits to which the proposed rule would have assigned a 50 percent ASF factor included: (1) A brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit and that is held in a transactional account; (2) a brokered deposit that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures in six months or more, but less than one year, from the calculation date; (3) a reciprocal brokered deposit or brokered affiliate sweep deposit where less than the entire amount of the deposit is covered by deposit insurance; and (4) a brokered non-affiliate sweep deposit, regardless of deposit insurance coverage.

Commenters argued that one or more of the above types of retail brokered deposits should be assigned a higher ASF factor. Commenters asserted the proposed rule's treatment of brokered deposits was too conservative, arguing that brokered deposits have historically been stable sources of funding, including during times of stress, and their use has not been correlated with the growth of risky assets.

Commenters recommended that specific brokered deposits be assigned a 90 percent ASF factor. For example, some commenters suggested that non-affiliate sweep deposits with contractual agreements that provide a depository institution with priority over other participants in a brokered sweep deposit program waterfall receive the same 90 percent ASF factor assigned to affiliated brokered sweep deposits. Another commenter requested that the 90 percent ASF factor be applied to all non-affiliate brokered retail sweep deposits that are fully insured and with remaining terms of greater than one year. Similarly, one commenter suggested that retail brokered deposits categorized as money market deposit accounts that are subject to a commitment to leave the balances on deposit with the bank for a pre-determined period of time and subject to an early withdrawal penalty should be assigned a 90 percent ASF factor. The commenter argued that the agreements, which require that the funds not be withdrawn for a minimum period without incurring a significant interest penalty, make the funds sufficiently stable to warrant a higher ASF factor.

One commenter argued that many brokered deposits held in transactional accounts behave substantially similarly to retail deposits and should therefore receive an ASF factor that is higher than the proposed 50 percent factor. In particular, this commenter noted that, due to the types of deposits that may be considered ''brokered deposits'' under the FDIC's brokered deposit guidance,[121] many transactional account products that act as a stable source of retail funding could be classified as ''brokered'' due to a referral from a third party. This, the commenter noted, would make them subject to a 50 percent ASF factor under the NSFR rule.[122] Another commenter argued that retail brokered deposits are more stable due to the large number and variety of providers of such deposits. Accordingly, the commenter asserted that a covered company could easily find a substitute counterparty for a company that withdraws its brokered deposits from the covered company.

Finally, commenters requested that the agencies increase the ASF factors applied to retail brokered deposits to align the ASF factors with the outflow rates assigned in the LCR rule. For example, one commenter argued that it would be inconsistent for brokered deposits that receive a 25 percent outflow rate under the LCR rule to receive a 50 percent ASF factor under NSFR rule. The commenter argued that the ASF factor and LCR outflow rate should be complements, and, if not, the ASF factor should be more favorable because a covered company would have a full year to make adjustments to its balance sheet to replace a withdrawal of retail brokered deposits, whereas the LCR outflow rate is assumed to occur over a 30 calendar-day stress period. The same commenter argued that the perceived disparate treatment of these brokered deposits between the NSFR rule and LCR rule could incentivize covered companies to meet funding needs with shorter, rather than long-term brokered deposits.

The retail brokered deposits to which a 50 percent ASF factor would have been assigned are less stable sources of funding than the retail brokered deposits that are assigned a 90 percent ASF factor, other deposits that are assigned a 90 percent ASF factor, and

[121] *See* Federal Deposit Insurance Corporation, ''Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits,'' updated June 30, 2016, available at *https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf.*

[122] *Id.*

stable retail deposits, which are assigned a 95 percent ASF factor. Although the considerations identified by commenters may cause certain brokered deposits to have increased relative stability, these brokered deposits do not have the same combination of stabilizing features that warrant assignment of a higher ASF factor. Specifically, they lack a combination of being fully covered by deposit insurance, being received from an affiliate, or having a longer-term maturity.

In response to commenters' request to treat certain non-affiliate sweep deposits in a similar manner to affiliate sweep deposits, the agencies note that an affiliate sweep deposit relationship is reflective of an overall relationship with the underlying retail customer or counterparty and these deposits generally exhibit a stability profile associated with deposits directly from retail customers, which warrants assignment of a higher ASF factor. As a result, the final rule assigns a 50 percent ASF factor to non-affiliate sweep deposits and a higher ASF factor to affiliate sweep deposits, as discussed above. The agencies will continue to review the treatment of sweep deposits, including non-affiliate sweep deposits, under the LCR and NSFR rules.[123] In response to the comments regarding treatment under the LCR rule, as discussed above in section V.C of this Supplementary Information section, the agencies note that the ASF factors are not intended to align with the outflow rates assigned in the LCR rule in all cases due to the different purposes of the two rules. With the exception of affiliate sweep deposits where less than the entire amount of the deposit is covered by deposit insurance, which the final rule assigns a 90 percent ASF factor,[124] the agencies are adopting the 50 percent ASF factor for these deposits as proposed for the reasons discussed above.

Funding From a Retail Customer or Counterparty not in the Form of a Deposit or Security

The proposed rule would have assigned a zero percent ASF factor to retail funding that is not in the form of a deposit or security issued by the covered company. In the proposed rule, the agencies noted that non-deposit retail liabilities are not regular sources of funding or commonly utilized funding arrangements for covered companies.[125] The proposed rule also, however, solicited comment as to whether the final rule should assign an ASF factor greater than zero to any non-deposit retail liabilities.[126]

Some commenters expressed concern that the proposed treatment of non-deposit retail liabilities was overly conservative and would unfairly penalize business models that focus on securities trading, such as retail-oriented securities brokerage firms that utilize retail brokerage payables as a source of funding.[127] For example, a commenter expressed concern that an organization with a depository institution and a broker-dealer subsidiary of equal size could face a funding shortfall under the proposed rule because the funding of the broker-dealer subsidiary would not be assigned sufficiently high ASF factors and the stable funding of the depository institution may not be treated under the NSFR rule as available to support the nonbank funding needs of the consolidated entity's broker-dealer subsidiary.[128] Some commenters noted that retail brokerage payables have been historically stable across both normal and stressed economic periods—for example, one commenter asserted that its amount of retail brokerage payables increased at the height of the 2007–2009 financial crisis, and from 2009 to 2016. Commenters further indicated that retail brokerage payables have counterparty credit risks similar to uninsured deposits, in part because they arise in a transactional context and as part of a client's larger brokerage relationship. One commenter argued that because the risk-based capital surcharge for GSIBs in the United States (GSIB capital surcharge rule) excludes non-deposit retail customer funding entirely from its Method 2 calculation methodology,[129] this implicitly suggests that other Board rules consider such funding to be stable.

Some commenters suggested more favorable treatment for specific types of non-deposit retail liabilities. Specifically, commenters argued that some liabilities owed to retail counterparties in connection with non-deposit products, such as prepaid cards, travelers checks, and customer rewards programs, should be recognized as a stable source of funding given historical experience of low volatility in balances and redemptions over time. In addition, these commenters argued that certain features may be offered in connection with certain prepaid products that would increase their stability, such as pass-through insurance provided by some prepaid card products and state law requirements that money transmitters hold and invest funds equal to outstanding prepaid liabilities in high grade, low-risk assets.

Several commenters argued that the agencies should apply an ASF factor higher than zero percent to non-deposit retail liabilities to align with the treatment of similar liabilities under the LCR rule.[130] Some commenters recommended assigning an ASF factor of 60 percent to non-deposit retail liabilities. Other commenters recommended assigning a 50 percent ASF factor to non-deposit retail funding or assigning a 50 percent ASF factor to the unsecured liabilities of a broker-dealer subsidiary of a covered company that are owed to a retail customer or counterparty.

As a general matter, the final rule considers the relationship characteristics of retail customers or counterparties at least as favorably as wholesale counterparties that are not financial sector entities, and takes into account whether funding is obtained in connection with a transactional account or as part of another relationship with the covered company. However, not all forms of retail funding are equally stable. Although the GSIB capital surcharge rule excludes certain forms of non-deposit retail funding from the Method 2 calculation methodology, exclusion of a funding source is not dispositive of its stability because the GSIB score measures a banking organization's systemic importance and does not measure the stability of each type of funding. Accordingly, the final rule does not calibrate ASF factors to non-deposit retail liabilities based on whether those liabilities are included in the Method 2 calculation under the GSIB capital surcharge rule.

[123] As part of this effort, the agencies intend to revise the regulatory reporting (*e.g.* Call Report) to obtain data that may help evaluate funding stability of sweep deposits over time to determine their appropriate treatment under liquidity regulations.

[124] *See* section VII.C.3.c.ii. of this Supplementary Information section.

[125] As noted above, a security issued by the covered company that is held by a retail customer or counterparty would not take into account counterparty type and therefore would not fall within this category.

[126] *See* 81 FR at 35140.

[127] The term ''retail brokerage payables'' generally refers to (1) cash awaiting investment in retail clients' brokerage accounts, or ''free credit balances,'' and (2) cash balances in a securities firm's bank account related to a retail client's pending securities purchase and sale transactions and pending deposits to and distributions from clients' brokerage accounts, or ''float.''

[128] *See also* section VII.F of this Supplementary Information section.

[129] 12 CFR 217.405.

[130] Section ____.32(a)(5) of the LCR rule assigns a 40 percent outflow rate to non-deposit retail funding. As discussed in section V of this Supplementary Information section, the treatment of liabilities under the NSFR rule is not intended to align directly with that of the LCR rule due to the different purposes of the two requirements.

As noted by commenters, many of the liabilities that would have been included in the non-deposit retail funding category have demonstrated a relative degree of stability during normal and adverse economic periods, similar to types of funding that receive a 50 percent ASF factor. As non-deposits, however, the types of retail funding described above do not have the same stabilizing characteristics as the categories of deposits assigned a 90 percent or 95 percent ASF factor under the final rule. Although certain non-deposit retail funding may have transactional and other counterparty relationship characteristics similar to retail deposits and retail brokered deposits, they may also reflect counterparty sophistication characteristics similar to certain wholesale counterparties. For these reasons, the final rule assigns a 50 percent ASF factor to funding from a retail customer that is not a deposit or a security, including retail brokerage payables.

All Other NSFR Liabilities With Remaining Maturity of Six Months or More, but Less Than One Year

Section ____.104(d)(8) of the proposed rule would have assigned a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year. As discussed in section VII.C.2 of this Supplementary Information section, a covered company would not need to roll over a liability of this maturity in the shorter-term, but may need to roll it over before the end of the NSFR's one-year time horizon.

The agencies received no comments on this provision of the proposed rule. For the reasons discussed in the proposed rule, the final rule assigns a 50 percent ASF factor to all other NSFR liabilities that have a remaining maturity of six months or more, but less than one year as proposed.

e) Zero Percent ASF Factor

The final rule assigns a zero percent ASF factor to NSFR liabilities that demonstrate the least stable funding characteristics, including trade date payables, certain short-term retail brokered deposits, certain short-term funding from financial sector entities or central banks, and any other NSFR liability that matures in less than six months and is not described above. In the absence of a remaining tenor of at least six months, funding on a covered company's balance sheet of these types are considered unreliable sources of funding relative to the need to support assets and commitments over the NSFR's time horizon.

Trade Date Payables

Section ____.104(e)(1) of the proposed rule would have assigned an ASF factor of zero percent to trade date payables that result from purchases by a covered company of financial instruments, foreign currencies, and commodities that are required to settle within the lesser of the market standard settlement period for the particular transactions and five business days from the date of the sale. Trade date payables are established when a covered company buys financial instruments, foreign currencies, and commodities, but the transactions have not yet settled. Trade date payables are recorded on the covered company's balance sheet as a liability. These payables should result in a payment from a covered company at the settlement date, which varies depending on the specific market. Accordingly, trade date payables are not a source of stable funding.

The agencies did not receive comments on this provision. As proposed, the final rule assigns an ASF factor of zero percent to trade date payables because trade date payables should result in a payment from a covered company at the settlement date, meaning the liability does not represent a stable source of funding.

Certain Short-Term Retail Brokered Deposits

Section ____.104(e)(2) of the proposed rule would have assigned a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a reciprocal brokered deposit or brokered sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date.

Commenters argued that non-maturity brokered deposits that are held in a savings account are similar in stability to non-brokered retail deposits held in a retail savings account, and therefore should be assigned a higher ASF factor. The commenters argued that assignment of a zero percent ASF factor would overstate the funding risks of brokered savings accounts, which these commenters argued include stabilizing deposit features such as the availability of full or partial FDIC deposit insurance and that the account holder can use other services provided by the banking organization.

Retail brokered deposits that are not brokered reciprocal deposits or sweep deposits, are not held in transactional accounts, and mature in less than six months tend to be less stable than other types of brokered deposits because they do not have the stabilizing features of brokered deposits that are assigned a higher ASF factor. Although non-maturity brokered deposits held in savings accounts may be fully or not fully insured and may provide similar access to services as a non-brokered deposit in a retail savings account, deposit brokers can, in some cases, decide whether to move this funding to a different banking organization at low cost and with little notice to the covered company. Additionally, even if the deposit is fully insured, because the funds are held in non-transactional accounts they are less stable due to the ease with which the deposits can be withdrawn. Finally, under the maturity categories of the final rule, the term of these deposits would fall into the shortest-term and thus represent the least stable form of funding.

For these reasons, the final rule assigns a zero percent ASF factor to a brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date as proposed.

Securities Issued by a Covered Company With Remaining Maturity of Less Than Six Months

Section ____.104(e)(4) of the proposed rule would have assigned a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months. As discussed above in section VII.C.2 of this Supplementary Information section, the proposed rule generally would have treated as less stable funding that has to be paid within the NSFR's one-year time horizon.

The agencies received no comments on this provision of the proposed rule. The final rule assigns a zero percent ASF factor to securities that are issued by a covered company and that have a remaining maturity of less than six months because such funding does not represent a source of stable funding over the NSFR's one-year time horizon.

Short-Term Funding From a Financial Sector Entity

Section ____.104(e)(5) of the proposed rule would have applied a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date.[131] In general, financial sector entities and their consolidated subsidiaries are more likely than other types of counterparties to withdraw funding from a covered company, regardless of whether the funding is secured or the type of collateral securing the funding, as described in section VII.C.2 of this Supplementary Information section.

Many commenters raised concerns that the proposed assignment of a zero percent ASF factor to short-term funding from a financial sector entity would impair an important funding source for covered companies and could adversely affect the functioning of credit markets by increasing borrowing and transaction costs for end-users. Specifically, commenters objected that the proposed rule would assign a zero percent ASF factor to secured funding transactions while also assigning a 10 to 15 percent RSF factor to secured lending transactions.[132]

Commenters also raised domestic and international regulatory concerns around the proposed framework for repurchase agreements. Commenters stated that rulemakings such as the GSIB capital surcharge rule and the SLR rule have increased the costs of transacting in matched-book repurchase agreements by adding higher capital requirements and that the NSFR would further exacerbate these costs. Commenters also questioned the assumption underlying the ASF and RSF factors for repurchase agreement and reverse repurchase agreement transactions—namely, that a covered company would be more likely to roll over short-term loans to financial sector entities than such entities would be likely to roll over short-term funding to a covered company. Since commenters primarily raised these concerns with regards to the assignment of RSF factors to short-term secured funding transactions, these issues are addressed more fully in section VII.D of this Supplementary Information section.

Consistent with the proposed rule, the final rule assigns a zero percent ASF factor to funding (other than operational deposits) for which the counterparty is a financial sector entity or a consolidated subsidiary thereof and the transaction matures less than six months from the calculation date because financial sector counterparties are more likely to withdraw short term funding within a one-year time horizon, regardless of whether the transaction is secured or unsecured. As discussed in section V of this Supplementary Information section, one of the goals of the final rule is to ensure that covered companies have sufficient levels of long-term stable funding and do not excessively rely on short-term borrowings from financial sector entities. Moreover, these types of short-term borrowings with financial sector counterparties can carry elevated risks to the funding needs of covered companies when combined with concentrations that can increase systemic risk and interconnectedness.

The agencies do not anticipate that the treatment of these short-term secured funding transactions will have a significant impact on the markets identified by commenters, such as fixed income markets, commercial mortgage-backed securities, lending markets, or money markets, especially in light of the adjustments made in the treatment of short-term secured lending transactions as discussed in VII.D.3 of this Supplementary Information section. However, the agencies monitor these market segments on an ongoing basis to evaluate the impact of agency rulemakings on financial intermediation. At the same time, the agencies will continue to examine collateral markets for any warning signals, including the costs of short- and long-term funding, participation rates, and collateral flows between covered companies and financial sector entities.

Short-Term Funding From a Central Bank

Section ____.104(e)(5) of the proposed rule also would have assigned a zero percent ASF factor to short-term funding from central banks to recognize the short-term nature of such funding from central banks, consistent with the proposed rule's focus on stable funding from market sources. For example, funding obtained from the discount window would have been assigned a zero percent ASF factor, consistent with the terms of discount window advances.

The agencies received no comments on this provision of the proposed rule. The final rule assigns a zero percent ASF factor to short-term funding from central banks as proposed.

All Other NSFR Liabilities With Remaining Maturity of Less Than Six Months or an Open Maturity

Section ____.104(e)(6) of the proposed rule would have assigned a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity. NSFR liabilities that do not fall into one of the categories that are assigned an ASF factor generally would not represent a regular or reliable source of funding and, therefore, the proposed rule would not have treated any portion as stable funding.

Commenters requested that the NSFR rule assign a non-zero ASF factor to the unused borrowing capacity with FHLBs because the FHLB system is an important source of liquidity for U.S. banking organizations. The commenters pointed to FHLB lending activity during the 2007–2009 financial crisis, which demonstrated that FHLBs increased their lending by 50 percent between 2007 and 2008. Commenters argued that recognizing this source of funding was appropriate since the NSFR requirement, unlike the LCR rule, is intended to be a structural metric that reflects the stable funding required across all market conditions over a longer one-year time horizon. One commenter suggested that the agencies conduct a study on the potential impact of the final rule on the FHLB system and its role in providing liquidity to banks.

As discussed in section V.C of this Supplementary Information section, the NSFR is determined based on a covered company's balance sheet at a point in time. In order for a funding source to be considered relevant stable funding under the NSFR, a covered company must have obtained the funding for its balance sheet at that point in time. Establishing reliable sources of contingent funding in advance of potential funding needs is an essential part of sound liquidity risk management for banking organizations. For the purposes of assessing the risks presented by a banking organization's balance sheet, however, the NSFR does not treat undrawn lines of credit available to a covered company as stable funding, regardless of whether they are collateralized or whether they are provided by the FHLB system, the Federal Reserve System, or any other third parties.

The final rule assigns a zero percent ASF factor to all other NSFR liabilities, including those that mature less than six months from the calculation date and those that have an open maturity.

D. Required Stable Funding

1. Calculation of the RSF Amount

Consistent with the proposed rule, under the final rule a covered company's RSF amount reflects a covered company's funding requirement based on the liquidity characteristics of

[131] *See supra* note 102.

[132] As discussed in section VII.D.3.a of this Supplementary Information section, the agencies are decreasing the effect on the market for short-term secured lending transactions by adopting a zero percent RSF factor for certain secured lending transactions that are secured by rehypothecatable level 1 liquid assets.

its assets, commitments, and derivative exposures. Under § ____.105 of the proposed rule, a covered company's RSF amount would have equaled the sum of two components: (i) The carrying values of a covered company's assets (other than assets included in the calculation of the covered company's derivatives RSF amount) and the undrawn amounts of its committed credit and liquidity facilities, each multiplied by an RSF factor assigned under § ____.106 (discussed in section VII.D.3 of this Supplementary Information section), and (ii) the covered company's derivatives RSF amount, as calculated under § ____.107 (discussed in section VII.E of this Supplementary Information section). The agencies received no comments on the calculation of the RSF amount and are adopting it as proposed.

2. Characteristics for Assignment of RSF Factors

The proposed rule would have grouped NSFR assets, derivative exposures and commitments into broad categories and assigned RSF factors to determine the overall amount of stable funding a covered company must maintain. RSF factors would have been scaled from zero to 100 percent based on the tenor and other liquidity characteristics of an asset, derivative exposure, or committed facility. The agencies did not receive comments on this general approach to using the characteristics of assets and commitments, and the final rule adopts the characteristics for assigning RSF factors as proposed. As in the proposed rule, the final rule categorizes assets, derivative exposures, and committed facilities into categories and assigns RSF factors based on the following liquidity characteristics: (1) Tenor; (2) encumbrance; (3) type of counterparty; (4) credit quality, and (5) market characteristics. As discussed below and in the relevant sections of this Supplementary Information section, the final rule assigns RSF factors using these characteristics as proposed with certain modifications that simplify the framework to seven categories for the assignment of RSF factors.

a) Tenor

In general, the final rule requires a covered company to maintain more stable funding to support assets that have longer tenors because of the greater time the asset will remain on the balance sheet and before the covered company is contractually scheduled to realize inflows at the maturity of the asset. In addition, if assets with a longer tenor are not held to maturity, such assets may liquidate at a discount because of the increased market and credit risks associated with cash flows occurring further in the future. Assets with a shorter tenor, in contrast, generally require a smaller amount of stable funding under the final rule because a covered company would not need to fund such assets after the maturity date unless the assets are extended or rolled over and the covered company would therefore have access to the inflows from these maturing assets sooner. The final rule divides maturities for purposes of a covered company's RSF amount calculation into the same four maturity categories consistent with the ASF maturity categories: One year or more, less than one year, six months or more but less than one year, and less than six months (RSF maturity categories).

b) Encumbrance

As described in section VII.D.3.h of this Supplementary Information section, whether an asset is encumbered and the extent of the encumbrance dictates the amount of stable funding required to support the particular asset. Similar to assets with longer contractual tenors, assets that are encumbered at a calculation date may be required to be held for the duration of the encumbrance and these assets often cannot be monetized while encumbered. In general, the longer an asset is encumbered, the more stable funding is required under the final rule.

c) Counterparty Type

A covered company may face pressure to renew some portion of its assets at contractual maturity in order to maintain its franchise value with customers and because a failure to roll over such assets could be perceived by market participants as an indicator of financial distress at the covered company. Typically, these pressures are influenced by the type of counterparty to the maturing asset. For example, covered companies often consider their lending relationships with a wholesale, non-financial borrower to be important to maintain current business and generate additional business in the future. By contrast, the agencies expect these concerns are less likely to be a factor with respect to financial sector counterparties because financial counterparties typically have a wider range of alternate funding sources already in place, face lower transaction costs associated with arranging alternate funding, and have less expectation of stable lending relationships with any single provider of credit. In light of these business and reputational considerations, the final rule generally requires a covered company to maintain more aggregate stable funding to support certain lending to non-financial counterparties than for lending to financial counterparties.[133]

d) Credit Quality

Credit quality is a factor in an asset's general funding requirements because market participants tend to be more willing to purchase assets with higher credit quality on a consistent basis and the prices of these assets are generally less volatile across a range of market and economic conditions. The demand for higher credit quality assets, therefore, is more likely to persist, and such assets are more likely to have resilient values, allowing a covered company to dispose of them more easily across a range of market conditions. Assets of lower credit quality, in contrast, are less likely to retain their value over time across market conditions. The final rule, like the proposed rule, generally requires greater aggregate stable funding with respect to assets of lower credit quality, to reduce the risk that in the event of having to dispose of such an asset prior to maturity a covered company may have to monetize it at a discount.

e) Market Characteristics

Assets that are traded in transparent, standardized markets with large numbers of participants and dedicated intermediaries tend to exhibit a higher degree of reliable liquidity. The final rule, therefore, generally requires less aggregate stable funding for holdings of such assets relative to those traded in markets characterized by information asymmetry and relatively few participants.

f) Comments Proposing Other Liquidity Characteristics

The agencies invited comment on whether other characteristics should be considered for purposes of assigning RSF factors. Several commenters suggested that RSF factors should be assigned based on criteria related to existing regulations and other market and operational factors.[134] Another commenter argued that RSF factors should more closely align with market haircuts used in secured funding markets. One commenter recommended

[133] *See supra* note 102.

[134] For example, a commenter recommended incorporating the impact of existing regulations on a given asset or the counterparty to the asset, and an asset's external credit rating. The commenter recommended other market and operational factors, including the seniority, hedging, clearing characteristics of the asset and the size of the market for the asset.

the agencies assign RSF factors based on the intent for which a security is held and apply a lower RSF factor to short-term securities held for market-making purposes than for securities held for investment purposes, arguing that the proposal would negatively impact market-making activities. Other commenters argued that the assignment of RSF factors should take into account eligibility of assets as collateral for FHLB advances.[135]

As discussed in section V.B of this Supplementary Information section, the final rule addresses funding stability risks not directly addressed in other parts of the agencies' regulatory framework. Although the agencies recognize that other regulations may require or incentivize covered companies to hold, or refrain from holding, certain assets, those regulations do not directly address the stability of a banking organization's funding profile in relation to the composition of its assets and commitments. Accordingly, it would not be appropriate to assign RSF factors to assets based on their treatment in other regulations or the impact of regulations on the counterparty to an asset. The liquidity characteristics described above tend to be generally reflected in market haircuts, but RSF factor values are not directly representative of asset haircuts and closer alignment of RSF factors with haircuts used in secured funding markets would be inappropriate for calibrating aggregate funding requirements of covered companies. As also discussed in section V.C, the final rule's simplified and standardized measure of funding risk does not differentiate between business activities or the intent for which a covered company holds a given asset. Accordingly, the final rule takes into account an asset's contractual residual maturity at a point in time and does not speculate on a covered company's intended purpose and timeframe for holding an asset in the future. Further, an asset's eligibility as collateral for FHLB advances is not an appropriate additional basis for determining RSF factors. The liquidity characteristics described above, including credit quality, are likely factors also considered by FHLBs when assessing collateral eligibility. Generally, assets currently held by a covered company contribute to its balance sheet funding risk regardless of the covered company's operational ability to obtain FHLB advances in the future.[136]

3. Categories of RSF Factors for Unencumbered Assets and Commitments

Based on the tenor, encumbrance, counterparty type, credit quality, and market characteristics described above, the final rule assigns RSF factors to unencumbered assets and commitments in the categories shown in Table 2. The treatment of encumbered assets is described below and shown in Table 3. The assignment of RSF factors for derivative exposures is described in section VII.E of this Supplementary Information section.

TABLE 2—CATEGORIES OF UNENCUMBERED ASSETS AND COMMITMENTS BASED ON THEIR CHARACTERISTSICS AND RESULTING RSF FACTORS

Unencumbered and with tenor of:	Counterparty types	Credit quality or market characteristics	NSFR assets or commitments	RSF factor percent
Perpetual	Central bank	Other	Currency and coin	0
Any tenor	Non-financial	HQLA	Level 1 liquid assets held on balance sheet	
Less than six months	All	Other	Cash items in the process of collection and certain trade date receivables.	
	Central bank	HQLA	Reserve Bank balances and claims on foreign central banks.	
	Financial	Non-operational	Secured lending transactions secured by rehypothecatable level 1 liquid assets.	
Committed	All	Other	Committed credit and liquidity facilities	5
Any tenor	Non-financial	HQLA	Level 2A liquid assets held on balance sheet	15
Less than six months	Financial	Non-operational	Secured lending transactions secured by assets other than rehypothecatable level 1 liquid assets and unsecured lending.	
Any tenor	Non-financial	HQLA	Level 2B liquid assets held on balance sheet	50
Six months or more, but less than one year.	Financial	Non-operational	Secured lending transactions and unsecured wholesale lending.	
Any tenor	Financial	Operational	Operational deposit placements	
Less than one year	Non-financial	Non-operational	Secured lending transactions and unsecured lending	
	Retail	Any	Retail lending	
	Any	Any	All other assets	
One year or more	Retail	Risk weight ≤50 percent	Retail mortgages	65
	Retail and non-financial	Risk weight ≤20 percent	Secured lending transactions, unsecured wholesale lending, and retail lending.	
	Retail	Risk weight >50 percent	Retail mortgages	85
	Retail and non-financial	Risk weight >20 percent	Secured lending transactions, unsecured wholesale lending, and retail lending.	
	All	Non-HQLA	Securities other than common equity shares that are not HQLA.	
Any tenor			Publicly traded common equity shares that are not HQLA.	
		Derivative transactions are traded on U.S. or non-U.S. exchanges.	Commodities	
One year or more	Financial	Any	Secured lending transactions and unsecured lending to a financial sector entity.	100
Any tenor	All	>90 days past due or non-accrual.	Nonperforming assets	
		Any	All other assets	

[135] As discussed in section VII.C.3 of this Supplementary Information section, some commenters also recommended assigning a non-zero ASF factor to unused borrowing capacity from FHLBs.

[136] In respect to FHLB advances, many FHLB advances may have long maturities that may be reflected in the assignment of ASF factors described in section VII.C.3 of this Supplementary Information section.

TABLE 2—CATEGORIES OF UNENCUMBERED ASSETS AND COMMITMENTS BASED ON THEIR CHARACTERISTSICS AND RESULTING RSF FACTORS—Continued

Unencumbered and with tenor of:	Counterparty types	Credit quality or market characteristics	NSFR assets or commitments	RSF factor percent
Any tenor *	All	Derivative	NSFR derivatives asset amount	

* The derivative treatment nets derivative transactions with various maturities.

a) Zero Percent RSF Factor

Certain assets held by banking organizations have unique characteristics such that they do not contribute risk to a banking organization's funding profile. Assets such as currency, coin, cash items in the process of collection and short-term central bank reserves on a covered company's balance sheet at the NSFR calculation date generally can be used in the immediate term to meet obligations and eliminate short-term liabilities. In the normal course of business, trade date receivables also constitute assets of this type, even though they are subject to certain operational frictions.

Certain other assets in this category, such as level 1 liquid asset securities on a covered company's balance sheet and certain short-term secured lending transactions backed by rehypothecatable level 1 liquid assets conducted with financial sector entities make minimal contribution to a covered company's aggregate funding risk and are important to the efficient operation of key short-term funding markets.

These unique characteristics make it appropriate to assign an RSF factor of zero percent, the lowest RSF factor assigned to assets.

(i) Asset Classes for Which the Agencies Received No Comments

The proposal would have applied a zero percent RSF factor to currency, coin, cash items in the process of collection, Reserve Bank balances and other central bank reserves with a maturity of less than six months. The agencies received no comments on these asset classes and are finalizing them as proposed.

Currency and Coin

Section ____.106(a)(1)(i) of the final rule assigns a zero percent RSF factor to currency and coin because these assets can be directly used to meet financial obligations. Currency and coin include U.S. and foreign currency and coin owned and held in all offices of a covered company; currency and coin in transit to a Federal Reserve Bank or to any other depository institution for which the covered company's subsidiaries have not yet received credit; and currency and coin in transit from a Federal Reserve Bank or from any other depository institution for which the accounts of the subsidiaries of the covered company have already been charged.[137]

Cash Items in the Process of Collection

Section ____.106(a)(1)(ii) of the final rule assigns a zero percent RSF factor to cash items in the process of collection because these assets will not persist on a covered company's balance sheet, but rather will be converted to assets that can be directly used to meet financial obligations in the immediate term. These items would include: (1) Checks or drafts in process of collection that are drawn on another depository institution (or a Federal Reserve Bank) and that are payable immediately upon presentation in the country where the covered company's office that is clearing or collecting the check or draft is located, including checks or drafts drawn on other institutions that have already been forwarded for collection, but for which the covered company has not yet been given credit (known as cash letters), and checks or drafts on hand that will be presented for payment or forwarded for collection on the following business day; (2) U.S. government checks drawn on the Treasury of the United States or any other U.S. government agency that are payable immediately upon presentation and that are in process of collection; and (3) such other items in process of collection that are payable immediately upon presentation and that are customarily cleared or collected as cash items by depository institutions in the country where the covered company's office that is clearing or collecting the item is located.[138]

Reserve Bank Balances and Other Claims on a Reserve Bank That Mature in Less Than Six Months

Section ____.106(a)(1)(iii) of the final rule assigns a zero percent RSF factor to a Reserve Bank balance or to another claim on a Reserve Bank that matures in less than six months from the calculation date. The term ''Reserve Bank balances'' is defined in § ____.3 of the LCR rule and includes required reserve balances and excess reserves, but not other balances that a covered company maintains on behalf of another institution.[139] Reserve Bank balances can be directly used to meet financial obligations through the Federal Reserve's payment system. Although other claims on Reserve Banks that mature in less than six months cannot be directly used to meet financial obligations, a covered company faces little risk of harm to its franchise value if it does not roll over the lending to a Reserve Bank at maturity. The covered company, therefore, may realize cash flows associated with the asset in the near term and not retain the asset on its balance sheet.

Claims on a Foreign Central Bank That Matures in Less Than Six Months

Section ____.106(a)(1)(iv) of the final rule assigns a zero percent RSF factor to claims on a foreign central bank that mature in less than six months. Similar to claims on a Reserve Bank, claims on a foreign central bank in this category may generally either be directly used to meet financial obligations or will be available for such use in the near term, and a covered company faces little risk of harm to its franchise value if it does not roll over the lending.

(ii) Asset Classes for Which the Agencies Received Comments

The proposed rule would have applied a zero percent RSF factor to trade date receivables that met certain criteria. The proposed rule also would have assigned RSF factors higher than zero to (1) certain level 1 liquid assets and (2) secured lending transactions with a maturity of less than six months

[137] This description of currency and coin is consistent with the treatment of currency and coin in Federal Reserve form FR Y–9C.

[138] This description of cash items in the process of collection is consistent with the treatment of cash items in process of collection in Federal Reserve form FR Y–9C.

[139] For example, the term ''Reserve Bank balance'' does not include balances maintained by a covered company on behalf of a respondent for which it acts as a pass-through correspondent. *See* 12 CFR 204.5(a)(1)(ii). The definition also does not include balances maintained on behalf of an excess balance account participant. *See* 12 CFR 204.10(d). The Board reduced reserve requirement ratios to zero percent effective March 26, 2020. This action eliminated reserve requirements for all depository institutions. *See https://www.federalreserve.gov/monetarypolicy/reservereq.htm* The Board could revise required reserve requirements in the future.

conducted with financial sector entities (or their subsidiaries) and secured by rehypothecatable level 1 liquid assets. The agencies received a number of comments on the proposed treatment of these assets.

Trade Date Receivables

Section ____.106(a)(1)(v) of the proposed rule would have assigned a zero percent RSF factor to a trade date receivable due to a covered company that results from the sale of a financial instrument, foreign currency, or commodity that (1) is contractually required to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale; and (2) has not failed to settle within the required settlement period. By contrast, § ____.106(a)(8) of the proposed rule would have assigned a 100 percent RSF factor to a trade date receivable that (1) is contractually required to settle within the lesser of the market standard settlement period and five business days, but (2) fails to settle within this period.[140] Several commenters expressed concerns that the proposed treatment was overly conservative and would result in assignment of a 100 percent RSF to trade date receivables that would likely still settle. Some commenters requested a zero percent RSF factor for trade date receivables that have failed to settle within the standard settlement period or five days, but still are expected to settle. These commenters noted that such treatment would align with the treatment in the Basel NSFR standard. One commenter contended that certain instruments have standard market settlement periods longer than five days and requested a zero percent RSF factor for receivables that settle within the greater of the standard market settlement period and five days. Another commenter requested a zero percent RSF factor for trade date receivables that failed to settle but are not more than five days past the standard settlement date, arguing that a covered company would expect the majority of its trade date receivables to have settled by that date.

The final rule expands the types of trade date receivables that are assigned a zero percent RSF factor to include trade date receivables due to a covered company that result from the sale of a financial instrument, foreign currency, or commodity that is required to settle no later than the market standard for the particular transaction, and that has yet to settle but is not more than five business days past the scheduled settlement date. This change from the proposal will more accurately measure the amount of receivables that are expected to settle and result in inflows in the near future because such trade date receivables are still reasonably expected to settle imminently. As discussed in section VII.D.3.g of this Supplementary Information, trade date receivables that do not qualify for a zero percent RSF factor are assigned a 100 percent RSF factor.

Unencumbered Level 1 Liquid Assets Held on Balance Sheet

Section ____.106(a)(2)(i) of the proposed rule would have assigned a 5 percent RSF factor to unencumbered level 1 liquid assets that would not have been assigned a zero percent RSF factor. The proposed rule would have incorporated the definition of ''level 1 liquid assets'' set forth in § ____.20(a) of the LCR rule but would not have taken into consideration the operational requirements described in § ____.22 of the LCR rule. As a result, the proposed rule would have assigned a 5 percent RSF factor to the following level 1 liquid assets: (1) Securities issued or unconditionally guaranteed as to the timely payment of principal and interest by the U.S. Department of the Treasury; (2) liquid and readily-marketable securities,[141] as defined in § ____.3 of the LCR rule, issued or unconditionally guaranteed as to the timely payment of principal and interest by any other U.S. government agency (provided that its obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government); (3) certain liquid and readily-marketable securities that are claims on, or claims guaranteed by, a sovereign entity, a central bank, the Bank for International Settlements, the International Monetary Fund, the European Central Bank and European Community, or a multilateral development bank; and (4) certain liquid and readily-marketable debt securities issued by sovereign entities.

Some commenters argued that the NSFR rule should assign a zero percent RSF factor for all HQLA. These commenters argued that the proposed non-zero RSF factors for these assets would unduly penalize low-risk sources of funding, increase banking organizations' costs for holding HQLA and engaging in securities financing transactions involving HQLA, and undermine the ability of banking organizations to act as market makers. Other commenters believed a zero percent RSF factor would provide for a more level playing field by aligning with other jurisdictions' implementation of the NSFR.

A number of commenters requested a zero percent RSF factor be assigned to all level 1 liquid assets, which include certain government securities that commenters argued have liquidity characteristics similar to assets that would have been assigned a zero percent RSF factor under the proposed rule.[142] Many commenters argued that U.S. Treasury securities, in particular, should be assigned a zero percent RSF factor because they are among the most liquid and readily marketable securities a covered company may hold and benefit from flight to quality during times of stress.

As described above, assets that a covered company can directly use to meet financial obligations or can reasonably expect to obtain the cash inflows at the maturity of these assets in the near future are assigned a zero percent RSF factor under the final rule. Such assets generally do not present risks to a covered company or the financial sector in the event of funding disruptions. Similarly, given their liquidity characteristics, level 1 liquid asset securities present minimal risks resulting from a covered company's funding of these assets as assessed over a one-year time horizon. Across a broad range of market conditions, a covered company generally may be less likely to have to fund these securities for one year compared to other securities. Although U.S. Treasury securities and other level 1 liquid asset securities generally must be monetized before they can be used to settle obligations and face modest transaction costs in doing so, these assets, regardless of their

[140] In addition, consistent with the definition of ''derivative transaction'' under § ____.3 of the LCR rule, a trade date receivable that has a contractual settlement or delivery lag longer than the lesser of the market standard for the particular instrument or five days would have been treated as a derivative transaction under § ____.107 of this final rule.

[141] As discussed in section VI of this Supplementary Information section, the final rule incorporates the LCR rule's definition of ''liquid and readily-marketable,'' which means, with respect to a security that the security is traded in an active secondary market with: (1) More than two committed market makers; (2) a large number of non-market maker participants on both the buying and selling sides of transactions; (3) timely and observable market prices; and (4) a high trading volume. *See* § ____.3 of the LCR rule.

[142] These commenters also argued that the proposed treatment would be more conservative than the treatment of level 1 liquid assets under the LCR rule, which allows a banking organization to include the full fair value of level 1 liquid assets in its HQLA amount. The value of RSF factors are not representative of market haircuts to asset values.

contractual maturity, serve as reliable sources of liquidity across market conditions, based on their high credit quality and the favorable characteristics of the markets for these assets. Further, level 1 liquid asset securities generally retain their value in the event of market disruptions relative to most other assets. In addition, these level 1 liquid asset securities serve a critically important role in supporting the smooth functioning of the funding markets, and, as further discussed in section X of this Supplementary Information section, a non-zero RSF factor on level 1 liquid assets could discourage intermediation in the U.S. Treasury market. For these reasons, the final rule applies a zero percent RSF factor to unencumbered level 1 liquid assets. Responses to comments requesting the final rule assign a zero percent RSF factor to all other HQLA are included below.

Secured Lending Transactions With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months and Are Secured by Rehypothecatable Level 1 Liquid Assets

Section ____.106(a)(3) of the proposed rule would have assigned a 10 percent RSF factor to a secured lending transaction [143] with a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date and is secured by level 1 liquid assets that are rehypothecatable for the duration of the transaction.[144] The proposal explained that a relatively lower amount of stable funding is needed to support all forms of short-term lending to financial sector entities because the financial nature of the counterparty presents relatively lower reputational risk to a covered company if it chooses not to roll over the transaction when it matures. As a general matter, the proposed rule would have treated secured lending transactions and unsecured lending transactions with financial sector counterparties the same. However, the proposed rule would have assigned a lower RSF factor to such short-term lending transactions that are secured by rehypothecatable level 1 assets, relative to most other lending, because of a covered company's ability to monetize the level 1 liquid asset for the duration of the transactions.

A number of commenters requested that the agencies reduce or remove the proposed RSF factors for all short-term secured lending transactions to financial sector entities. These commenters argued that the RSF factor should match the zero percent ASF factor assigned to short-term secured funding transactions with financial sector entities, noting that the proposed asymmetrical treatment would prevent a covered company from using such short-term funding transactions wholly to fund its short-term lending transactions. Commenters asserted that this asymmetry would be overly punitive, impair a covered company's ability to conduct prudent short-term liquidity risk management, not accurately reflect collateral quality, and increase costs. Such increased costs, commenters contended, would cause covered companies to reduce such lending, resulting in a further contraction of the repo market, increased market volatility for the securities typically used as collateral, and have a negative impact on financial institutions that rely on the short-term funding market. Commenters also argued that the proposed RSF factors for short-term secured lending transactions to financial sector entities are unnecessary and overly burdensome because other regulatory measures sufficiently address the risks posed by these transactions. Several commenters argued that the proposed RSF treatment would reduce the competitiveness of covered companies relative to other market participants. Other commenters requested that the agencies reduce the RSF factors to align with other jurisdictions' implementation of the NSFR.

The agencies also received comments requesting a zero percent RSF factor be assigned to short-term secured lending transactions with financial sector entities secured by rehypothecatable level 1 liquid assets. One commenter argued that these transactions present few risks of disorderly or destabilizing unwinds due to the quality of the underlying collateral. Another commenter expressed concern that the proposed 10 percent RSF factor would incentivize a covered company to purchase on balance sheet level 1 liquid assets rather than borrow such assets through secured lending transactions to obtain more favorable RSF treatment, which would increase liquidity and interest rate risk as a result of holding the assets on balance sheet.

Covered companies may use short-term secured funding and lending transactions, such as repurchase agreements and reverse repurchase agreements, for collateral management and funding purposes as well as other business and risk management purposes. Short-term secured funding and lending transactions, however, can give rise to certain funding risks. For example, a covered company is exposed to risk of borrower default and fluctuation in the price of the underlying collateral. At the same time, a covered company may be incentivized to continue funding a certain portion of its lending under these transactions even as it loses access to its short term funding transactions. Although the agencies recognize that other regulations reduce certain risks associated with short-term secured lending transactions, the NSFR requirement is designed to directly measure and ensure the stability of covered companies' aggregate funding profile over a one-year horizon.

Consistent with the proposed rule, the final rule generally treats secured lending transactions with financial sector counterparties the same as unsecured lending to these counterparties based on their tenor and counterparty characteristics, described below. However, the agencies have revised the proposed rule by adding § ____.106(a)(1)(vii) to the final rule, which assigns an RSF factor of zero percent, rather than 10 percent, for short-term lending transactions with a financial sector entity secured by rehypothecatable level 1 liquid assets, as such short-term secured lending transactions present minimal risk to the covered company. Moreover, as further discussed in section X of this Supplementary Information section, a non-zero RSF factor on secured lending transactions secured with rehypothecateble level 1 liquid assets could also discourage intermediation in certain short-term secured lending markets. The calibration would also align the RSF factor for these loan receivables with the RSF factor for level 1 liquid assets that are held on the covered company's balance sheet.

b) 5 Percent RSF Factor

Committed Credit and Liquidity Facilities—RSF Factor and Undrawn Amount

Section ____.106(a)(2)(ii) of the proposed rule would have assigned a 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties.[145] The proposed rule

[143] *See* section VI of this Supplementary Information section for a description of the definition of "secured lending transaction" in § ____.3 of the LCR rule.

[144] The proposal would have assigned a 15 percent RSF factor to all other secured lending transactions to a financial sector counterparty with a remaining maturity of less than six months.

[145] The terms "credit facility," "liquidity facility," and "committed" are defined terms under § ____.3 of the LCR rule. As discussed in section

Continued

clarified that the ''undrawn amount'' for purposes of the NSFR rule would be the amount that could be drawn within one year of the calculation date, but would not have included amounts that could only be drawn contingent upon contractual milestones or events that cannot reasonably be expected to occur within one year.

The agencies did not receive any comments on the proposed 5 percent RSF factor assigned to the undrawn amount of committed credit and liquidity facilities. However, several commenters requested the agencies modify the proposed rule to permit a covered company to reduce the undrawn commitments by the value of collateral that it receives to secure its committed facility, particularly collateral in the form of HQLA, for purposes of determining the applicable RSF amount. Commenters noted that the LCR rule permits covered companies to net, for purposes of calculating outflow amounts, level 1 and level 2A liquid assets that secure a committed credit or liquidity facility against the undrawn amount of the facility, and requested similar treatment under the NSFR rule.

Consistent with the proposed rule, the final rule does not permit a covered company to net collateral against undrawn amounts of commitments.[146] As described in section V.C of this Supplementary Information section, unlike the LCR rule, which addresses the risk of cash outflows and permits a covered company to net certain high-quality collateral against the undrawn amount of a committed credit or liquidity facility because such collateral may be used to meet its short-term obligations,[147] the NSFR measures the funding profile of a covered company's balance sheet and any draw upon a committed facility would become an asset (*i.e.,* a loan) on a covered company's balance sheet that generally would increase the covered company's stable funding needs. Similarly, collateral obtained pursuant to a default of a draw on a secured facility would add to a covered company's balance sheet and require stable funding.

One commenter requested clarification of the term ''undrawn amount'' and the treatment of funded commitments that result in contractually offsetting collateral inflows. The commenter also asked what level of support would be required to demonstrate an amount is excludable from the undrawn amount because it is contingent upon events not reasonably expected to occur within the NSFR's time horizon. The agencies are clarifying that the undrawn amount is the maximum amount that could be drawn under the agreement within the NSFR requirement's one-year time horizon under all reasonably possible circumstances.[148] The undrawn amount does not include amounts that are contingent on the occurrence of a contractual milestone or other events that cannot reasonably be expected to be reached or occur within the one-year time horizon. For example, if a construction company can draw a certain amount from a credit facility only upon meeting a construction milestone that cannot reasonably be expected to be reached within one year, such as entering the final stage of a multi-year project that has just begun, then the undrawn amount would not include the amount that would become available only upon entering the final stage of the project.

Similarly, a letter of credit that meets the definition of credit or liquidity facility may entitle a seller to obtain funds from a covered company if a buyer fails to pay the seller. If the seller is legally entitled to obtain the funds available under the letter of credit as of the calculation date (because the buyer has defaulted) or if the buyer should reasonably be expected to default within the NSFR's one-year time horizon, then the funds available under the letter of credit are undrawn amounts. However, if, under the terms of the letter of credit, the seller is not legally entitled to obtain funds from the covered company as of the calculation date because the buyer has not failed to perform under the agreement with the seller, and the covered company does not reasonably expect nonperformance within the NSFR's one-year time horizon, then the funds potentially available under the letter of credit are not undrawn amounts.

The agencies expect that a covered company would conduct an analysis of the likelihood of contingent contractual milestones or other events to be reached or occur, which may include reliance on historical experience, including consideration of both internal and industry-wide data. The agencies also expect a covered company to be able to provide sufficient supporting documentation that justifies its assessment that a contractual milestone or other event cannot reasonably be expected to be reached or occur within the one-year time horizon. The sufficiency and appropriateness of that documentation would be reviewed by supervisory staff.

The agencies are finalizing the assigned 5 percent RSF factor to the undrawn amount of committed credit and liquidity facilities that a covered company provides to its customers and counterparties as proposed. The final rule requires a covered company to recognize committed facilities in its aggregate stable funding requirement to a limited extent, even though they are generally not included on a covered company's balance sheet. The 5 percent RSF factor is the lowest non-zero RSF factor and is applied uniquely to off-balance sheet commitments.

c) 15 Percent RSF Factor

The final rule applies a 15 percent RSF factor to unencumbered level 2A liquid assets held on a covered company's balance sheet and lending to financial counterparties that matures in less than six months, other than secured lending transactions backed by rehypothecatable level 1 liquid assets. Based on their liquidity characteristics, including their high credit quality, these assets may also not need to be funded for the entirety of the NSFR's one-year time horizon, and covered companies may have the ability to recognize inflows from such assets within one year across a range of market conditions.

Unencumbered Level 2A Liquid Assets

Section ____.106(a)(4)(i) of the proposed rule would have assigned a 15 percent RSF factor to level 2A liquid assets, as defined in § ____.20(b) of the LCR rule, but would not have taken into consideration the operational requirements described in § ____.22 or the level 2 cap in § ____.21. As set forth in the LCR rule, level 2A liquid assets

VI.A of this Supplementary Information section, the final rule modifies the definition of ''committed.''

[146] The NSFR requirement generally does not take into account prospective inflows arising from the receipt of collateral. As explained further below in section VII.E of this Supplementary Information section, the NSFR requirement's treatment of derivative transactions permits the receipt of certain eligible collateral to be netted against the derivatives asset amount. Recognition in the NSFR requirement of the funding value of collateral for derivatives transactions is appropriate notwithstanding the rule's general prohibition against netting collateral because of the special role of derivatives margin and because the rule sets forth a number of restrictions and contractual netting criteria for certain collateral to be netted against the derivatives asset amount.

[147] *See* § ____.32(e)(3) of the LCR rule.

[148] For example, if the governing agreement provides that (1) the counterparty must liquidate collateral securing the facility before drawing on the facility and (2) the covered company must provide the amount available under the facility less the proceeds of the collateral sale, the undrawn amount would be the full value of the amount available under the facility (*i.e.,* not reduced by the proceeds of the collateral sale). This reflects the contractual possibility that the covered company may still be required to provide the counterparty the full value allowed under the facility, even though under many circumstances the covered company's exposure would be reduced.

include certain obligations issued or guaranteed by a Government Sponsored Enterprise (GSE) and certain obligations issued or guaranteed by a sovereign entity or a multilateral development bank. The LCR rule requires these securities to be liquid and readily-marketable, as defined in § ____.3, to qualify as level 2A liquid assets.

Commenters requested more favorable treatment for certain GSE securities under the NSFR rule. Several commenters recommended that mortgage-backed securities issued by the Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) should receive the same 5 percent RSF factor proposed for level 1 liquid assets, as long as Fannie Mae and Freddie Mac remain under the conservatorship of the Federal Housing Finance Agency (FHFA). One commenter argued these securities exhibit favorable liquidity characteristics and are low risk, and expressed concern that the proposed 15 percent RSF factor would discourage banks from purchasing these mortgage-backed securities, which would result in increased mortgage interest rates for homeowners. Another commenter noted that the European Union allows covered bonds with similar liquidity characteristics to qualify as level 1 liquid assets. Another commenter recommended that FHLB consolidated debt obligations should receive a 5 percent RSF factor based on the historical performance of these obligations during financial stress and their strong market attributes, including narrow bid-ask spreads, numerous active and diverse market makers, timely market prices, and high trading volumes.

Similar to other HQLA, level 2A liquid assets held by covered companies on their balance sheets have a broad range of residual maturities and are held for a variety of purposes. For example, covered companies hold such securities as long-term investments, as instruments to maintain medium-term hedges or as part of the covered company's eligible HQLA under the LCR rule. Holdings of unencumbered level 2A liquid assets on a covered company's balance sheet present only modest risks to the covered company or financial system in the event of funding disruptions. A 15 percent RSF factor is appropriate for GSE-issued or GSE-guaranteed obligations because they have high credit quality and are traded in deep, liquid markets. For example, mortgage-backed securities issued by GSEs have a higher credit quality, higher average daily trading volume, and lower bid-ask spreads relative to corporate debt securities, which are assigned a higher RSF factor. However, these securities have different liquidity characteristics than U.S. Treasury securities and other level 1 liquid assets. For instance, GSE obligations are not subject to the same unconditional sovereign guarantee as certain securities that are level 1 liquid assets, which are assigned a zero percent RSF factor. Moreover, while certain GSEs are currently operating under the conservatorship of the FHFA, GSE obligations are not explicitly guaranteed by the full faith and credit of the United States, and they should not receive the same treatment as obligations that have such an explicit guarantee. This treatment is consistent with the agencies' risk-based capital rule, which differentiates between obligations and guarantees of U.S. GSEs, including those operating under conservatorship of FHFA and securities explicitly guaranteed by the full faith and credit of the United States.[149] With respect to covered bonds, the agencies have determined that covered bonds do not meet the liquid and readily-marketable standard in the United States and thus do not meet the liquidity characteristics to qualify as a level 1 or level 2A liquid asset. The final rule adopts a 15 percent RSF factor for level 2A liquid assets as proposed.

Secured Lending Transactions Secured by All Other Collateral and Unsecured Wholesale Lending With a Financial Sector Entity or a Subsidiary Thereof That Mature Within Six Months

Section ____.106(a)(4)(ii) of the proposed rule would have assigned a 15 percent RSF factor to a secured lending transaction with a financial sector entity or a consolidated subsidiary thereof that is secured by assets other than rehypothecatable level 1 liquid assets and that matures within six months of the calculation date. The proposal also would have assigned a 15 percent RSF factor to unsecured wholesale lending to a financial sector entity or a consolidated subsidiary thereof that matures within six months of the calculation date.[150]

The comments received by the agencies regarding the treatment of secured lending transactions generally, as well as the agencies' response to the comments, are summarized above in section VII.D.3.a of this Supplementary Information section. The agencies did not receive any comments specific to the proposed treatment of unsecured wholesale lending to a financial sector entity or a subsidiary thereof that matures within six months.

The final rule adopts the proposed treatment for these transactions without any modification. A 15 percent RSF factor reflects that these transactions contribute less to a covered company's aggregate funding requirement because of their shorter tenors relative to loans with a longer remaining maturity, when considering cash inflows upon maturity of the loan. In addition, these loans also generally present lower reputational risk if a covered company chooses not to roll over the transaction because of the financial nature of the counterparty. For these reasons, a 15 percent RSF factor for these assets is lower than the RSF factor assigned to longer-term secured transactions to similar counterparties or to similar-term loans to non-financial counterparties. However, the assignment of a higher RSF factor to these assets compared to similar short-term secured lending transactions to financial counterparties that are secured by rehypothecatable level 1 liquid assets reflects the covered company's more limited ability to monetize assets that are not level 1 liquid assets for the duration of the transaction.

d) 50 Percent RSF Factor

Based on the NSFR's one-year time horizon, the final rule applies the median RSF factor of 50 percent to unencumbered level 2B liquid assets of all maturities. Covered companies may not need to fund these securities for the entirety of the NSFR's one-year time horizon, and covered companies may have the ability to recognize inflows from such assets within one year, each across a range of market conditions.

The final rule also applies a 50 percent RSF factor to most loans with remaining maturities of less than one year and to operational deposit placements. Lending that matures in less than one year is less likely to require funding for a full year relative to loans that have residual maturities of one year or more, which generally receive a higher RSF factor under the final rule. While certain loans that mature in less than one year may be renewed, covered companies are generally more likely to receive cash inflows when these loans mature compared to longer maturities. With respect to operational deposit placements, the 50 percent RSF factor reflects that covered companies as recipients of operational services likely would face limitations to making significant changes to their operational activities during the NSFR's one-year

[149] 12 CFR 3.32 (OCC); 12 CFR 217.32 (Board); 12 CFR 324.32 (FDIC).

[150] *See supra* note 102.

time horizon across a range of market conditions.

Unencumbered Level 2B Liquid Assets

Section ____.106(a)(5)(i) of the proposed rule would have assigned a 50 percent RSF factor to level 2B liquid assets, as defined in § ____.20(c) of the LCR rule, but without taking into consideration the operational requirements described in § ____.22 or the level 2 caps in § ____.21. At the time of proposal, level 2B liquid assets included certain publicly traded corporate debt securities and publicly traded common equity shares that are liquid and readily-marketable. To qualify as a level 2B liquid asset, the asset must meet certain criteria under § ____.20 of the LCR rule. For example, among other criteria, equity securities must be part of a major index and both corporate debt securities and municipal obligations must be ''investment grade'' under 12 CFR part 1.

Subsequent to the issuance of the proposed rule, EGRRCPA was enacted, which requires the agencies to treat certain municipal obligations as a level 2B liquid asset for purposes of the LCR rule and any other regulation that incorporates a definition of the term ''high-quality liquid asset'' or substantially similar term.[151] Consistent with EGRRCPA, the agencies amended the LCR rule to treat municipal obligations that are investment grade and liquid and readily-marketable as level 2B liquid assets.[152]

Several commenters expressed concern that the proposed RSF factor for level 2B liquid assets was too high and argued that these securities should be considered more liquid over the NSFR's one-year horizon. For example, one commenter requested a 15 percent RSF factor for equity securities that are included in major market indices, such as exchange-traded funds that track a major market index. Some commenters recommended revised RSF treatment for level 2B liquid asset eligible corporate debt securities. For example, some commenters requested that the RSF factor for corporate debt securities be more granular and calibrated based on the tenor of the securities, the issuer's creditworthiness, or the desired tenor of funding used to purchase the securities. One commenter requested eliminating the requirement that a corporate debt security be investment grade.[153]

Another commenter recommended the agencies adopt the RSF factors assigned to various types of corporate debt in the Basel NSFR standard. One commenter recommended that the agencies more closely align the RSF factor for these assets to the market haircuts in secured funding markets. Another commenter expressed concern that the proposed RSF treatment would make it more expensive for banking organizations to hold debt and equity securities intended for trading, which would result in decreased willingness to hold inventories and negatively impact capital markets. The commenter asserted that, given the importance of capital markets in the United States, the proposed RSF factor would place the United States at a competitive disadvantage to other jurisdictions.

The final rule maintains as proposed the 50 percent RSF factor for level 2B liquid assets, which include certain investment grade publicly traded corporate debt securities and municipal obligations[154] and certain publicly traded common equity shares included on the Russell 1000 or an index that a foreign supervisor recognizes for purposes of including equity shares in level 2B liquid assets under applicable regulatory policy of a foreign jurisdiction. As described in section V.C of this Supplementary Information section, the final rule uses definitions common to the LCR rule to increase the efficiency of the rule. The agencies did not propose and the final rule does not adopt any changes to the definition of level 2B liquid assets. The agencies, therefore, are not changing the requirements for corporate debt securities to qualify as a level 2B liquid asset. Such changes would be outside the scope of this rulemaking. Assets that meet the definition of level 2B liquid assets have distinctive liquidity characteristics as described in the LCR rule, which include either relatively higher credit risk, lower trading volumes, or elevated price volatility across market conditions when compared to level 1 and level 2A liquid assets. These securities also have relatively greater liquidity relative to assets that are not HQLA under the LCR rule. For these reasons, the RSF factor assigned to level 2B liquid assets is materially higher than the RSF factor of 15 percent applied to level 2A liquid assets, but lower than the RSF factor applied to securities that do not qualify as HQLA.

Covered companies may be holding level 2B liquid assets on balance sheet at a calculation date that have a wide range of residual maturities and for a range of purposes, each of which may require various contractual or anticipated holding periods. While some portion of level 2B liquid assets may mature or be contractually scheduled to be sold within one year, a covered company may need to fund certain of these securities over a one-year time horizon. Similar to level 2A liquid assets, covered companies may hold these securities for investment purposes or as part of a covered company's HQLA amount. Over a range of market conditions, a covered company may be generally less likely to have to fund these securities for one year compared to securities that do not qualify as HQLA. For the reasons above, it is appropriate for the RSF factor applied to level 2B liquid assets to be materially higher than the RSF factor of 15 percent applied to level 2A liquid assets but lower than that applied to securities that do not qualify as HQLA.

In response to commenters' requests for additional granularity, the agencies note that the purpose of the NSFR is to provide a broad, standardized measure of funding stability that can be compared across covered companies. As discussed in section V.C, to achieve this purpose, the final rule uses a small number of standardized maturity buckets rather than using granular maturity buckets of debt instruments or the funding used to purchase such assets. In addition, the final rule does not differentiate between assets based on other difficult to monitor criteria, such as a covered company's intent for holding or funding the asset or the characteristics of the issuer, because to do so would require the agencies to make determinations about each covered company's intent or the credit risk of each issuer. Such individualized determinations would be contrary to the NSFR's purpose as a standardized measure. In addition, contrary to commenters' concerns, the agencies expect that the final rule will strengthen the U.S. financial system, including capital markets, by ensuring banking organizations maintain sufficiently stable funding on an ongoing basis.

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[151] Public Law 115–174, 132 Stat. 1296–1368 (May 24, 2018).

[152] *See* 84 FR 25975 (June 5, 2019). As a result, the agencies are not also finalizing proposed § ____.106(a)(5)(iv).

[153] Pursuant to the LCR rule, corporate debt securities must be investment grade in order to qualify as a level 2B liquid asset. 12 CFR 249.20(c)(1)(i).

[154] Section ____.106(a)(5)(iv) of the proposed rule, which would have assigned a 50 percent RSF factor to general obligation securities of a public sector entity, is removed because such securities now are encompassed by the definition of municipal obligations in § ____.3 of the LCR rule. Consistent with section 403 of EGRRCPA, § ____.3 of the LCR rule defines a ''municipal obligation'' as ''an obligation of (1) a state or any political subdivision thereof, or (2) any agency or instrumentality of a state or any political subdivision thereof.''

Secured Lending Transactions and Unsecured Wholesale Lending to a Financial Sector Entity or a Subsidiary Thereof or a Central Bank That Mature in Six Months or More, But Less Than One Year

Section ____.106(a)(5)(ii) of the proposed rule would have assigned a 50 percent RSF factor to a secured lending transaction or unsecured wholesale lending transaction that matures in six months or more, but less than one year from the calculation date, where the counterparty is a financial sector entity or a consolidated subsidiary thereof or the counterparty is a central bank.[155] As discussed above, a covered company faces lower reputational risk if it chooses not to roll over secured or unsecured loans to financial counterparties or claims on a central bank than it would with loans to non-financial counterparties. Even though loans in this category have terms greater than six months (and liquidity from principal repayments will not be available in the near term) these loans mature within the NSFR's one-year time horizon so the proposed rule would not have required them to be fully supported by stable funding. For the reasons discussed in the proposal, the agencies are finalizing a 50 percent RSF factor for these transactions as proposed.

Operational Deposits Held at Financial Sector Entities

Section ____.106(a)(5)(iii) of the proposed rule would have assigned a 50 percent RSF factor to an operational deposit, as defined in § ____.3 of the LCR rule, placed by the covered company at a financial sector entity. Consistent with the reasoning for the ASF factor assigned to operational deposits placed at a covered company, described in section VII.C.3.d of this Supplementary Information section, such operational deposits placed by a covered company are less readily monetizable by the covered company compared to non-operational placements. These deposits are placed for operational purposes, and covered companies likely would face legal or operational limitations to making significant withdrawals during the NSFR's one-year time horizon. While the agencies received comments addressing the ASF factor assigned to operational deposits received by a covered company, as discussed above at section VII.C.3.d, the agencies did not receive any comments addressing the RSF factor assigned to operational deposits placed by a covered company at an unaffiliated financial sector entity. For the reasons discussed in the proposed rule, the final rule adopts the 50 percent RSF factor for operational deposits placed by a covered company at another financial sector entity as proposed.

Secured Lending Transactions and Unsecured Wholesale Lending to Counterparties That Are Not Financial Sector Entities and Are Not Central Banks and That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to lending to a wholesale customer or counterparty that is not a financial sector entity or central bank, including a non-financial corporate, sovereign, or public sector entity, that matures in less than one year from the calculation date. Unlike with lending to financial sector entities and central banks, the proposed rule would have assigned the same RSF factor to lending to these entities with a remaining maturity of less than six months as it would have assigned to lending with a remaining maturity of six months or more, but less than one year. The proposed rule would not have required this lending to be fully supported by stable funding based on its maturity within the NSFR's one-year time horizon and the assumption that a covered company may be able to reduce its lending to some degree over the NSFR's one-year time horizon. However, the proposed rule's assignment of a 50 percent RSF factor reflected the stronger incentives that a covered company is likely to have to continue to lend to these wholesale counterparties due to reputational risk and a covered company's need to maintain its franchise value, even when the lending is scheduled to mature in the nearer term, as discussed in section VII.D.2.c of this Supplementary Information section. The agencies did not receive any comments addressing the proposed RSF factor assigned to this category. For the reasons discussed in the proposal, the agencies are adopting this provision as proposed.[156]

Lending to Retail Customers and Counterparties That Matures in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to lending to retail customers or counterparties (including certain small businesses), as defined in § ____.3 of the LCR rule, that matures less than one year from the calculation date for the same reputational and franchise value maintenance reasons for which it would have assigned a 50 percent RSF factor to lending to wholesale customers and counterparties that are not financial sector entities or central banks. The agencies did not receive any comments specific to the RSF factor assigned to this asset category. For the reasons described in the proposed rule, the agencies are adopting this provision as proposed.[157]

All Other Assets That Mature in Less Than One Year

Section ____.106(a)(5)(v) of the proposed rule would have assigned a 50 percent RSF factor to all other assets that mature within one year of the calculation date but are not described in the categories above. The shorter maturity of an asset in this category reduces a covered company's funding needs, since the asset may not need to be retained on the covered company's balance sheet past maturity and provides for cash inflows upon maturity during the NSFR's one-year time horizon. However, a covered company generally may be less able to monetize these assets due to their lower credit quality and their relevant market characteristics as compared to the enumerated asset classes that are assigned lower RSF factors.

One commenter expressed concern that this category would capture asset-backed commercial paper that is fully supported by a credit or liquidity facility provided by another bank and has a maturity of six months or less, while unencumbered loans to banks with maturities of less than six months are assigned a 15 percent RSF factor. The commenter argued that a covered company's risk exposure for purchasing asset-backed commercial paper that is fully supported by a facility provided by a bank is equivalent to its risk exposure for a loan to another bank. Accordingly, the commenter argued that such asset-backed commercial paper should receive the same 15 percent RSF factor as a short-term loan to a financial sector entity. Another commenter argued that the RSF factor assigned to commercial

[155] Section ____.106(a)(5)(ii) of the final rule does not apply to an operational deposit placed at a financial sector entity or consolidated subsidiary thereof. The treatment of such an operational deposit is covered by § ____.106(a)(4)(iii) of the final rule.

[156] This provision is adopted at § ____.106(a)(4)(iv)(A) of the final rule.

[157] This provision is adopted at § ____.106(a)(4)(iv)(B) of the final rule.

paper should be based on the creditworthiness of the issuing company.

In response, the agencies note that the final rule generally assigns RSF factors to exposures as of a point in time. For holdings of asset-backed commercial paper that are supported by a credit or liquidity facility provided by a bank, a covered company would not have an exposure to a financial sector entity unless the facility has been drawn upon; therefore, such asset-backed commercial paper is not treated as a loan to a financial sector entity under the final rule. Although the contractual features of an individual asset or the credit worthiness of its issuer can affect the funding needs related to holding that particular asset, the final rule is intended to provide a standardized measure of funding stability that can be compared across covered companies. Differentiating between holdings of commercial paper based on contractual features or the issuer's credit worthiness would require the agencies to make determinations based on each contractual arrangement and the credit risk of each issuer. Such individualized determinations would be contrary to the NSFR's purpose as a standardized measure.

For the reasons discussed in the proposed rule, the agencies are finalizing this provision as proposed.[158]

e) 65 Percent RSF Factor

Under the final rule, loans that mature in one year or more (other than operational deposit placements) are assigned higher RSF factors than loans that mature in less than one year. The final rule assigns a 65 percent RSF factor to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent under the agencies' risk-based capital rule and loans to retail and non-financial wholesale counterparties that mature in one year or more and are assigned a risk weight of no greater than 20 percent.

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 50 Percent

Section ____.106(a)(6)(i) of the proposed rule would have assigned a 65 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of no greater than 50 percent under subpart D of the agencies' risk-based capital rule. Under the agencies' risk-based capital rule, residential mortgage exposures secured by a first lien on a one-to-four family property that are prudently underwritten, are not 90 days or more past due or carried in nonaccrual status, and that are neither restructured nor modified generally receive a 50 percent risk weight.[159]

Some commenters argued that the proposed rule's treatment for mortgage loans would be overly conservative in comparison to the 15 percent RSF factor assigned to certain GSE-issued or GSE-guaranteed mortgage-backed securities. One commenter noted that prudently underwritten mortgages can be pooled into GSE or private label mortgage-backed securities and argued that, as a result, they should receive an RSF factor no higher than 50 percent. Similarly, another commenter noted that single family mortgage loans should not receive an RSF factor above 50 percent because such loans can be used as collateral for FHLB loans. One commenter suggested that the proposed RSF factor for mortgage loans under the NSFR could encourage banks to originate and sell loans rather than hold them in portfolio.

Mortgage lending to households is an important form of financial intermediation conducted by banking organizations, including during times of funding disruptions. To support financial intermediation, and based on the residual maturity and other liquidity characteristics of mortgage loans, the final rule requires individual mortgages that meet certain criteria to be supported by a greater amount of stable funding than assets assigned a 50 percent RSF factor. Individual mortgage loans have substantially different credit and liquidity characteristics than mortgage-backed securities eligible for a lower RSF factor. In particular, GSE-issued and GSE-guaranteed securities have a much higher trading volume than individual mortgage loans. Mortgage loans also do not have the same liquidity characteristics as assets that are assigned a 50 percent RSF factor, such as assets that are either securities that satisfy certain benchmark market thresholds or assets with relatively short maturity. In contrast, mortgage loans in the 65 percent RSF category mature in more than one year from the calculation date, and typically have many years until they mature. Prior to maturity, it may be difficult to monetize an individual mortgage loan in a timely fashion or without incurring a relatively higher haircut in a secured funding transaction compared to HQLA.

In addition, the agencies acknowledge that covered companies will take into account the final rule's assignment of a 65 percent RSF factor when deciding whether to sell mortgage loans or retain them in portfolio. However, covered companies may choose to retain or sell mortgage loan originations for a variety of reasons including earnings, liquidity, and capital management. Accordingly, the 65 percent RSF factor for mortgage loans would not significantly impact a covered company's decision to retain a mortgage loan in portfolio. The primary purpose of the final rule is to ensure that a banking organization's assets are adequately funded. For the reasons described above, the final rule assigns a 65 percent RSF factor to mortgage loans that meet certain criteria as proposed.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of No Greater Than 20 Percent

Section ____.106(a)(6)(ii) of the proposed rule would have assigned a 65 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor, that mature one year or more from the calculation date, that are assigned a risk weight of no greater than 20 percent under subpart D of the agencies' risk-based capital rule, and where the borrower is not a financial sector entity or a consolidated subsidiary thereof.[160] As discussed in the proposed rule, these loans generally have more favorable liquidity characteristics because of their lower credit risk than loans that have a risk weight greater than 20 percent under the agencies' risk-based capital rule. However, these loans require more stable funding than loans that mature and provide liquidity within the NSFR's one-year time horizon. The agencies did not receive any comments on this provision. For the reasons discussed in

[158] This provision is adopted at § ____106(a)(4)(iv) of the final rule.

[159] *See* 12 CFR 3.32(g) (OCC); 12 CFR 217.32(g) (Board); 12 CFR 324.32(g) (FDIC). The final rule is consistent with the Basel NSFR standard, which assigns a 65 percent RSF factor to residential mortgages that receive a 35 percent risk weight under the Basel II standardized approach for credit risk, because the agencies' risk-based capital rule assigns a 50 percent risk weight to residential mortgage exposures that meet the same criteria as those that receive a 35 percent risk weight under the Basel II standardized approach for credit risk.

[160] *See* 12 CFR 3.32(g) (OCC); 12 CFR 217.32(g) (Board); 12 CFR 324.32(g) (FDIC). This aspect of the proposed rule would have been consistent with the Basel NSFR standard, which assigns a 65 percent RSF factor to loans that receive a 35 percent or lower risk weight under the Basel II standardized approach for credit risk, because the standardized approach in the agencies' risk-based capital rule does not assign a risk weight that is between 20 and 35 percent to such loans.

the proposed rule, the agencies are adopting this provision as proposed.

f) 85 Percent RSF Factor

The final rule assigns an 85 percent RSF factor to all other retail mortgages not assigned an RSF factor above, all other loans to non-financial sector counterparties, publicly traded common equity shares that are not HQLA, other non-HQLA securities that mature in one year or more, and certain commodities.

Retail Mortgages That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 50 Percent

Section ____.106(a)(7)(i) of the proposed rule would have assigned an 85 percent RSF factor to retail mortgages that mature one year or more from the calculation date and are assigned a risk weight of greater than 50 percent under subpart D of the agencies' risk-based capital rule. As noted above, under the agencies' risk-based capital rule, a retail mortgage is assigned a 50 percent risk weight if it is secured by a first lien on a one-to-four family property, prudently underwritten, not 90 days or more past due or carried in nonaccrual status, and has not been restructured or modified.[161] Mortgages that do not meet these criteria are assigned a risk weight of greater than 50 percent.[162] The proposed rule would have treated these mortgages as generally riskier than mortgages that receive a risk weight of 50 percent or less and would have required them to be supported by more stable funding because of the possibility that they would be more difficult to monetize.

For the reasons discussed in the proposed rule, the final rule assigns an 85 percent RSF factor to these mortgage exposures as proposed.

Secured Lending Transactions, Unsecured Wholesale Lending, and Lending to Retail Customers and Counterparties That Mature in One Year or More and Are Assigned a Risk Weight of Greater Than 20 Percent

Section ____.106(a)(7)(ii) of the proposed rule would have assigned an 85 percent RSF factor to secured lending transactions, unsecured wholesale lending, and lending to retail customers and counterparties that are not otherwise assigned an RSF factor (such as retail mortgages), that mature one year or more from the calculation date, that are assigned a risk weight greater than 20 percent under subpart D of the agencies' risk-based capital rule, and for which the borrower is not a financial sector entity or consolidated subsidiary thereof.

Several commenters requested lower RSF factors for certain lending transactions. For example, a few commenters argued that commercial real estate mortgages should be assigned an RSF factor lower than 85 percent because commercial real estate loans are low risk, and covered companies already are subject to regulatory requirements related to their real estate portfolios, which renders an RSF requirement unnecessary. Another commenter requested the agencies reduce the RSF factor for credit card exposures to customers who pay their entire account balances each month. This commenter argued that credit card exposures to these customers are analogous to short-term loans that receive a 50 percent RSF factor.

The final rule retains the 85 percent RSF factor for this category of lending. These loans mature in one year or more and have less favorable liquidity and market characteristics, including greater credit risk associated with higher risk weights under the agencies' risk-based capital rule. Commercial real estate loans generally present a higher risk profile, heightened vulnerability to changing market conditions, and greater monetization difficulty than loans that are assigned a lower RSF factor. Although commercial real estate lending is subject to other regulations designed to promote safe and sound lending practices, these regulations do not specifically address the funding risks presented by these loans. Accordingly, the agencies consider the 85 percent RSF factor appropriate for these loans in order to ensure covered companies maintain sufficient funding to support these assets.

In addition, the agencies decline to adopt a commenter's suggestion to apply a lower RSF factor to credit card exposures to customers who repay their entire account balances each month. Although some credit card customers fully and regularly repay account balances, assigning different RSF factors to credit card exposures based on a covered company's assumptions of a credit card customer's future repayment behavior would be inconsistent with the NSFR's purpose as a standardized measure of funding stability. Accordingly, the final rule assigns an 85 percent RSF factor to all credit card exposures that mature in one year or more and have a risk weight of greater than 20 percent under the agencies' risk-based capital rule as proposed. The agencies are clarifying, however, that contractual minimum payment amounts due on credit card exposures would generally be considered to be a loan to a retail customer maturing in less than one year and would be subject to the 50 percent RSF factor.

Publicly Traded Common Equity Shares That Are Not HQLA and Other Securities That Mature in One Year or More That Are Not HQLA

Sections ____.106(a)(7)(iii) and (iv) of the proposed rule would have assigned an 85 percent RSF factor to publicly traded common equity shares that are not HQLA and other non-HQLA securities that mature one year or more from the calculation date. For example, these assets would have included equity shares not listed on a recognized exchange, low rated corporate debt securities and municipal obligations, private-label mortgage-backed securities, and other types of asset-backed securities.

As described above, commenters generally expressed concern that the proposed rule's assignment of RSF factors to equity shares was overly conservative and not reflective of market haircuts for such securities. Commenters, however, also expressed specific concerns related to the 85 percent RSF factor assigned to non-HQLA publicly traded common equity shares and other securities that mature in one year or more. One commenter expressed concern that higher RSF factors for non-HQLA securities would be procyclical and incentivize covered companies to sell non-HQLA securities in favor of HQLA securities in a crisis. Other commenters argued that even though equity and debt securities issued by a financial sector entity are precluded from qualifying as HQLA, these assets should receive a lower RSF factor because there is no empirical basis for assigning a higher RSF factor to securities issued by a financial sector entity than to securities issued by a non-financial sector entity. These commenters also asserted that the 85 percent RSF factor would adversely impact capital flows to financial sector entities, which would impair their ability to provide market-making and other services. Another commenter argued that the 85 percent RSF factor is overly conservative because it fails to take into account a bank's ability to mitigate its exposure risk with liquid options, swaps, or future instruments.

Several commenters also requested that lower RSF factors be assigned to

[161] *See supra* note 159.

[162] Under the agencies' risk-based capital rule, the risk weight on mortgages may be reduced to less than 50 percent if certain conditions are satisfied. In these cases, the final rule assigns an RSF factor of 65 percent, which is the RSF factor assigned to retail mortgages that mature in one year or more and are assigned a risk weight of no greater than 50 percent. *See* 12 CFR 3.36 (OCC); 12 CFR 217.36 (Board); 12 CFR 324.36 (FDIC).

specific types of equities and securities. For example, one commenter recommended a 50 percent RSF factor for equities traded on an exchange that are included in certain global stock indexes. Other commenters requested lower RSF factors for certain private-label residential mortgage-backed securities, commercial mortgage backed securities, and certain asset-backed securities. Commenters argued that the 85 percent RSF factor was overly punitive and would discourage covered companies from holding these securities, which would impair the markets served by these securities. Some of these commenters argued that residential mortgage-backed securities, in particular, should receive the same RSF treatment as level 2 liquid assets consistent with the Basel NSFR standard and the EU NSFR rule. Other commenters requested lower RSF factors for certain traditional securitizations, which commenters asserted are safer assets as a result of certain changes to regulatory requirements and rating agency protocols. One commenter recommended the agencies examine recent initiatives by the BCBS and International Organizations of Securities Commission to identify specific securities that warrant lower RSF factors.

The final rule retains the 85 percent RSF factor for publicly traded securities that are not HQLA and mature in one year or more. Non-HQLA securities, including securities issued by financial sector entities, historically have demonstrated greater price volatility and lower marketability across market conditions than securities that qualify as HQLA. Given this historical experience, it is appropriate to assign a higher RSF factor to these securities than HQLA securities. Although a banking organization may have some ability to mitigate its risk exposure to these assets, the final rule is designed as a standardized measure of the stability of a covered company's funding profile and therefore does not take into account the company's idiosyncratic risk management practices. With respect to the concern that the 85 percent RSF factor would incentivize covered companies to liquidate non-HQLA during a stress period, the 85 percent RSF factor will reduce this risk because covered companies would be holding large amounts of stable funding to support these assets, decreasing the need to immediately monetize these assets.

For the reasons described above, the agencies decline to reduce the RSF factor for certain types of securities which are not eligible as HQLA, as requested by commenters. As previously explained, equities that are not HQLA generally exhibit less favorable liquidity characteristics relative to equities that qualify as HQLA, regardless of the country location of the index or exchange on which that equity is traded. Although specific issuances of private-label residential mortgage-backed securities, commercial mortgage backed securities, or asset-backed securities may exhibit liquidity characteristics similar to HQLA, the final rule assigns RSF factors based on asset class to ensure standardization and ease of comparability of the measure. These securities can exhibit high price volatility, depending on the performance of their underlying assets and specific contractual features. In addition, the bespoke characteristics of securitization structures may be tailored to a limited range of investors, which can limit a banking organization's ability to monetize a given securitization issuance. Although changes in regulatory requirements and rating agency protocols regulations may have reduced certain risks associated with certain securitizations, many of these assets do not have a proven history of liquidity. As a result, the final rule assigns an 85 percent RSF factor as proposed.

Commodities

Section ____.106(a)(7)(v) of the proposed rule would have assigned an 85 percent RSF factor to commodities held by a covered company for which a liquid market exists, as indicated by whether derivative transactions for the commodity are traded on a U.S. board of trade or trading facility designated as a contract market (DCM) under sections 5 and 6 of the Commodity Exchange Act [163] or on a U.S. swap execution facility (SEF) registered under section 5h of the Commodity Exchange Act.[164] The proposed rule would have assigned a 100 percent RSF factor to all other commodities held by a covered company. The proposed rule would have required a covered company to support its commodities positions with a substantial amount of stable funding because, in general, commodities as an asset class have historical material price volatility.

The proposed rule would have assigned an 85 percent RSF factor, rather than a 100 percent RSF factor, to commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF because the exchange trading of derivatives on a commodity tends to indicate a greater degree of standardization, fungibility, and liquidity in the market for the commodity.[165] As noted in the Supplementary Information section to the proposed rule, a market for a commodity for which a derivative transaction is traded on a U.S. DCM or U.S. SEF is more likely to have established standards (for example, with respect to different grades of commodities) that are relied upon in determining the commodities that can be provided to effect physical settlement under a derivative transaction. In addition, the exchange-traded market for a commodity derivative transaction generally increases price transparency for the underlying commodity. A covered company could therefore more easily monetize a commodity that meets this requirement than a commodity that does not, either through the spot market or through derivative transactions based on the commodity. The proposed rule accordingly would have required less stable funding to support holdings of commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF than it would have required for other commodities, which a covered company may not be able to monetize as easily.

One commenter argued that the stated rationale for assigning an 85 percent RSF factor to commodities traded on U.S. exchanges should apply equally to commodities traded on non-U.S. exchanges. The commenter requested that rather than assigning a 100 percent RSF factor to commodities traded on non-U.S. exchanges, the final rule assign an 85 percent RSF factor to commodities that are traded on non-U.S. exchanges that are registered in non-U.S. jurisdictions in order to provide consistent treatment with commodities traded on a U.S. exchange. These commodities, the commenter argued, have similar liquidity characteristics to commodities traded on U.S. exchanges.

As noted by the commenter, commodities for which derivative transactions are traded on exchanges registered outside the United States may have a similar degree of liquidity as commodities for which derivative transactions are traded on a U.S. DCM or U.S. SEF. To provide consistent treatment of commodities traded on U.S. and non-U.S. exchanges, the final rule assigns an 85 percent RSF factor to any commodity held by a covered company for which derivative transactions are

[163] 7 U.S.C. 7 and 7 U.S.C. 8.

[164] 7 U.S.C. 7b–3.

[165] Examples of commodities that currently meet this requirement are gold, oil, natural gas, and various agricultural products.

authorized to be traded on an U.S. DCM, U.S. SEF, or any other exchange, whether located in the United States or in a jurisdiction outside of the United States.[166] The agencies note that covered companies are limited in the types of physical commodities activities in which they are able to engage. For example, the Board has approved requests from certain financial holding companies to engage in certain physical commodities trading activities for which derivative contracts are approved for trading on a U.S. futures exchange by the U.S. Commodity Futures Trading Commission (CFTC) (unless specifically excluded by the Board) or other commodities that have been specifically authorized by the Board under section 4(k)(1)(B) of the Bank Holding Company Act of 1956.[167] The legal restrictions applicable to bank holding companies and financial holding companies under the BHC Act (as well as restrictions applicable to national banks and state-chartered banks under the National Bank Act and the FDI Act, respectively) continue to apply, and the final rule does not grant a covered company the authority to engage in any commodities activities not otherwise permitted by applicable law.

g) 100 Percent RSF Factor

All Other Assets Not Described Above

Section ____.106(a)(8) of the proposed rule would have assigned a 100 percent RSF factor to all other performing assets not otherwise assigned an RSF factor under § ____.106 or § ____.107. These assets include, but are not limited to, loans to financial institutions (including to an unconsolidated affiliate) that mature in one year or more; assets deducted from regulatory capital;[168] common equity shares that are not traded on a public exchange; unposted debits; and trade date receivables that have failed to settle within the lesser of the market standard settlement period for the relevant type of transaction, without extension of the standard settlement period, and five business days from the date of the sale.

The agencies received a number of comments suggesting that certain trade date receivables receiving a 100 percent RSF factor under the proposed rule should receive a lower RSF factor. As described above, several commenters opposed the proposal's assignment of a 100 percent RSF factor to trade date receivables that fail to settle within the lesser of five business days and the standard settlement period but are still expected to settle. Another commenter argued that, in the case of trade date receivables generated by primary offerings, settlement delays reflect unique timing needs rather than increased funding risk. Accordingly, the commenter recommended that the agencies assign a zero percent RSF factor to trade date receivables generated by primary offering settlements for the duration of the primary offering.

As described above, the agencies are amending the final rule to assign a zero percent RSF factor to trade date receivables due to a covered company that result from the sale of a financial instrument, foreign currency, or commodity that are required to settle no later than the market standard for the particular instrument, and have yet to settle but are not more than five business days past the scheduled settlement date. The final rule otherwise retains the assignment of a 100 percent RSF factor as proposed. Assets in this category do not consistently exhibit liquidity characteristics that would suggest a covered company should support them with anything less than full stable funding.

Nonperforming Assets RSF Factor

Section ____.106(b) of the proposed rule would have assigned a 100 percent RSF factor to any asset on a covered company's balance sheet that is past due by more than 90 days or that has nonaccrual status. Because these assets have an elevated risk of non-payment, these assets tend to be illiquid regardless of their tenor. The agencies did not receive any comments on this aspect of the proposal. Consistent with the proposed rule, the final rule requires a covered company to assign a 100 percent RSF factor to nonperforming assets.[169]

h) RSF Factors for Encumbered Balance Sheet Assets

Consistent with the criteria used for assigning RSF factors described above, the RSF factor that the proposed rule would have assigned to an asset would have depended on whether or not the asset is encumbered and the length of any encumbrance. As discussed in section VI of this Supplementary Information section, the proposed rule would have defined ''encumbered'' (a new defined term under § ____.3), as the converse of the term ''unencumbered'' currently used in the LCR rule. Encumbered assets must generally be retained for the period of encumbrance and generally cannot be monetized during this period. Thus, § ____.106(c) of the proposed rule would have assigned the RSF factor to encumbered assets based on the tenor of the encumbrance.

The agencies received one comment regarding the potential impact of the proposed rule's treatment of assets pledged for six months or longer by a covered company to an FHLB under a blanket, but not asset-specific, lien to secure an extension of credit to the covered company.

As is the case for an asset pledged to any other counterparty to secure or provide credit enhancement to a transaction, a covered company generally must retain or replace an asset pledged to an FHLB during the period in which it is encumbered and cannot monetize the asset while encumbered.[170] However, where an asset of a covered company is subject to a blanket, rather than asset-specific lien, in favor of an FHLB, such asset would not be considered ''encumbered'' if credit secured by the asset is not currently extended to the covered company or its consolidated subsidiaries. Where credit has been extended and is secured by a blanket

[166] As with all derivatives, commodity derivatives are subject to § ____.107 of the final rule.

[167] 12 U.S.C. 1843(k)(1)(B). The types of commodities permitted by the Board for financial holding companies generally are assigned an 85 percent RSF factor under the final rule. For example, under Board precedent, commodity trading activities involving any type of coal would be permissible for a financial holding company, even though the CFTC has authorized only Central Appalachian coal. Therefore, under the final rule, the carrying value of any type of coal would be assigned an 85 percent RSF factor. Any derivative transaction based on coal, though, would be subject to § ____.107 of the final rule. With respect to commodities for which a derivative is traded on a non-U.S. exchange, the agencies note that such non-U.S. exchanges will be supervised by a prudential regulator in the relevant jurisdiction.

[168] Assets deducted from regulatory capital include, but are not limited to, goodwill, certain deferred tax assets, certain mortgage servicing assets, and certain defined benefit pension fund net assets. *See* 12 CFR 3.22 (OCC); 12 CFR 217.22 (Board); 12 CFR 324.22 (FDIC). These assets, as a class, tend to be difficult for a covered company to readily monetize.

[169] The final rule's description of nonperforming assets in § ____.106(b), like the proposed rule's description, is consistent with the definition of ''nonperforming exposure'' in § ____.3 of the LCR rule.

[170] As discussed in section VI.B of this Supplementary Information section, the final rule's definition of ''encumbered'' does not consider an asset to be encumbered solely because the asset is pledged to a central bank or GSE to secure a transaction if (i) potential credit secured by the asset is not currently extended to the covered company or its consolidated subsidiaries and (ii) the pledged asset is not required to support access to the payment services of a central bank. The final rule's definition of ''encumbered'' does not include any substantive changes to the concept of encumbrance included in the LCR rule. *See* 79 FR at 61469.

lien, a covered company may identify which specific assets covered by the blanket lien secure the amount of extended credit, consistent with the requirements of the LCR rule.

The final rule retains the treatment of encumbered assets as proposed. Under the final rule, an asset that is encumbered for less than six months from the calculation date is assigned the same RSF factor as would be assigned to the asset if it were not encumbered because the covered company will not need to retain the asset beyond six months. For an asset that is encumbered for a period of six months or more, but less than one year, the final rule assigns an RSF factor equal to the greater of 50 percent and the RSF factor that would be assigned if the asset were not encumbered. This treatment ensures that a covered company's RSF amount reflects the effect of the encumbrance on an asset that would be assigned a lower RSF factor if unencumbered based on its tenor and other liquidity characteristics. Additionally, the final rule assigns a 100 percent RSF factor to an asset that is encumbered for a remaining period of one year or more because the asset would be retained and unavailable to the covered company for the entirety of the NSFR's one-year time horizon. Finally, in cases where the duration of an asset's encumbrance exceeds the maturity of that asset, the final rule assigns an RSF factor to the asset based on its encumbrance period. For example, if a covered company provides a level 1 liquid asset security that matures in three months as collateral in a one-year repurchase agreement, the covered company would need to replace that security upon its maturity with another asset that meets the requirements of the repurchase agreement. Thus, even though the maturity of the asset currently provided as collateral is short-dated, a covered company must fully support an asset with stable funding for the duration of the one-year repurchase agreement. As a result, the RSF factor determined by on the one-year encumbrance period.

Table 3 sets forth the RSF factors for assets that are encumbered.

TABLE 3—RSF FACTORS FOR ENCUMBERED ASSETS

	RSF factors for encumbered assets *		
	Asset encumbered <6 months	Asset encumbered ≥6 months <1 year	Asset encumbered ≥1 year
If RSF factor for unencumbered asset is ≤50 percent:.	RSF factor for the asset as if it were unencumbered.	50 percent	100 percent.
If RSF factor for unencumbered asset is >50 percent:.	RSF factor for the asset as if it were unencumbered.	RSF factor for the asset as if it were unencumbered.	100 percent.

* If the remaining encumbrance period exceeds the effective maturity of the asset, the final rule assigns an RSF factor to the asset based on its encumbrance period.

i) Assets Held in Certain Customer Protection Segregated Accounts

Section ____.106(c)(3) of the proposed rule would have specified that an asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets would not have been considered to be encumbered solely because it is held in such a segregated account.[171] Instead, the proposed rule would have assigned an asset held in such a segregated account the RSF factor that would be assigned to the asset under § ____.106 if it were not held in a segregated account. For example, a covered company must segregate customer free credits, which are customer funds held prior to their investment, until the customer decides to invest or withdraw the funds. The proposed rule would have treated the funds that a covered company places on deposit with a third-party depository institution in accordance with segregation requirements as a short-term loan to a financial sector entity, which would have been assigned a 15 percent RSF factor.

Several commenters argued that segregated client assets should have no stable funding requirement because, among other reasons, they already are funded by liabilities to the client and pose limited funding risks to covered companies. Some commenters noted that SEC and CFTC rules require client assets to be segregated and accounted for separately from the covered company's assets, protected from the bankruptcy of the covered company, and held in cash or other limited investments. Commenters also argued that segregated client assets should be treated analogously to currency and coin, which are assigned a 0 percent RSF factor. One commenter argued that the proposed treatment for segregated client assets would conflict with the treatment of such assets under the LCR rule, which recognizes some inflows from anticipated changes in the value of segregated client accounts and 100 percent outflows for non-operational deposits placed by financial institution counterparties.

Several commenters claimed that requiring stable funding for segregated client assets would inappropriately incentivize covered companies to maintain such balances in non-cash form (*e.g.,* U.S. Treasury securities) rather than hold them in a deposit account at a third-party bank in order to reduce the RSF factor. Other commenters expressed concern that covered companies may pass the cost of maintaining stable funding for segregated client assets on to the client or stop providing services that require segregated accounts.

The agencies are finalizing the treatment of customer segregated account assets as proposed.[172] As discussed in section V.C of this Supplementary Information section, the NSFR applies to a covered company's entire balance sheet, does not differentiate between assets based on business line or the reason for which they are held, and is not designed to mirror the treatment of assets under the LCR rule. Regulatory or contractual requirements to segregate certain assets for the benefit of customers do not necessarily reduce a covered company's funding risks relative to holding the same assets absent segregation, based on the covered company's funding stability relative to the tenor and other liquidity characteristics of its assets. The NSFR measure generally utilizes the carrying value of assets where possible and,

[171] For example, the proposed rule would not consider an asset held pursuant to the SEC's Rule 15c3–3 (17 CFR 240.15c3–3) or the CFTC's Rule 1.20 or Part 22 (17 CFR 1.20; 17 CFR part 22) to be encumbered solely because it is held in a segregated account.

[172] Comments requesting treatment as interdependent assets and liabilities are discussed in section VII.H of this Supplementary Information section.

consistent with GAAP, does not distinguish segregated balance sheet assets from other assets, except to the extent the final rule does not consider assets to be encumbered solely as a result of segregation. Additionally, regulatory requirements to hold specified amounts of assets for clients, in the form of cash, limited investments, or other assets, may result in a covered company holding additional assets relative to the absence of such regulatory requirements and the need to fund such assets is treated consistently in the final rule relative to assets of the same type. For example, the covered company may hold, and need to fund, identical level 1 liquid asset securities for the purpose of customer protection and as a hedging instrument to provide protection to the covered company; therefore, the final rule would assign the RSF factor corresponding to the level 1 liquid asset securities. Further, the NSFR applies to an aggregate balance sheet and generally does not associate specific assets with specific funding.[173] For example, the NSFR does not associate aggregate deposit placements for the protection of clients collectively that may be funded with individual liabilities due to certain clients, as described by commenters.

As discussed above, the final rule assigns a zero percent RSF factor to unencumbered level 1 liquid assets and generally assigns a 15 percent RSF factor to a deposit placed at a third-party financial institution with a remaining maturity of less than six months, based on the tenor and other liquidity characteristics of these assets. A covered company's requirement to comply with certain customer protection segregation requirements that result in a deposit at a third-party financial institution does not, by itself, adjust the tenor of such a placement or serve to improve the covered company's ability to withdraw the funds or otherwise monetize the asset in comparison to other deposits placed with a third-party banking organization. For example, unlike coin and currency, a covered company cannot directly use customer segregated account assets to satisfy its own obligations.[174]

For these reasons, it would not be appropriate to assign a zero percent RSF factor to assets based on their segregated status and an asset held in this type of segregated account is assigned the RSF factor that would be assigned to the asset under § ____.106 as if it was not held in a segregated account.

4. Treatment of Rehypothecated Off-Balance Sheet Assets

As discussed in section V of this Supplementary Information section, the NSFR calculation is based on the carrying value of assets on a covered company's balance sheet consistent with GAAP. However, certain assets that can affect a covered company's aggregate funding risks may not be included on a covered company's balance sheet under GAAP. The proposed rule, therefore, would have included provisions to address the funding risks associated with certain off-balance sheet assets that a covered company may obtain through lending transactions, asset exchanges, or other transactions. These assets can affect a covered company's balance sheet risk profile where they are rehypothecated and used to obtain funding. For example, a covered company may use off-balance sheet assets to generate funding. The assignment of an ASF factor to this liability without recognizing the encumbrance placed on a covered company's balance sheet would distort the NSFR assessment of a covered company's overall balance sheet risks. Therefore, it is appropriate that such reuse of off-balance sheet assets should be associated with an appropriate contribution to a covered company's RSF amount regardless of the source of the assets. This is especially the case if the off-balance sheet asset is encumbered to generate funding that has a longer tenor than the transaction through which the off-balance sheet asset was sourced. In that case, a covered company may need to roll over the transaction through which it obtained the off-balance sheet asset before the encumbrance of the asset terminates. Alternatively, the covered company may need to obtain a replacement asset to close out the sourcing transaction under which it obtained the asset before the encumbrance expires. Under either approach, the covered company must fund an asset for the duration of the encumbrance.

Section ____.106(d) of the proposed rule specified how a covered company would have assigned an RSF factor to a transaction involving an off-balance sheet asset that secures an NSFR liability or the sale of an off-balance sheet asset that results in an NSFR liability (for instance, in the case of a short sale). The proposed rule would have assigned an RSF factor to a receivable of a lending transaction, a security provided in an asset exchange, or to the off-balance sheet asset itself depending on the transaction through which the covered company obtained the off-balance sheet asset. Specifically, for an off-balance sheet asset obtained under a lending transaction, § ____.106(d)(1) of the proposed rule would have assigned an RSF factor to the receivable of the lending transaction as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period already applicable to the lending transaction. For an off-balance sheet asset obtained through an asset exchange, § ____.106(d)(2) of the proposed rule would have assigned an RSF factor to the asset provided by the covered company in the asset exchange as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period applicable to the provided asset. For an off-balance sheet asset not obtained under either a lending transaction or asset exchange, § .106(d)(3) of the proposed rule would have assigned an RSF factor to the off-balance sheet asset as if it were encumbered for the longer of (1) the remaining maturity of the NSFR liability secured by or resulting from the sale of the off-balance sheet asset and (2) any other encumbrance period applicable to the off-balance sheet asset.

The agencies received several comments on the proposed treatment of rehypothecated off-balance sheet assets under § ____.106(d) of the proposed rule. Commenters argued that the proposed treatment would be inconsistent with the concept of the NSFR as a balance-sheet metric because it would assign RSF factors based on assets not included on the covered company's balance sheet under GAAP. Some commenters also argued that the agencies should not adopt the proposed treatment because it would result in stable funding requirements that would be greater than specified under the Basel NSFR standard. Commenters also argued that the proposed rule lacked a clear empirical foundation for the treatment of rehypothecated off-balance sheet assets. One commenter argued that the proposed treatment would result in the assignment of ASF and RSF factors that do not accurately reflect the funding risk of the underlying transactions. One commenter objected to the proposed treatment for rehypothecated off-balance sheet assets received in an asset exchange, asserting

[173] The final rule does include certain netting of specific assets against certain liabilities as described in sections VII.A.2 and VII.E.2 of this Supplementary Information section.

[174] *See* section VII.D.3.a of this Supplementary Information section.

that the final rule should assign an ASF factor to the value of the asset received in an asset exchange, based on the type of asset and the remaining maturity of the asset exchange. Another commenter asserted that asset exchanges enable a covered company to manage its collateral at reduced funding costs and lower funding risks, so the proposed treatment of rehypothecated off-balance sheet assets received in an asset exchange is unnecessary to achieve the agencies' stated goal of ensuring that off-balance sheet assets are not used to generate ASF while not reducing the covered company's overall funding risk.

Commenters requested additional clarification as to the scope of activities intended to be covered by § ____.106(d) of the proposed rule, in particular by proposed § ____.106(d)(3), which would have addressed off-balance sheet assets that are sourced through all other types of transactions. One of these commenters stated that proposed § ____.106(d)(3) is extremely punitive and could lead to unintended consequences.

Another commenter asserted that it would be operationally difficult to comply with § ____.106(d) of the proposed rule if a covered company is required to link each source and use of off-balance sheet assets to on-balance sheet assets and liabilities. This commenter also suggested that the final rule should recognize the benefits to a covered company of collateral substitution rights, for example, where a covered company has provided two assets to a single counterparty or a single tri-party repurchase agreement intermediary to secure two separate NSFR liabilities, and the covered company has the operational and legal capability to determine the allocation of the assets to each NSFR liability.

To address the funding risks presented when a covered company has an NSFR liability that is secured by, or results from the sale of, an off-balance sheet asset and to prevent distortion of the NSFR metric, the agencies are finalizing the treatment of rehypothecated off-balance sheet assets under § ____.106(d) generally as proposed, but are narrowing the scope of the section such that § ____.106(d) does not apply to off-balance sheet assets received as variation margin under a derivative transaction. The agencies also are modifying § ____.106(d)(3), as explained in this Supplementary Information section. As noted by commenters, the NSFR is a balance-sheet metric, and the treatment for rehypothecated off-balance sheet assets under the final rule assigns RSF factors to assets recorded on a covered company's balance sheet, rather than to off-balance sheet assets. The agencies also note that the BCBS clarified the treatment of certain off-balance sheet assets under the Basel NSFR standard as a result of rehypothecation, which is generally consistent with the treatment under the final rule.[175]

a) Off-Balance Sheet Assets Obtained in Lending Transactions

Where a covered company obtains an off-balance sheet asset through a lending transaction,[176] the lending transaction will be included as a receivable asset on the covered company's balance sheet. Under § ____.106(d)(1) of the final rule, if a covered company obtained an off-balance sheet asset through a lending transaction (*e.g.,* a reverse repurchase agreement), the final rule treats the balance sheet receivable associated with the lending transaction as encumbered for the longer of: (1) The remaining maturity of the NSFR liability secured by the off-balance sheet asset (*e.g.,* a repurchase agreement) or resulting from the sale of the off-balance sheet asset (*e.g.,* a short sale), as the case may be, and (2) any other encumbrance period already applicable to the lending transaction. The remaining maturity of the liability secured by the off-balance sheet asset, or resulting from the sale of the off-balance sheet asset, restricts the ability of a covered company to monetize the lending transaction receivable and the lending receivable is therefore treated as encumbered.[177] For example, § ____.106(d)(1) applies if a covered company obtains a level 2A liquid asset as collateral under an overnight reverse repurchase agreement with a financial counterparty and subsequently pledges the level 2A liquid asset as collateral in a repurchase transaction with a maturity of one year or more but, consistent with GAAP, does not include the level 2A liquid asset on its balance sheet. In this case, the final rule treats the covered company's balance-sheet receivable associated with the reverse repurchase agreement as encumbered for a period of one year or more, since the remaining maturity of the repurchase agreement secured by the rehypothecated level 2A liquid asset is one year or more. Accordingly, the final rule assigns the reverse repurchase agreement receivable an RSF factor of 100 percent (under § ____.106(c)(1)(iii)) instead of 15 percent (under § ____.106(a)(3)(i)).

A commenter asserted that this type of position poses less funding risk, because the on-balance sheet receivable has a shorter maturity than the liability and the off-balance sheet asset is highly liquid. However, the asset funding need for this type of transaction is driven by the obligation to continue to collateralize the liability for a period of one year or more relative to the short-term sourcing transaction rather than the liquidity characteristics of the asset pledged. Therefore, the effective funding need of the receivable associated with the asset pledged must take into account the one-year period of encumbrance, consistent with a 100 percent RSF factor.

b) Off-Balance Sheet Assets Obtained in an Asset Exchange

Where a covered company provides a security in an asset exchange, the security provided remains on the covered company's balance sheet under GAAP. However, the security received by the covered company in the asset exchange may be an off-balance sheet asset under GAAP (for example, because the covered company acted as a securities borrower in the asset exchange). Under § ____.106(d)(2) of the final rule, if a covered company obtains an off-balance sheet asset under an asset exchange and has an NSFR liability secured by, or resulting from the sale of, the off-balance sheet asset, the final rule treats the on-balance sheet asset provided by the covered company in the asset exchange as encumbered for the longer of: (1) The remaining maturity of the NSFR liability secured by the off-balance sheet asset or resulting from the sale of the off-balance asset, as the case may be, and (2) any encumbrance period already applicable to the provided asset. For example, assume a covered company, acting as a securities borrower, provides a level 2A liquid asset as collateral and obtains a level 1 liquid asset security under an asset

[175] BCBS, ''Basel III—The Net Stable Funding Ratio: frequently asked questions,'' February 2017, available at *https://www.bis.org/bcbs/publ/d396.pdf.*

[176] As described in section VI.A.2 of this Supplementary Information section, the final rule defines the term ''secured lending transaction'' to mean any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the covered company that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the covered company, as holder of the lien, priority over the securities or loans. Section .____106(d)(1) applies to an off-balance sheet asset obtained under any lending transaction, regardless of the nature of the counterparty or the off-balance sheet asset. For the purposes of this section of this Supplementary Information section, a lending transaction is not an asset exchange or a derivative transaction.

[177] As described in section VI.B of this Supplementary Information section, the final rule includes a new definition of ''Encumbered'' based on any legal, regulatory, contractual or other restrictions on the ability of a covered company to monetize an asset. *See* § ____.3 of the LCR rule.

exchange with counterparty A and with a remaining maturity of six months, and subsequently provides the level 1 liquid asset security as collateral to secure a repurchase agreement with counterparty B and that matures in one year or more. In such a case, the covered company typically would not include the level 1 liquid asset security on its balance sheet.[178] Under § ____.106(d)(2) of the final rule, the level 2A liquid asset provided by the covered company (which remains on the covered company's balance sheet) is treated as encumbered for a period of one year or more (equal to the remaining maturity of the repurchase agreement secured by the rehypothecated level 1 liquid asset security) instead of six months (equal to the remaining maturity of the asset exchange) and the carrying value of the level 2A liquid asset provided is assigned an RSF factor of 100 percent (in accordance with § ____.106(c)(1)(iii)) instead of 50 percent.

With regard to comments that the final rule should recognize the funding value of the off-balance sheet asset received in an asset exchange (in the example above where the covered company acts a securities borrower, the level 1 liquid asset) and for the reasons described in section VII.A.3 of this Supplementary Information section, the final rule provides that a covered company must assign an RSF factor to the on-balance sheet asset provided (in the example above, the level 2A liquid asset) rather than the off-balance sheet asset received because the on-balance sheet asset is a component of the covered company's aggregate funding need at the calculation date. Unlike the LCR rule, where an off-balance sheet asset received in an asset exchange can potentially qualify as eligible HQLA available to satisfy short-term cash-flow needs, the NSFR is a measure of the stability of a covered company's funding profile relative to its assets. As discussed in section V of this Supplementary Information section, the final rule generally does not consider the future availability of an asset as a source of liquidity and assigns RSF factors to assets rather than ASF factors as suggested by commenters.

c) Off-Balance Sheet Assets Obtained Through Other Transactions

Where a covered company obtains an off-balance sheet asset through a transaction that is not a lending transaction or an asset exchange (source transaction), there is the potential that the covered company might not record the source transaction on its balance sheet. At the same time, the covered company may rehypothecate the off-balance sheet asset obtained in the source transaction to obtain funding and generate an NSFR liability. This funding could increase the covered company's ASF amount, depending on the maturity and other characteristics of the NSFR liability, without the source transaction or the off-balance sheet asset itself being reflected in its RSF amount. However, due to the rehypothecation of the off-balance sheet asset, a covered company may record a liability to return the asset to the counterparty of the source transaction or a liability secured by the off-balance sheet asset.[179] Further, the covered company may need to roll over the source transaction if this transaction matures before the encumbrance of the rehypothecated asset terminates. Alternatively, the covered company may need to obtain a replacement asset to close out the source transaction before the encumbrance expires.

To address this risk and prevent potential distortions of the NSFR, under § ____.106(d)(3) of the final rule, if a covered company has an off-balance sheet asset that it did not obtain under either a lending transaction or an asset exchange, the covered company is required to treat any associated on-balance sheet asset resulting from the rehypothecation transaction as encumbered for a period equal to the greater of the remaining maturity of the NSFR liability or the encumbrance of the source transaction. This provision would apply to any proceeds that appeared on a covered company's balance sheet as a result of a rehypothecation transaction. For example, if a covered company rehypothecates an off-balance sheet asset for a period of one year more and receives cash as proceeds of the rehypothecation, the covered company would be required to treat the cash received as encumbered and assigned a 100 percent RSF factor. Covered companies are not required to treat the off-balance sheet asset as if the off-balance sheet asset was included on a company's balance sheet. Even if a covered company reuses the proceeds of the rehypothecated transaction, the covered company should still apply an RSF factor, based on the encumbrance, to the on-balance sheet asset that was the direct result of the transaction. Without this treatment, a covered company's RSF amount would not reflect the funding risk that the covered company must maintain the asset, or a similar asset, or the fact that the covered company has limited its ability to monetize or recognize inflows from the source transaction for the duration of the rehypothecation.

Additionally, § ____.106(d)(3) of the proposed rule would have applied in the case of an NSFR liability secured by, or resulting from the sale of, an off-balance sheet asset that a covered company had received in the form of variation margin under a derivative transaction. The final rule modifies the proposal by not subjecting assets received as variation margin under a derivative transaction to the requirements of § ____.106(d).[180] Excluding such variation margin from § ____.106(d) of the final rule is appropriate because the final rule accounts for variation margin within the derivatives RSF amount calculation specified in § ____.107.[181] Section ____.106(d)(3) of the final rule therefore

[178] Under GAAP, where a covered company acting as a securities borrower engages in an asset exchange, the asset provided by the covered company typically remains on the covered company's balance sheet while the received asset, if not rehypothecated, would not be on the covered company's balance sheet. To the extent a covered company includes on its balance sheet an asset received in an asset exchange and the covered company subsequently uses the on-balance sheet asset as collateral to secure a separate NSFR liability, § ____.106(d) of the final rule does not apply. For example, if a covered company acts as a securities lender in an asset exchange and recognizes the collateral securities received on its balance sheet, the covered company should treat those collateral securities received as encumbered if the covered company sells or rehypothecates the collateral securities received, taking into account the remaining maturity of the transaction in which they have been rehypothecated. While the covered company should treat the securities it provided in the asset exchange as encumbered, the covered company would not be required to treat the securities it provided in the original asset exchange as encumbered for a period other than the remaining maturity of the asset exchange. The on-balance sheet asset used as collateral to secure the NSFR liability is assigned an RSF factor in the same manner as other assets on the covered company's balance sheet (including by taking into account the asset's encumbrance) pursuant to §§ ____.106(a) through (c) or § ____.107 of the final rule, as applicable. *See* section VII.A.3 of this Supplementary Information section for assets received that remain unencumbered and section VII.D.3.h of this Supplementary Information section for any balance sheet assets that are encumbered.

[179] If the NSFR liability is a short sale that is booked on an open basis or otherwise has a remaining maturity of less than six months, the asset resulting from the NSFR liability would be treated as unencumbered.

[180] This treatment applies to both assets received as variation margin necessary to cover the current exposure of a derivative or derivative netting set and variation margin received in excess of such an amount.

[181] Section ____.107 of the final rule provides for netting of certain rehypothecatable level 1 liquid assets received as variation margin by the covered company against the value of the underlying derivative asset for purposes of a covered company's derivatives RSF amount. *See* section VII.E.2 of this Supplementary Information section. The final rule's modifications to § ____.106(d)(3) of the proposed rule are consistent with § ____.107 of the final rule.

applies where a covered company has rehypothecated an off-balance sheet asset not received under a lending transaction or asset exchange or as variation margin under a derivative transaction. For example, the agencies note that § ____.106(d)(3) of the final rule applies if a covered company obtains an asset as initial margin under a derivative transaction or borrows an asset for a fee without providing collateral and uses the asset to generate an NSFR liability without including the asset on its balance sheet under GAAP.

TABLE 4—TREATMENT OF OFF-BALANCE SHEET ASSETS

Transaction through which a covered company obtains an off-balance sheet asset (source transaction) and whether the asset is subsequently used in a transaction to generate a NSFR liability.	RSF factor is applied to the following on-balance sheet asset, taking into account the remaining maturity of the NSFR liability and the encumbrance period of the source transaction.
Off-balance sheet asset received in any source transaction and is not rehypothecated.	No RSF factor applied.
Off-balance sheet asset received in a lending transaction and subsequently used to generate a NSFR liability.	RSF factor is applied to on-balance sheet lending transaction receivable under § ____.106(d)(1).
Off-balance sheet asset received in an asset exchange (*e.g.,* where a covered company acts as securities borrower) subsequently used to generate a NSFR liability *.	RSF factor is applied to the on-balance sheet asset provided in the asset exchange under § ____.106(d)(2).
Off-balance sheet asset received as variation margin under a derivative transaction.	See derivative treatment under § ____.107 of the final rule.
Off-balance sheet asset received in a source transaction other than a lending transaction, or asset exchange, and the asset is not received as variation margin under a derivative transaction, and subsequently used to generate a NSFR liability.	RSF factor is applied to the on-balance sheet asset resulting from the NSFR liability under § ____.106(d)(3).

* For assets received in an asset exchange recorded on balance sheet (*e.g.,* when a covered company acts as a securities lender) see sections VII.A.3 and VII.D.3.h of this Supplementary Information section.

Consistent with the proposed rule, § ____.106(d) of the final rule does not apply in cases where a covered company has an NSFR liability secured by, or resulting from the sale of, an on-balance sheet asset.

d) Technical and Operational Clarifications

(i) Amounts of Rehypothecated Off-Balance Sheet Assets Relative to Transactions Through Which the Assets Are Obtained

If the value of rehypothecated off-balance sheet assets obtained in lending transactions or asset exchanges is less than the carrying value of the on-balance sheet receivables for the lending transactions or assets provided under the asset exchanges, respectively, the covered company should treat the value of the receivables or assets provided as encumbered in an amount equivalent to the value of the rehypothecated off-balance sheet assets, for purposes of §§ ____.106(d)(1) and (2).[182] This treatment recognizes that when a covered company rehypothecates only a portion of the value of off-balance sheet assets obtained in a lending transaction or an asset exchange, it would be overly conservative to apply an RSF factor based on such encumbrance to the entire value of the lending transaction receivable, or to the full value of assets provided in the asset exchange, as applicable. Accordingly, the covered company need not treat the entire value of the receivables or assets provided as encumbered.

Conversely, the value of rehypothecated off-balance sheet assets received by a covered company in a lending transaction, asset exchange, or other transaction might exceed the value of the on-balance sheet receivable for the lending transaction, the assets provided under the asset exchange, or the asset resulting from the NSFR liability, respectively. In such cases, a covered company potentially could rehypothecate an amount of off-balance sheet assets to produce an NSFR liability that exceeds the value of the on-balance sheet lending transaction receivable or assets provided (excess rehypothecated assets). Under the final rule, on-balance sheet assets resulting from the rehypothecation of the off-balance sheet assets are assigned the appropriate RSF factor consistent with other on-balance sheet assets. Covered companies should use appropriate and justifiable assumptions in identifying and attributing the sources and uses of off-balance sheet assets, including excess rehypothecated assets, consistent with the operational clarifications below.

(ii) Operational Clarifications

With regard to a commenter's concerns about the operational burden associated with linking assets and liabilities for purposes of § ____.106(d), if a covered company provides an asset as collateral, and the covered company operationally could have provided either an off-balance sheet asset or the same security in the form of on-balance sheet asset, the final rule permits the covered company to identify either the off-balance sheet asset or the on-balance sheet asset as the provided collateral for purposes of determining encumbrance treatment under §§ ____.106(c) and (d). Similarly, if a covered company operationally could have provided either of two equivalent off-balance sheet assets, one received under a lending transaction and the other under an asset exchange, the final rule does not restrict the covered company's ability to identify either asset as the provided collateral for purposes of determining encumbrance treatment under § ____.106(d). In either case, the covered company's identification for purposes of §§ ____.106(c) and ____.106(d) must be consistent with contractual and other applicable requirements on the relevant calculation date. The same treatment would apply for a covered company's use of a security as collateral and the covered company's ability to identify whether the security is already owned by the covered company or is an identical security received from a lending transaction, asset exchange, or other transaction.

For example, if a covered company receives a security in a reverse repurchase agreement that is identical to a security the covered company already owns, and the covered company provides one of these securities as collateral to secure a repurchase

[182] A covered company would assign appropriate RSF factors to the value of the lending transaction receivables, or assets provided in the asset exchanges, equivalent to the value of the rehypothecated off-balance sheet assets based on the appropriate encumbrance periods and categories of RSF factors under § ____.106 of the final rule.

agreement, the final rule permits the covered company to identify, for purposes of determining encumbrance treatment under §§ ___.106(c) and (d), either the owned security or the security received in the reverse repurchase agreement as the encumbered collateral for the repurchase agreement, provided that the covered company had the operational and legal capability to provide either one of the securities as of the calculation date. If the covered company chooses to treat the off-balance sheet security received in connection with the reverse repurchase agreement as the collateral securing the repurchase agreement at the calculation date, § ___.106(d)(1) would apply and the covered company would treat the reverse repurchase agreement as encumbered for purposes of assigning an RSF factor. If the covered company instead chooses to treat the owned security as the collateral encumbered by the repurchase agreement, the covered company would apply the appropriate RSF factor (reflecting the encumbrance) to the owned security under § ___.106(c) and no additional adjustment would need to be made to the encumbrance of the reverse repurchase agreement under § ___.106(d).

The agencies anticipate that a covered company would be able to comply with this section based on aggregate information (because much of the data is currently collected and monitored for other purposes, including the FR 2052a and compliance with the LCR rule) rather than through transaction-by-transaction tracking. For example, a covered company may determine its requirements under §§ ___.106(c) and ___.106(d) based on the aggregate value of an asset class pledged at each of the NSFR rule's encumbrance periods (less than six months, six months or more but less than one year, or one year or more); the aggregate value of the asset class on the covered company's balance sheet; and the values and maturity categories of balance sheet receivables or assets provided by the covered company under transactions sourcing each type of borrowed asset.[183] The agencies expect this approach to substantially limit any incremental operational costs of compliance for covered companies.

In addition, when the covered company has provided two assets to a single counterparty to secure two different NSFR liabilities, and the covered company had the sole legal right and operational capability to determine the allocation of the collateral provided to each of the NSFR liabilities at the calculation date, the final rule permits the covered company to identify which asset secures which NSFR liability for purposes of determining encumbrance treatment under §§ ___.106(c) and ___.106(d). As an example, assume that a covered company enters into two secured funding transactions with a single counterparty (or with a single tri-party repo intermediary), one with an overnight maturity and one with a maturity of one year, and provides level 2A liquid assets as collateral for one secured funding transaction and level 2B liquid assets as collateral for the second secured funding transaction. If the covered company had the legal right and operational capability to allocate the provided level 2A and level 2B liquid assets between the two secured funding transactions, the final rule permits the covered company to identify which of the securities are encumbered for a period of one year and which are encumbered overnight for purposes of §§ ___.106(c) and ___.106(d). As described above, the covered company's determinations for purposes of these sections must be consistent with contractual and other applicable requirements, including accounting treatment.[184] Similar considerations apply where a covered company has borrowed an asset of one type from a counterparty pursuant to an asset borrowing transaction and the covered company has the legal right and operational capability to substitute another type of asset to return.

E. Derivative Transactions

The proposed rule would have required a covered company to maintain stable funding to support its on-balance sheet derivative activities. Under the proposed rule, a covered company would have calculated its required stable funding amount relating to its derivative transactions[185] (derivatives RSF amount) separately from its other assets, commitments, and liabilities due to the variable nature and generally more complex features of derivative transactions relative to other on-balance sheet assets and liabilities of covered companies.[186] For similar reasons, the proposed rule would not have separately treated derivative liabilities in excess of derivative assets as available stable funding to support non-derivative assets and commitments, as described below.

Under the proposed rule, a covered company's derivatives RSF amount would have consisted of three general components, each described further below: (1) A component reflecting the current net value of a covered company's derivative assets and liabilities, taking into account variation margin provided by and received by the covered company (current net value component); (2) a component to account for initial margin provided by a covered company for its derivative transactions and assets contributed by a covered company to a CCP's mutualized loss-sharing arrangement in connection with cleared derivative transactions (initial margin component); and (3) a component to account for potential future derivatives valuation changes (future value component). For the current net value component, a covered company would have netted its derivatives transactions and certain variation margin amounts to identify whether the current net value of its

[183] In the case of securities, this approach would involve a covered company identifying its aggregate encumbrances by each security identifier (*e.g.,* CUSIP or ISIN) for each of the NSFR's encumbrance periods; the aggregate value held in a covered company's inventory by each security identifier; and the aggregate value of on-balance sheet receivables or assets associated with transactions sourcing each security identifier. Since the NSFR generally applies the same funding requirement to all transaction types that have similar counterparty, collateral and maturity characteristics (*e.g.,* a margin loan to a financial sector entity maturing in six months and a reverse repo to a financial sector entity maturing in six months would have the same funding requirement), a covered company may consider transactions that are treated equivalently by the NSFR in aggregate when calculating the receivable amounts that are subject to § ___.106(d) of the final rule.

[184] Covered companies may allocate collateral encumbered at the calculation date between transactions secured by such collateral based on the eligibility of the currently encumbered pool of collateral using justifiable and consistent assumptions. For the purposes of § ___.106 of the final rule, a covered company should not make assumptions regarding the potential future substitution of encumbered collateral with other assets.

[185] As defined in § ___.3 of the LCR rule, ''derivative transaction'' means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, forward contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign currency exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. A derivative does not include any identified banking product, as that term is defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)), that is subject to section 403(a) of that Act (7 U.S.C. 27a(a)).

[186] The proposed rule would have included mortgage commitments that are derivative transactions in the general derivative transactions treatment, in contrast to the LCR rule, which excludes those transactions and applies a separate, self-contained mortgage commitment treatment. *See* §§ ___.32(c) and (d) of the LCR rule.

derivatives positions was either an NSFR derivatives asset amount or an NSFR derivatives liability amount (described below) and assigned a 100 percent RSF factor or zero percent ASF factor, respectively. For the initial margin component, the proposed rule would have assigned an 85 percent RSF factor to CCP contributions and a minimum 85 percent RSF factor to initial margin provided by a covered company. The proposed rule also would have assigned a 100 percent RSF factor to the future value component, which would have equaled 20 percent of the sum of a covered company's gross derivative liabilities. The final rule makes certain adjustments to the current net value component's treatment of variation margin received by covered companies and the calibration of the future value component.

1. Scope of Derivatives Transactions Subject to § ____.107 of the Final Rule

The proposed rule would have required a covered company to measure its derivatives exposures in its calculation of the NSFR, regardless of the counterparty. A few commenters suggested that all derivative transactions with commercial end-users—specifically, entities that are not subject to the clearing requirement under the Commodity Exchange Act [187] or the margin requirements for non-cleared swaps under the agencies' swap margin rule (swap margin rule)—should be excluded from the NSFR rule.[188] These commenters argued that derivative activities of commercial end-users do not pose a threat to financial stability and that applying funding requirements for such activities would be inconsistent with Congress's intent in the Dodd-Frank Act that the regulation of derivative trading not impose costs on commercial end-users.[189]

The final rule does not distinguish between derivative transactions with commercial end-users and other counterparty types. Unlike the clearing and margin requirements cited by commenters, which apply specifically to derivative transactions and include statutory exemptions for certain transactions with non-financial sector counterparties, the final rule seeks to measure and address funding risks of a covered company's aggregate balance sheet. The final rule therefore includes derivative transactions as one of many types of exposures that contribute to a covered company's aggregate funding risk.[190] Derivative transactions are subject to a range of funding risks driven by the underlying economic exposures and contractual features, such as their variable nature and the regular need to exchange collateral. These funding risks are not primarily determined by the derivative transaction's counterparty, and therefore transactions with commercial end-user counterparties could contribute to funding risk in a manner similar to derivative transactions with financial sector entity counterparties. In addition, although the agencies' regulatory capital rule differentiates the capital requirements for derivative transactions with commercial end-user and financial sector counterparties in certain cases, such distinction is based largely on the potential for the transactions with commercial end-users to be primarily used to hedge or mitigate commercial risks, which can be a material consideration in determining the counterparty credit risk for an exposure.[191] By contrast, the NSFR is not designed to measure the risks associated with counterparty defaults, but instead presumes a covered company would continue to intermediate and fund its derivatives portfolio over a one-year horizon. Accordingly, the final rule does not provide an exclusion for derivative transactions with commercial end-user counterparties and requires a covered company to include all its balance sheet derivatives exposures in its calculation of the NSFR.

2. Current Net Value Component

Under the proposed rule, the stable funding requirement for the current net value component of a covered company's derivative assets and liabilities would have been based on the value (as of the calculation date) of each of its derivative transactions (not subject to a QMNA) and each QMNA netting set and the variation margin provided by and received by the covered company. For the current net value component, the proposed rule would have measured a covered company's aggregate derivative activities on a net basis by: (i) Reducing exposures with each counterparty by taking into account QMNA netting sets; (ii) determining the value of each derivative asset, liability or QMNA netting set after netting certain variation margin amounts; and (iii) offsetting a covered company's overall total derivatives asset amount with its total derivatives liability amount, each as described below (*i.e.,* the proposed rule's NSFR derivatives asset or liability amount). Through these netting calculations, a covered company would have determined whether the current net value of its derivatives positions was either an NSFR derivatives asset amount or an NSFR derivatives liability amount. The proposed rule would have assigned a 100 percent RSF factor to a covered company's NSFR derivatives asset amount or a zero percent ASF factor to a covered company's NSFR derivatives liability amount. By netting across assets and liabilities in addition to counterparties and transactions, the current net value component would have reflected the current stable funding needs associated with the covered company's overall derivatives activities.

The agencies received a number of comments regarding this component, including comments on the calculation of the NSFR derivative asset or liability amount, the proposed RSF and ASF factors for these amounts, and how the proposed calculation would have accounted for variation margin received and provided by a covered company. The final rule modifies the calculation of the current net value component with certain adjustments to the types of variation margin that are eligible for netting in such component, but otherwise adopts the treatment as proposed. Due to the variable nature of derivative transactions, the interdependencies within the derivative

[187] Although the term ''commercial end-user'' is not defined in the Dodd-Frank Act, it is used in this Supplementary Information section to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps under section 2(h)(7)(A) of the Commodity Exchange Act and section 3C(g)(1) of the Securities Exchange Act, respectively. This exception is generally available to a person that (1) is not a financial entity, (2) is using the swap to hedge or mitigate commercial risk, and (3) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps. *See* 7 U.S.C. 2(h)(7)(A) and 15 U.S.C. 78c–3(g)(1).

[188] *See* 12 CFR part 45 (OCC); 12 CFR part 237 (Board); 12 CFR part 349 (FDIC); *see also* Final Rule, Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (November 30, 2015).

[189] These commenters cited to 7 U.S.C. 2(h)(7), 6s(e)(4) as examples within the Dodd-Frank Act. One commenter noted that certain regulatory requirements relating to derivative transactions in jurisdictions outside the United States also exempt certain derivative transactions with non-financial sector entities, which the commenter argued provided support for an exemption from the NSFR.

[190] As discussed further below, the final rule, like the proposed rule, also applies a stable funding requirement based on a covered company's derivative transactions in the aggregate, using a standardized measure rather than a more granular approach that would consider in greater detail specific features of individual transactions, such as counterparty type.

[191] For example, the standardized approach for calculating the exposure amount of derivative contracts under the agencies' regulatory capital rule removes the alpha factor from the exposure amount formula for derivative contracts with commercial end-user counterparties, resulting in lower requirements in comparison to similar derivative contracts with a counterparty that is not a commercial end-user.

portfolios of covered companies, and the connection to assets and liabilities related to margin provided and received by a covered company, the final rule, like the proposed rule, assesses the funding risks of derivatives activities on a net basis. Under the final rule, the NSFR point-in-time measure generally reflects the funding provided by derivative transactions and associated variation margin in supporting a covered company's funding needs for its derivative portfolio. Under the final rule, the current net value component is calculated as follows:

Step 1: Calculation of Derivative and QMNA Netting set Asset and Liability Values

First, a covered company determines the asset or liability value of each derivative transaction (not subject to a QMNA) and each QMNA netting set. Each derivative transaction or QMNA netting set has either a derivatives asset value or derivatives liability value, depending on (1) the derivative transaction's or QMNA netting set's asset or liability valuation and (2) the value of variation margin provided or received under the derivative transaction or QMNA netting set that is eligible for netting under the final rule.[192]

A derivatives asset value of a derivative transaction or QMNA netting set is the asset value after netting variation margin received in the form of cash or rehypothecatable level 1 liquid asset securities by the covered company that meets the eligibility conditions described in § ____.107(f)(1) of the final rule and discussed in section VII.E.2.b of this Supplementary Information section.

A derivatives liability value of a derivative transaction or QMNA netting set is the liability value after netting any variation margin provided by the covered company, regardless of the type of variation margin. The final rule also specifies that a covered company may not reduce its derivatives asset or liability values by initial margin provided to or received from counterparties.[193]

Step 2: Calculation of Total Derivatives Asset Amounts and Total Derivatives Liability Amounts

Second, a covered company sums its derivatives asset values, as calculated in step 1, to determine its total derivatives asset amount, and separately sums its derivatives liability values, as calculated in step 1, to determine its total derivatives liability amount.[194]

Step 3: Calculation of NSFR Derivatives Asset Amount or NSFR Derivatives Liability Amount

Third, a covered company calculates its overall NSFR derivatives asset amount or NSFR derivatives liability amount by calculating the difference between its total derivatives asset amount and its total derivatives liability amount, each as calculated in step 2.[195] If a covered company's total derivatives asset amount exceeds its total derivatives liability amount, the covered company would have an NSFR derivatives asset amount. Conversely, if a covered company's total derivatives liability amount exceeds the total derivatives asset amount, the covered company would have an NSFR derivatives liability amount. The NSFR derivatives asset or NSFR derivatives liability amount represents a covered company's overall derivatives activities on a net basis.

Step 4: Application of RSF or ASF Factors to the NSFR Derivatives Asset Amount or NSFR Derivatives Liability Amount

Fourth, and finally, the final rule assigns a 100 percent RSF factor to a covered company's NSFR derivatives asset amount or a zero percent ASF factor to a covered company's NSFR derivatives liability amount. [196]

a) Comments Regarding NSFR Derivatives Asset Amount and NSFR Derivatives Liability Amount

A number of commenters recommended that the approach for calculating the NSFR derivatives asset amount or NSFR derivatives liability amount should be based on the remaining maturity of a covered company's derivative transactions or netting sets, which commenters asserted would be more consistent with the proposed rule's consideration of tenor for assigning an RSF factor for certain other assets. Moreover, commenters asserted that short-dated derivatives do not require as much long-term funding as long-dated derivatives because a covered company could generally expect to allow its short-dated derivative transactions to mature within the NSFR's one-year horizon, there are generally no market or client expectations that firms would roll over derivative transactions, and the agencies did not provide empirical evidence suggesting otherwise. For example, commenters suggested reducing the RSF factor for assets based on individual derivative transactions with a remaining maturity of less than one year, with a further reduction for asset values based on individual derivative transactions with a remaining maturity of six months or less. Some commenters suggested that the agencies should rely on other regulatory measures to determine the remaining maturity of derivative netting sets, such as the calculation of maturity for derivative netting sets under the internal models methodology for counterparty credit risk under the agencies' advanced approaches risk-based capital rule.[197] As an alternative to incorporating tenor considerations to determine a covered company's derivatives asset amount, one commenter suggested that the final rule assign reduced RSF factors for an asset purchased by a covered company as a hedge to a derivative transaction based on the remaining maturity of the derivative it is meant to hedge.

The agencies are not adopting in the final rule a more granular approach to the calculation of the NSFR derivatives asset amount and are instead adopting the approach under the proposed rule. The current net value component is an operationally simple measure of the funding needs associated with a covered company's aggregate derivatives portfolio. Relative to other approaches, such as the more granular approaches suggested by commenters that would take into account the remaining maturity of certain derivative transactions or hedging transactions, the final rule's approach allows for a consistent and comparable measure of net derivative exposures across covered companies. Further, while a more complex approach based on a covered company's internal models methodology as suggested by commenters may be appropriate in other contexts, such an approach would be contrary to the NSFR's standardized calculation of a relatively simple measure of the risks raised by a covered company's derivative positions. Although this simplified approach may overstate the funding risk of certain short-maturity derivative assets, it may

[192] *See* § ____.107(f) of the final rule.

[193] Initial margin includes payments provided and received by a covered company to provide credit protection relative to a derivative exposure, including independent amounts. Such payments should be considered as initial margin under the final rule except in instances where a payment, such as the return of part or all of an independent amount, has occurred due to the change in the value of a derivative exposure and the payment has been netted against the covered company's exposure, in which case the payment should be treated as variation margin.

[194] *See* § ____.107(e) of the final rule.

[195] *See* § ____.107(d) of the final rule.

[196] *See* §§ ____.107(b) and (c) of the final rule.

[197] *See* 12 CFR 3.132(d)(4) (OCC); 12 CFR 217.132(d)(4) (Board); 12 CFR 324.132(d)(4) (FDIC).

also understate the funding risk of certain short-maturity derivative liabilities. As described above, the current net value component is arrived at through a series of netting procedures to determine the NSFR derivatives asset amount. Derivative asset exposures to a counterparty with varying maturities may be offset by derivative liabilities within a netting set. Additionally, total derivative assets are netted with total derivative liabilities. Given the inclusion of many different transactions in the calculation, the remaining maturity of the resulting NSFR derivatives asset amount or NSFR derivatives liability amount to which the RSF or ASF factor is applied would not be intuitive or meaningful for the NSFR's one-year time horizon and estimating its effective maturity would require complex calculations. Under the final rule's approach, a covered company's current net value component can be reduced by the value of derivative liabilities of any maturity, including short-dated positions. This simplified approach should serve as a reasonable and balanced approximation of the current stable funding needs associated with a covered company's overall derivatives activities.

In response to comments requesting the assignment of reduced RSF factors to assets that hedge derivative transactions, the agencies similarly note that the current net value component of the final rule is designed as a simplified approach that nets all derivative liabilities against derivative assets. An alternative approach that permits a covered company to match particular derivative assets or liabilities to specific hedging positions (whether derivative transactions or otherwise) to determine the assignment of RSF factors for the current net value component would introduce significant complexity, reduce standardization, and, depending on the approach, introduce an additional operational burden or increased reliance on covered companies' internal models. In addition, although derivative assets or liabilities may reduce certain risks of the specific positions for which they are hedging, they would still require stable funding to enable the covered company to continue to intermediate and fund its derivatives portfolio and hedging positions over a one-year time horizon. The final rule therefore adopts the same calculation structure as the proposed rule for the current net value component, with modifications discussed below with respect to consideration of variation margin received by a covered company.

The agencies are adopting the proposed rule's assignment of a 100 percent RSF factor to an NSFR derivatives asset amount and a zero percent ASF factor to an NSFR derivatives liability amount. The calculation of a covered company's NSFR derivatives asset amount already recognizes the contribution made by variation margin and derivative liabilities to the funding for derivative asset positions, based on their treatment under the final rule. As a result, the NSFR derivatives asset amount represents overall derivatives activities that are not fully margined, based on the eligibility of variation margin for netting under the rule. Derivative transactions are complex financial instruments that can significantly and quickly fluctuate in value. Given these risks, the final rule, like the proposed rule, would require full stable funding for these net residual exposures. Moreover, while the final rule's current net value component recognizes the contribution made by derivative liabilities to the funding for derivative asset positions, the agencies do not consider a covered company's NSFR derivatives liability amount, if any, to be available stable funding to support assets outside of the covered company's derivative portfolio.

b) Variation Margin Received and Provided

Under the proposed rule's calculation of a covered company's current net value component, a covered company would have been permitted to offset derivative assets only by variation margin received that was in the form of cash that met criteria at § ____.10(c)(4)(ii)(C)(*1*) through (*7*) of the SLR rule (SLR netting criteria).[198] Additionally, under the proposed rule, all variation margin provided by the covered company would have been taken into account in determining derivatives liability values. The proposed rule also would have assigned RSF factors to on-balance sheet assets that the covered company has provided or received as variation margin under a derivative transaction (not subject to a QMNA netting set) or QMNA netting set, and an ASF factor to any liability that arises from an obligation to return variation margin.

(i) Criteria for Netting of Variation Margin Received or Provided Against Derivative Assets or Liabilities, Respectively

The agencies received comments regarding the proposed rule's criteria for variation margin received to be eligible for netting against derivatives asset values. Commenters argued that the proposed rule lacked a rationale for recognizing all forms of variation margin provided by a covered company against derivatives liability values, while only permitting derivatives asset values to be netted by variation margin received by a covered company if the variation margin met the SLR netting criteria. These commenters argued that the proposed treatment for netting variation margin received was overly conservative and would increase costs to covered companies. Commenters requested that the agencies allow additional forms of variation margin received to be netted against derivatives assets.

Operational and Contractual Criteria for Netting Variation Margin Received

Many commenters requested that the final rule permit netting of additional variation margin received against the covered company's derivative assets because the amounts received would represent a funding benefit to the covered company. Commenters argued that, unlike the SLR rule, the NSFR rule is designed to measure the funding risk of a covered company's balance sheet and, therefore, should recognize the value of collateral received when the receipt of collateral represents a source of liquidity or facilitates the monetization of the underlying derivative asset. These commenters asserted that the final rule should recognize netting for any cash collateral that is received by a covered company, specifically criticizing the proposed criteria that variation margin be calculated and transferred on a daily basis or provide for the full extinguishment of a net current credit exposure, as the amounts of cash collateral received would represent a funding benefit to the covered company. Commenters noted that, under the proposed rule, a small shortfall of variation margin would result in a

[198] *See* 12 CFR 3.10(c)(4)(ii)(C) (OCC); 12 CFR 217.10(c)(4)(ii)(C) (Board); 12 CFR 324.10(c)(4)(ii)(C) (FDIC). Specifically, under the proposed rule, these conditions were: (1) Cash collateral received is not segregated; (2) variation margin is calculated and transferred on a daily basis based on mark-to-fair value of the derivative contract; (3) variation margin transferred is the full amount necessary to fully extinguish the net current credit exposure to the counterparty, subject to the applicable threshold and minimum transfer amounts; (4) variation margin is cash in the same currency as the settlement currency in the contract; (5) the derivative contract and the variation margin are governed by a QMNA between the counterparties to the contract, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (6) variation margin is used to reduce the current credit exposure of the derivative contract and not the PFE (as that term is defined in the SLR rule); and (7) variation margin may not reduce net or gross credit exposure for purposes of calculating the Net-to-gross Ratio (as that term is defined in the SLR rule).

derivative asset being considered as entirely un-margined, which could lead to volatility in the amounts allowed for netting due to periodic shortfalls. Certain commenters requested that, at a minimum, this requirement be revised so that margin disputes or operational shortfalls would not have an impact on the netting amount. Commenters also argued that, if the SLR netting criteria are retained in the final rule, the criteria should be changed to align with proposed changes to the Basel Leverage Ratio Framework to avoid the final rule being more be more stringent than the Basel NSFR standard, which incorporates the Basel Leverage Ratio Framework netting criteria by reference.[199]

Commenters also specifically recommended that the final rule not include the proposed criterion that cash variation margin received must be in the same currency as the settlement currency in the contract. These commenters noted that the LCR rule treats HQLA denominated in a foreign currency as a source of liquidity that can be used to meet near-term outflows denominated in a different currency and the swap margin rule permits the receipt of cash collateral denominated in a currency different from the settlement currency of the derivative transaction if the currency falls within swap margin rule's definition of ''major currency'' or, if the cash variation margin is not in a ''major currency,'' subject to an 8 percent haircut under that rule.[200] Commenters expressed concern that the proposed criterion would discourage covered companies from accepting variation margin in certain currencies. These commenters argued the proposed criterion would make transactions more expensive if covered companies passed along any increased costs to counterparties by requiring them to provide variation margin in certain currencies.

After considering these comments, the agencies have revised the proposal by: (1) Removing the requirement that variation margin be received in the full amount necessary to extinguish the net current credit exposure to a counterparty in order to be recognized for netting purposes; and (2) modifying the currency requirement. In the final rule, to be recognized for netting purposes, the variation margin (1) must not be segregated; (2) must be received in connection with a derivative transaction that is governed by a QMNA or other contract between the counterparties to the derivative transaction, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided; (3) must be calculated and transferred on a daily basis on mark-to-fair value of the derivative contract; and (4) must be in a currency specified as an acceptable currency to settle payment obligations in the relevant governing contract.

In response to commenters, the final rule does not include the requirement that variation margin be received in the full amount necessary to extinguish the net current credit exposure to a counterparty in order to be recognized for netting purposes. This change will avoid unduly penalizing a covered company if variation margin the covered company has received does not fully extinguish the underlying derivative exposure due to short-term margin disputes or operational reasons and would avoid volatility in a covered company's funding requirement due to periodic, short-term shortfalls in variation margin received.[201]

The final rule includes a modified version of the proposed netting criterion for currency. Specifically, the final rule requires that in order to qualify for netting treatment, variation margin received by a covered company must be in a currency specified as an acceptable currency to settle the obligation in the relevant governing contract. Non-cash variation margin must be denominated in a currency specified as an acceptable currency. The final rule does not adopt certain commenters' suggestions to permit netting of variation margin only if it is denominated in certain major currencies, or to apply discount rates to account for costs of currency conversion, because such requirements would have significantly increased the complexity of the final rule. Allowing variation margin, whether cash or non-cash, that is not in a currency specified as an acceptable currency would also entail currency conversion risks and decrease the certainty about whether the variation margin truly netted out a derivatives exposure.

The final rule retains the requirement that variation margin is calculated on a daily basis based on the fair value of the derivative contract. To satisfy this criterion, derivative positions must be valued daily, and margin must be transferred daily when the threshold and daily minimum transfer amounts are satisfied according to the terms of the derivative contract. While variation margin exchanged less frequently may reduce the funding risk associated with a derivative position, the requirement that margin be exchanged daily makes the funding flows associated with derivative positions more predictable and manageable. Derivative positions with less frequent or episodic transfers of variation margin present more significant funding concerns than derivative positions subject to daily margin exchanges.

Netting Variation Margin Received in the Form of Non-Cash Collateral

With respect to non-cash variation margin received by a covered company, commenters recommended that the final rule recognize variation margin received in the form of rehypothecatable securities. In particular, commenters argued that variation margin received in the form of rehypothecatable level 1 liquid assets represents stable funding to a covered company with respect to derivative assets. The commenters cited the treatment of level 1 liquid assets under the LCR rule as evidence that such securities have limited liquidity and market risk.

Other commenters recommended that all classes of rehypothecatable HQLA, not only rehypothecatable level 1 liquid assets, should be recognized for netting under § ____.107 of the final rule. Some commenters urged the agencies to permit netting of variation margin received in the form of rehypothecatable HQLA, subject to haircuts equivalent to the applicable RSF factors for such assets. One commenter also suggested applying the haircuts used by the Board for collateral accepted at the discount window to determine the amount by which such collateral received as variation margin would offset a derivatives asset. Other commenters asserted that market practices—such as haircuts and daily exchange of collateral—ensure that non-cash variation margin received would provide a sufficiently stable source of funding for purposes of netting against a covered company's derivative assets.

Commenters also asserted that permitting netting of non-cash variation margin received would better align with the treatment of collateral under the swap margin rule, which allows certain non-cash collateral to be used to meet variation margin requirements.[202]

[199] *See* BCBS, Consultative Document: Revisions to the Basel Leverage Ratio Framework (April 2016), p. 7, Annex ¶ 24(iv).

[200] *See* 12 CFR 45.6 (OCC); 12 CFR 237.6. (Board); 12 CFR 349.6 (FDIC).

[201] Because the final rule does not include the proposed criterion regarding full extinguishment, the agencies note that comparisons of this criterion to the Basel Leverage Ratio Framework are accordingly no longer relevant.

[202] *See* 12 CFR 45.6 (OCC); 12 CFR 237.6. (Board); 12 CFR 349.6 (FDIC).

Commenters further argued that recognition of non-cash variation margin received would be consistent with the proposed rule's treatment of variation margin provided as well as other parts of the proposed rule that would have assigned lower RSF factors to an asset based on receipt of collateral.[203]

Commenters argued that the proposed treatment of non-cash variation margin received would have a disproportionately adverse impact on certain counterparties, such as mutual funds, pension funds, and insurance companies, which generally provide securities as variation margin due to their business models. Commenters stated that, in order to be able to provide cash variation margin to a covered company, these counterparties would have to engage in securities lending or repurchase agreements, which could increase interconnectedness and systemic risks within the financial system, adversely affect the liquidity of such securities, and reduce returns to these counterparties.[204] Another commenter argued that the NSFR rule would create a substantial new funding requirement across all covered companies if it did not allow netting of non-cash variation margin received in the form of HQLA.

In a change from the proposed rule, for purposes of determining derivatives asset values under the final rule, a covered company may take into account variation margin received in the form of rehypothecatable level 1 liquid asset securities. Level 1 liquid asset securities tend to have very stable value and reliable liquidity across market conditions. However, other types of non-cash collateral (*i.e.,* non-level 1 liquid asset securities) are less likely to hold their value across market conditions, are more likely to be difficult to monetize, and may fluctuate in value to a greater degree. Therefore, the final rule does not permit a covered company to net against a derivatives asset variation margin received in the form of non-level 1 liquid asset securities or other non-cash assets. Moreover, the contractual ability to rehypothecate the level 1 liquid asset securities ensures that the covered company is able to monetize the collateral without a triggering event, such as a default by the counterparty, across market conditions. Therefore, in order to be recognized for netting under the final rule, level 1 liquid asset securities received as variation margin must be rehypothecatable, in addition to meeting the other netting criteria that are required for recognition of cash variation margin.[205]

The final rule's allowance of rehypothecatable level 1 liquid assets to be netted against derivatives assets will further align the final rule and the agencies' swap margin rule. Although the swap margin rule permits certain non-level l liquid assets to be used as variation margin for certain swap transactions, limiting the final rule's permissible netting to variation margin received in the form of cash and rehypothecatable level 1 liquid asset securities is appropriate because permitting a covered company to reduce its derivative assets by other types of non-cash collateral could increase the funding risk associated with its derivative portfolio and reduce its ability to continue to intermediate and fund its derivatives portfolio over a one-year horizon. The agencies also recognize that, when measured by total volume, a significant majority of variation margin exchanged by swap dealers continues to be comprised of cash, with the majority of the remaining variation margin comprised of government securities.[206] As a result, the agencies do not expect that the final rule's allowance of rehypothecatable level 1 liquid assets for the purposes of netting will materially alter counterparties' behaviors regarding variation margin or result in substantial new funding requirements.

Accordingly, § ____.107(f)(1)(ii) of the final rule provides that a covered company must calculate the derivatives asset value of the underlying derivative transaction or QMNA netting set by subtracting the value of variation margin received that is in the form of rehypothecatable level 1 liquid asset securities from the asset value of the derivative transaction or QMNA netting set.[207]

(ii) RSF and ASF Factors Assigned to Assets Provided or Received as Variation Margin and Associated Liabilities

The proposed rule would have required a covered company to include in its RSF amount on-balance sheet assets that the covered company has provided (that remain on a covered company's balance sheet) and received as variation margin in connection with its derivative transactions.

On-Balance Sheet Variation Margin Provided by a Covered Company

The proposed rule would have assigned an RSF factor to on-balance sheet variation margin [208] provided by a covered company based on whether the variation margin reduces the covered company's derivatives liability value or whether it is excess variation margin. The agencies did not receive any comments regarding this proposed treatment.

As described above, under the final rule, the liability value of a derivative transaction or QMNA netting set, as applicable, takes into account any variation margin provided by a covered company. A covered company may have provided variation margin in an amount that reduces its liability to a counterparty or variation margin in excess of this amount. For example, the amount of a receivable or of securities recorded on a covered company's balance sheet may represent both an amount of variation margin provided that reduces a covered company's derivative liability, as calculated under the final rule, and excess variation margin provided. Consistent with the

[203] Commenters noted that short-term secured lending transactions with a financial sector entity secured by rehypothecatable level 1 liquid assets would have received a lower RSF factor than other secured and unsecured lending transactions under the proposed rule.

[204] The commenters also noted that a covered company may then have an incentive to invest the cash variation margin received in securities for business and risk management reasons.

[205] As noted above, for purposes of the netting criterion for currency, rehypothecatable level 1 liquid assets received as variation margin must be denominated in a currency that is specified as an acceptable currency to settle the obligation in the relevant governing contract.

[206] The swap margin rule requires variation margin exchanged between swap entities to be cash, which represents a significant portion of the swaps market. *See* 12 CFR 45.6(a) (OCC); 12 CFR 237.6(a) (Board); 12 CFR 349.6(a) (FDIC). According to the ISDA's Margin Survey for 2019, the 20 counterparties with the largest outstanding notional amounts of derivative transactions reported that their regulatory and discretionary variation margin delivered is comprised of approximately 84.6 percent cash, and 13.2 percent government securities, and regulatory and discretionary variation margin received is approximately 76.5 percent cash and 14.2 percent government securities. *See* ISDA Margin Survey 2019 (September 2019), *available at https://www.isda.org/a/1F7TE/ISDA-Margin-Survey-Year-end-2019.pdf.*

[207] To the extent a covered company receives variation margin in excess of the asset value of the derivative transaction or QMNA netting set, the derivative asset value may not be reduced below zero, treated as a derivative liability value, or netted against other derivative asset values.

[208] For example, if a covered company uses securities from its trading inventory to satisfy a requirement to provide variation margin in respect to a derivative liability, these securities would remain on its balance sheet under GAAP. For cash variation margin provided in respect to a similar derivative transaction, a covered company's cash balance would already have been reduced, and the covered company would have recorded a receivable. The receivable amount may reflect amounts of cash variation margin previously provided in excess of a covered company's liability and owed by a counterparty.

proposed rule, if the variation margin provided by a covered company reduces the derivatives liability value of a derivative transaction or QMNA netting set, the final rule assigns a zero percent RSF factor to the carrying value of such variation margin. This variation margin already reduces the covered company's derivatives liabilities, resulting in a lower total derivatives liability amount that, in turn, offsets the covered company's total derivatives asset amount when calculating its NSFR derivatives asset amount. As a result, the funding needs for this variation margin provided is already reflected in a covered company's RSF amount through the current net value component.

To the extent a covered company provides excess variation margin—that is, an amount of variation margin that does not reduce the liability value of a derivative transaction or QMNA netting set—and includes the excess variation margin asset on its balance sheet, the final rule assigns such excess variation margin an RSF factor under § ____.106, based on the characteristics of the asset or balance sheet receivable associated with the asset, as applicable. Since excess variation margin does not reduce a covered company's derivatives liabilities values, the covered company's current net value component does not reflect these on-balance sheet assets. The final rule assigns RSF factors to excess variation margin on a covered company's balance sheet to reflect the need for stable funding for such assets as part of the covered company's aggregate balance sheet. The RSF factor applied to excess variation margin provided depends on the asset provided. If a covered company has provided different types of variation margin (for example, both cash and securities), the covered company can determine which variation margin should be treated as excess and apply the appropriate RSF factor.

On-Balance Sheet Assets for Variation Margin Received by a Covered Company

The proposed rule would have assigned an RSF factor to all variation margin received by a covered company that is on the balance sheet of the covered company,[209] according to the characteristics of each asset received. The agencies received no comments on this aspect of the proposal.

The agencies are adopting the requirement for variation margin received by a covered company that is on the covered company's balance sheet as proposed. As described above, under the final rule, the derivatives asset value of a derivative transaction or QMNA netting set, as applicable, takes into account certain variation margin received by a covered company. This variation margin received reduces the covered company's derivative assets, resulting in a lower total derivatives asset amount. As a result, the funding needs for this variation margin received is not reflected in the current net value component. Therefore, regardless of whether on-balance sheet variation margin received is eligible for netting under the current net value component calculation, assignment of an RSF factor to these on-balance sheet assets under § ____.106 is necessary to capture the funding risk associated with these assets.

ASF Assignment for Balance Sheet Liabilities Representing the Return of Variation Margin Received by a Covered Company

The proposed rule would have assigned a zero percent ASF factor to any liability that arises from an obligation to return[210] variation margin received by a covered company related to its derivative transactions. One commenter suggested that the final rule assign an ASF factor of greater than zero to the liability to return variation margin received by a covered company. The commenter argued that this change would be consistent with the BCBS and the International Organization of Securities Commission guidelines for acceptable classes of derivatives collateral.

As discussed in the proposed rule, given that these liabilities can change based on the underlying derivative transactions and remain on balance sheet, at most, only for the duration of the associated derivative transactions, they do not represent stable funding for a covered company. Additionally, the contribution of variation margin received to the covered company's funding risk is appropriately recognized through the final rule's calculation of the NSFR derivatives asset amount described above and an additional contribution to a covered company's ASF amount in respect to an accounting liability to return such assets would be duplicative. For these reasons, the final rule assigns a zero percent ASF factor to liabilities representing an obligation to return variation margin received by a covered company.

3. Initial Margin Received by a Covered Company

For initial margin received by the covered company that is recorded as an asset on its balance sheet, the proposed rule would not have treated the asset received as initial margin differently from other balance sheet assets and would have assigned an RSF factor according to the characteristics of each asset received. Additionally, the proposed rule would have assigned a zero percent ASF factor to any liability that arises from an obligation to return initial margin received by a covered company related to its derivative transactions.[211]

Some commenters argued that the final rule should recognize the receipt of initial margin by a covered company as a potential source of stable funding, especially if the covered company has the contractual and operational ability to re-use the collateral assets in the future, which commenters asserted is common market practice in the over-the-counter derivatives market. Commenters requested that the final rule more closely align the ASF treatment of liabilities for initial margin received with the RSF treatment of initial margin assets provided by a covered company, in particular with respect to initial margin received from a counterparty that is a commercial end-user. Some commenters requested that the final rule apply an ASF factor of at least 50 percent to liabilities for initial margin received by a covered company and permit initial margin received to reduce the RSF amount for initial margin provided by a covered company in the initial margin component. As another approach, commenters requested that the NSFR rule permit initial margin assets received by a covered company that can be rehypothecated in the future to offset the current RSF amount derived from the related derivative asset, subject to haircuts on the initial margin assets, because such initial margin is contractually linked to the covered company's rights and obligations under the derivative transaction and is

[209] Under the final rule, RSF factors are assigned to variation margin received that are recorded as on-balance sheet assets of a covered company regardless of whether the variation margin received has reduced the covered company's derivative asset value under the rule. GAAP's treatment of variation margin assets received by a covered company depends on whether the variation margin was received in the form of cash or securities. Variation margin received that is eligible for netting under GAAP reduces the value of derivative assets under GAAP.

[210] A covered company generally will record a liability on its balance sheet representing its obligation to return a value of variation margin received.

[211] Similar to variation margin received, a covered company will record a liability for its obligation to return initial margin and independent amounts received.

available to the covered company for the duration of the derivative contract.

The agencies are adopting the treatment of initial margin received as proposed. As discussed in section V of this Supplementary Information section, the general design of the final rule requires a covered company to assess of the amount of its stable funding based on NSFR regulatory capital and liabilities at a point in time, and the adequacy of such funding based on the characteristics of assets and commitments. The NSFR generally does not determine current stable funding based on the potential future reuse of assets. Consistent with this approach, the derivative framework under the final rule does not recognize as stable funding the potential reuse at a future date of assets received as initial margin. Additionally, the amount of initial margin received by a covered company, and the liability to return such margin, can change based on the aggregate underlying derivative transactions and customer preferences, such as counterparties' demand for derivatives exposure, which may fluctuate over time. Moreover, the extent to which the initial margin assets received are available to a covered company may also fluctuate. Initial margin received by a covered company, including initial margin subject to the swap margin rule, often is subject to segregation requirements that arise from regulatory or contractual requirements, which limits the ability of the covered company to re-use initial margin assets. Even absent a segregation requirement, a covered company may voluntarily agree to segregate the initial margin received at the request of its counterparties or novate the position from the covered company to another counterparty at some point in the future in order to preserve franchise value and avoid negative signaling to market participants, making unsegregated initial margin also an unstable source of funding. This is true also in those cases where a covered company currently has the ability to re-use the initial margin assets that it receives, as the initial margin is only available to the covered company at most for the duration of the derivative transaction. Consistent with the general treatment of balance sheet assets, the final rule applies an RSF factor to a covered company's on-balance sheet assets received as initial margin. These assets result from the current level of activity with derivative counterparties and likely will be held on balance sheet for the duration of the associated derivative transactions or counterparty relationships. It is therefore appropriate to assign RSF factors to these assets based on their liquidity characteristics.

With respect to the liability to return initial margin received, this liability is subject to change based on a covered company's counterparties and their derivative positions and remains, at most, only for the duration of the associated derivative transactions, such that it does not represent stable funding for a covered company. In response to commenters' request that initial margin received be permitted to reduce the RSF amount for initial margin provided, the agencies note that unlike variation margin that is exchanged to account for changes in the current valuations of a derivative transaction or QMNA netting set, initial margin received from counterparties is intended to cover a covered company's potential losses in connection with a counterparty's default (*e.g.,* the cost to close out or replace the transaction with a defaulted counterparty) and therefore would not factor into the measure of the current value of a covered company's derivatives portfolio.

For these reasons, the final rule assigns a zero percent ASF factor to any liability representing an obligation to return initial margin received and assigns an RSF factor under § ____.106 to an asset received as initial margin that is on the covered company's balance sheet based on the characteristics of the asset.

4. Customer Cleared Derivative Transactions

Under the proposed rule, the treatment of a covered company's cleared derivative transaction would have depended on whether the covered company was acting as an agent or as a principal. A covered company's NSFR derivatives asset amount or NSFR derivatives liability amount would have taken into account the asset or liability values of derivative transactions between a CCP and a covered company, acting as principal, where the covered company has entered into an offsetting transaction (commonly known as a ''back-to-back'' transaction) with a customer. Because a covered company would have obligations as a principal under both derivative transactions comprising the back-to-back transaction, any asset or liability values arising from these transactions, or any variation margin provided or received in connection with these transactions, would have been taken into account in the covered company's calculations of its NSFR derivatives asset or liability amount.

If a covered company was a clearing member of a CCP, it would not have included in its NSFR derivatives asset amount or NSFR derivatives liability amount the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to the CCP on behalf of a customer, including when the covered company has provided a guarantee to the CCP for the performance of the customer. As the proposed rule explained, these cleared derivative transactions are assets or liabilities of a covered company's customer and not the covered company. Similarly, a covered company would not have included in its calculations under § ____.107 of the proposed rule variation margin provided or received in connection with customer cleared derivative transactions.

To the extent a covered company includes on its balance sheet under GAAP a derivative asset or liability value (as opposed to a separate receivable or payable in connection with a derivative transaction) associated with a customer cleared derivative transaction, the derivative transaction would have constituted a derivative transaction of the covered company under the proposed rule.[212] If a covered company includes on its balance sheet an asset associated with a guarantee of a customer's performance on a cleared derivative transaction and that balance sheet entry is substantially equivalent to a derivative contract, the asset should be treated as a derivative.

To the extent a covered company has an asset or liability on its balance sheet associated with a customer derivative transaction that is not a derivative asset or liability—for example, if a covered company has extended credit on behalf of a customer to cover a variation margin payment or a covered company holds customer funds relating to derivative transactions in a customer protection segregated account—such asset or liability of the covered company would have been assigned an RSF or ASF factor under §§ ____.106 or ____.104 of the proposed rule, respectively. Accordingly, to the extent a covered company's balance sheet includes a receivable asset owed by a CCP or payable liability owed to a CCP in connection with customer receipts and payments under derivative

[212] The proposed rule requested comment regarding whether the value of a cleared derivative transaction that a covered company, acting as agent, has submitted to a CCP on behalf of a customer of the covered company would be included on the covered company's balance sheet under any circumstances other than in connection with a default by the customer. Commenters did not identify any such circumstances.

transactions, this asset or liability would not have constituted a derivative asset or liability of the covered company and would not have been included in the covered company's calculations under § ____.107 of the proposed rule.

Commenters supported the proposed exclusion from a covered company's NSFR for a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of a customer, stating that this treatment appropriately reflected the limited funding risks of these activities. Some commenters suggested that certain back-to-back derivative transactions with a customer and a CCP also should be excluded from a covered company's NSFR derivatives asset or liability amount because they present minimal funding risks that are similar to cleared derivative transactions where the covered company is acting as an agent. Specifically, commenters highlighted as low risk a derivative transaction where the covered company is not contractually required to make a payment to the customer unless and until the covered company has received a corresponding payment from the CCP. These commenters noted that in both a back-to-back arrangement and a cleared derivative transaction submitted by a covered company as agent with a guarantee of the customer's performance, the covered company faces the same risk upon customer default of being required to make payments to the CCP without receiving a corresponding payment from the customer.

One commenter asked how the proposed rule would treat initial margin that a covered company receives from customers in excess of amounts provided to the CCP in connection with a cleared derivative transaction. The commenter asked how the proposed rule would treat a customer's initial margin that a covered company maintains in segregated accounts and invests in accordance with applicable rules, regulations and agreements with the customer. The commenter also asserted that the customer's initial margin functions as funding for the resulting assets.

Under the final rule, and consistent with the proposal, a covered company's NSFR derivatives asset amount or NSFR derivatives liability amount does not include the value of a cleared derivative transaction that the covered company, acting as agent, has submitted to a CCP on behalf of a customer. This includes instances when the covered company, acting as agent, has provided a guarantee to the CCP for the performance of the customer, as long as the cleared derivative transaction does not appear on a covered company's balance sheet. Additionally, consistent with GAAP, the final rule requires a covered company to include in its NSFR the derivative asset or liability amounts related to back-to-back derivative transactions that the covered company has executed with a CCP and a customer of the covered company as proposed.

As discussed in section V of this Supplementary Information section, the NSFR rule is a standardized metric that generally relies on the assets and liabilities on a covered company's balance sheet. The treatments of submitted agency transactions and executed back-to-back derivative transactions are consistent with the final rule's reliance of on-balance sheet items. Since exposures due to back-to-back derivative transactions are recorded on the balance sheet of a covered company, the final rule's treatment for these exposures will ease administration of the rule by aligning with the balance sheet treatment, consistent with the design of the NSFR. The agencies note that in the case of back-to-back derivative transactions executed with a customer and a CCP where the covered company maintains equal exposures to each counterparty (which reflects the amount of variation margin posted and collected), the covered company's derivative asset and liability positions facing the customer and CCP should generally offset within the covered company's NSFR derivatives asset or liability amount, reflecting a neutral stable funding requirement. However, by taking this approach, the final rule reflects the incremental funding risk that is present when these exposures are not fully offset, such as in the case where there are differences in the amount of eligible variation margin received and collected. In addition, these net exposures are not excluded from the final rule as certain funding risks may still be present. For example, as commenters noted, a covered company in a back-to-back arrangement may be required to make payments to the CCP even if the covered company's customer has failed to make a corresponding payment to the covered company. Initial margin received by a covered company from customers in excess of amounts provided to a CCP in connection with a cleared derivative transaction, including initial margin maintained in segregated accounts and other permitted assets, is treated the same as other initial margin received by a covered company, as described in section VII.E.3 of this Supplementary Information section. Additional RSF amounts could also result from initial margin provided by a covered company to the CCP and the derivatives future value component, each as described below.

5. Initial Margin Component

The proposed derivative framework included an initial margin component that would address the treatment of assets contributed to a CCP's mutualized loss-sharing arrangement and initial margin provided by a covered company in respect to its derivative transactions. Under the proposed rule, a covered company's contribution to a CCP's mutualized loss-sharing arrangement would have been assigned an RSF factor of 85 percent. Similarly, under the proposed rule, initial margin provided by a covered company for derivative transactions (except where the covered company acts as an agent for a customer's cleared derivative transaction, as described below) would have been assigned an RSF factor equal to the higher of 85 percent or the RSF factor applicable under § ____.106 to each asset comprising the initial margin provided. The proposed rule would have assigned an 85 percent RSF factor to the fair value of a covered company's contributions to a CCP's mutualized loss-sharing arrangement or initial margin provided by a covered company regardless of whether the contribution or initial margin is included on the covered company's balance sheet. This treatment reflects the fact that a covered company would have faced the same funding needs and risks as a result of having to provide these assets, regardless of their balance sheet treatment under GAAP. Under the proposed rule, to the extent a covered company included on its balance sheet a receivable for its contributions to a CCP's mutualized loss-sharing arrangement or for initial margin provided for derivative transactions, the covered company would have assigned an RSF factor to the fair value of the asset, but not the receivable, in order to avoid double-counting.

Under the proposed rule, a covered company would not have assigned an RSF factor to initial margin provided by the covered company when it is acting as an agent for a customer's cleared derivative transaction and the covered company does not guarantee return of the initial margin to the customer. The preamble to the proposal noted that a covered company would have had limited liquidity risk for such initial margin because, following certain timing delays, the customer would have been obligated to fund the initial margin for the duration of the transaction.

However, to the extent a covered company would have included such initial margin on its balance sheet, the proposed rule would have required the covered company to assign an RSF factor to the resulting initial margin asset under § ____.106 of the proposed rule and an ASF factor to the corresponding liability under § ____.104 of the proposed rule, similar to the treatment of other on-balance sheet items.

One commenter asserted that the agencies should not adopt the 85 percent RSF factor because the process by which this percentage was developed for the Basel NSFR standard did not include public input or publication of supporting evidence by the BCBS. Commenters also requested that a lower RSF factor be assigned to a covered company's contributions to a CCP's mutualized loss-sharing arrangement (*e.g.,* one commenter requested an RSF factor of 50 percent, other commenters recommended assigning the RSF factor that applies to operational deposits held at a financial sector entity). To support a lower RSF factor, one commenter asserted that the amount of such contributions tend to exhibit low variability over time and are typically redeemable within a three-month time horizon. The commenter also asserted that there is a low probability of a CCP drawing on the funds available in the mutualized loss-sharing account, which are used in very rare cases of a clearing member default and only after exhaustion of the defaulter clearing member's resources and the CCP's first loss contributions to the mutualized loss-sharing resources. Finally, the commenter argued that a lower RSF amount could be more appropriately set by assigning RSF factors directly to the underlying assets contributed to a CCP's mutualized loss-sharing arrangement, given the low probability that the assets will be used by a CCP.

With respect to the treatment of initial margin provided by a covered company for derivative transactions, the agencies received several comments recommending that such initial margin should be assigned an RSF factor of less than 85 percent and also that the RSF factor should be assigned based on the remaining contractual maturity of the relevant derivative transaction or QMNA netting set. Commenters argued that such treatment is warranted because a covered company may choose to not re-enter into a short-dated derivative transaction following its maturity if the covered company has liquidity needs at that point and a covered company will be able to liquidate the initial margin provided for the transaction in a short period of time after the contract matures.

One commenter argued that initial margin provided to a CCP for cleared derivative transactions should be assigned a lower RSF factor than initial margin provided for non-cleared derivative transactions because cleared derivatives tend to be more standardized and liquid, and turn over more frequently, than non-cleared derivatives. The commenter asserted that a covered company could choose to reduce its cleared derivative activities with a CCP in the future and realize the return of initial margin provided to a CCP within a six-month time horizon. Therefore, the commenter argued, the final rule should assign an RSF factor of 50 percent to initial margin provided for cleared derivative transactions, similar to the RSF factor assigned to secured lending transactions with a financial sector entity that matures in six months or more but less than one year. The commenter also argued that providing favorable treatment for initial margin provided for cleared derivative transactions would be consistent with the CFTC's margin requirements for derivatives clearing organizations, which assume short liquidation periods,[213] and the agencies' swap margin rule.[214]

One commenter supported the proposed rule's treatment of initial margin provided by a covered company when the covered company is acting as an agent for the client and does not guarantee the performance of the CCP to the client. This commenter stated that the proposed rule appropriately reflects the central clearing market structure and noted that the majority of initial margin that a covered company receives from a client for the client's cleared derivative transactions is passed through to the CCP.

After reviewing these comments, the agencies are adopting the treatment of assets provided to a CCP's mutualized loss sharing arrangement and initial margin provided by a covered company for derivative transactions as proposed.

The final rule assesses a covered company's funding profile for its derivative activities on an aggregate net basis based on its current contractual positions. In addition, the final rule generally does not consider the range of potential activities that covered companies or counterparties may take in the future.[215] For example, the standardized initial margin component is applied consistently to all covered companies and does not take into account an individual covered company's ability to adjust its level of cleared derivative activities or the probability of individual CCP's usage of a covered company's contributions to a default fund upon a member default. Additionally, an individual covered company may face challenges in meaningfully reducing its derivative exposures and initial margin requirements without impacting its customer relationships and intermediation. Moreover, during periods of market volatility, initial margin requirements may increase, which would increase a covered company's funding needs related to initial margin assets.

The final rule does not incorporate more granular assignments of RSF factors to initial margin provided by a covered company based on the maturity of the underlying derivative transactions. As discussed above, the final rule's treatment of initial margin provided is consistent with the overall approach taken in the rule to utilize an aggregate portfolio framework with respect to derivative transactions that does not take into account the scheduled maturity of individual transactions. For the reasons discussed, while there may be some benefits to a more granular approach, the agencies have determined that a change from the proposal is not justified because such an approach would unnecessarily increase the complexity of the measure and require reliance on covered companies' internal modeling, which is contrary to the NSFR's design as a standardized measure.

Specifically, the final rule assigns an RSF factor of 85 percent to the fair value of assets provided to a CCP's mutualized loss sharing arrangement and an RSF factor of at least 85 percent to the fair value of initial margin provided for derivatives transactions. The application of these RSF factors is based on the assumption that a covered company generally must maintain most of its CCP mutualized loss sharing arrangement contributions or initial margin provided in order to continue to support its customers and intermediate in derivative markets. For similar reasons, the treatment applies regardless of whether the contribution or initial margin is included on the covered company's balance sheet. The final rule's assignment of an 85 percent RSF factor reflects a standardized assumption across all derivative transactions based on an assumption of derivatives activities at an aggregate level. In addition, the standardized

[213] *See* 17 CFR 39.13(g).

[214] *See supra* note 188.

[215] *See* section V of this Supplementary Information section.

minimum 85 percent RSF factor reflects the difficulty for covered companies generally to significantly reduce the aggregate level of derivative activity (both principal and client-driven behavior) without damaging their customer relationships or reputations as intermediaries.

Another commenter asked that the agencies clarify whether initial margin provided by a covered company in connection with cleared derivative transactions of a customer that have a remaining maturity of one year or more would be assigned an RSF factor of 100 percent, similar to the proposed treatment of assets encumbered for a period of one year or longer.

Like the proposed rule, § ____.107 of the final rule does not assign an RSF factor to initial margin provided by a covered company acting as agent for a customer's cleared derivative transactions where the covered company does not guarantee the return of the initial margin to the customer. To the extent a covered company includes on its balance sheet any such initial margin provided, this initial margin would instead be assigned an RSF factor pursuant to § ____.106 of the final rule and any corresponding liability would be assigned an ASF factor pursuant to § ____.104.

6. Future Value Component

In addition to the current net value component, which requires a covered company to maintain stable funding relative to its net current derivatives position as of the calculation date, the proposed rule would have required a covered company to maintain stable funding to support potential changes in the valuation of its derivative transactions over the NSFR's one-year horizon (future value component). Specifically, this future value component would have addressed the risk that the covered company may need to provide or return margin or make settlement payments to its counterparties as the net value of its derivatives portfolio fluctuates.

Under the proposed rule, the future value component would have equaled 20 percent of the sum of a covered company's gross derivative values that are liabilities (*i.e.,* liabilities related to each of its derivative transactions not subject to a QMNA and each of its QMNA netting sets that are liabilities prior to consideration of margin, hereinafter gross derivative liabilities), multiplied by an RSF factor of 100 percent. Gross derivative liabilities in this context would have referred to derivative liabilities calculated without recognition of variation margin or settlement payments provided or received based on changes in the value of the covered company's derivative transactions. For example, if the value of a covered company's derivative transaction moves from $0 to a liability position of −$10, the covered company's gross derivative liability value would be $10, even if the covered company has provided $10 of variation margin to cover the change in value.

While some commenters supported addressing funding risk associated with changes in the value of derivative transactions in the final rule, other commenters asserted that this component should not be included in the final rule because the NSFR, as a business-as-usual and point-in-time funding metric, should not take into account funding needs that could result from potential future market changes. One commenter argued that the future value component was unnecessary because the LCR rule already adequately addresses the risks associated with potential valuation changes in a covered company's derivatives portfolio.

The agencies also received a number of comments on the specific design and calibration of the proposed future value component. Many of these commenters asserted that the proposed calibration was overly conservative and was not sufficiently supported by empirical evidence. Commenters also argued that gross derivative liabilities are a poor indicator of a covered company's potential contingent funding obligation. The value of a covered company's derivatives portfolio may fluctuate over time (*e.g.,* due to a covered company having to provide or return margin to its counterparties) in a way that results in a material increase to its funding requirements over the one-year time horizon. It is necessary to address the contingent funding risk associated with derivatives in the final rule in order to adequately ensure the resilience of a covered company's funding profile and to address a funding need not picked up by the current net value component. Covered companies require sufficient stable funding to support margin flows in a range of market conditions, including a stress event.[216]

The current net value component relies on a uniform netting treatment that assumes payment inflows and outflows related to derivatives assets and liabilities would be perfectly offsetting across QMNAs, counterparties, derivative types, and maturities. On its own, this assumption generally benefits covered companies by resulting in a lower funding requirement under the NSFR than might occur in practice. In addition, even if a covered company's payment inflows and outflows under its derivatives are matched, as the first component assumes, the covered company's margin inflows and outflows may not be. For example, even where a covered company has entered into offsetting positions in terms of market risk, its margin rights and obligations (based on changes in the value of its derivatives, contractual triggers such as changes in the covered company's financial condition, or business considerations such as customer requests) may differ. This could occur if it faces different types of counterparties, such as a commercial end-user on one side and a dealer on the other side, for each offsetting position. For covered companies with substantial derivatives activities, margin flows can be a significant source of liquidity risk.

The final rule generally retains the proposed rule's treatment of derivative portfolio potential valuation changes but reduces the weighting of this component from 20 percent to 5 percent of gross derivative liabilities. This revision should reduce the potentially pro-cyclical effects raised by commenters in response to the proposed rule's calibration at 20 percent. To the extent the proposed rule's requirement could have disincentivized covered companies from maintaining longer-dated derivative transactions used by clients for hedging purposes, this change also should reduce such effects. This calibration also ensures covered companies maintain at least a minimum amount of stable funding for funding risks associated with potential valuation changes in derivatives portfolios. In addition, the agencies expect the final rule's reduction of the calibration from 20 percent to 5 percent should lessen the incentive for a covered company to reduce its NSFR funding requirement without meaningfully changing its risk profile by closing out derivative transactions with large gross derivative liabilities and re-entering into equivalent transactions with zero liability exposure. The agencies will monitor this risk through supervisory processes and evaluate the appropriateness of the 5 percent calibration as more data, reflective of a

[216] For example, during the 2007–2009 financial crisis, some covered companies experienced volatility in their derivatives portfolios, which led to margin payments that were a significant drain on liquidity and contributed to systemic instability. Since the 2007–2009 crisis, banking organizations continue to experience funding needs in their net margin flows over time, with the size and impact of the funding needs varying across covered companies depending on the size and composition of their derivatives portfolios.

wider variety of economic conditions, become available.[217]

The final rule relies on gross derivative liabilities as the basis for measuring a covered company's funding risks associated with derivatives portfolio potential valuation changes. Gross derivative liabilities tend to positively correlate with cumulative losses realized over the life of outstanding contracts. Thus, large amounts of gross derivative liabilities are likely to be positively correlated with derivatives portfolios characterized by higher average volatility and collateral and settlement flows. In addition, although gross derivative liabilities may include transactions that are not currently subject to the exchange of variation margin, the agencies note that these transactions may become subject to margin calls or early repayment due to contractual triggers or client requests, for example in response to a change in the covered company's financial condition.

Consistent with the proposed rule, the final rule requires a covered company to treat settlement payments based on changes in the fair value of derivative transactions equivalently to variation margin for purposes of calculating the covered company's gross derivative liabilities. While these settlement payments fully extinguish a covered company's current derivative exposure from an accounting perspective, they do not reduce a derivative transaction's funding risk related to potential valuation changes. Under both the collateralized-to-market and settled-to-market approaches, a covered company may be required to fund equivalent flows of margin or settlement payments based on changes in the value of its derivative transactions. Permitting settlement payments to reduce the gross derivatives liability measure could inappropriately incentivize covered companies to re-characterize variation margin as settlement payments in order to evade the stable funding requirement for potential derivative valuation changes. Therefore, derivative liabilities that have been extinguished from the balance sheet by such settlement payments must still be included in the covered company's calculation of gross derivative liabilities for the purposes of this component. This requirement also should reduce opportunities for evasion.[218]

The agencies also considered a range of alternative approaches for addressing funding risks associated with derivatives portfolio potential valuation changes, including alternative approaches suggested by commenters. The agencies, however, have determined to adopt this component as proposed because the benefits of a simpler measure with less operational costs outweighs its shortcomings. Although many of the alternatives could have increased this component's risk sensitivity, they also would have introduced increased complexity and pro-cyclicality. In addition, the suggested alternative of applying the 20 percent calculation as a floor to the overall NSFR derivatives RSF amount would not reflect the funding risks arising from the other components of the NSFR derivatives treatment.

7. Comments on the Effect on Capital Markets and Commercial End Users

The agencies received a number of comments arguing that the proposed rule would increase the cost to covered companies of engaging in derivative transactions, which commenters argued would harm capital markets and the economy. Some of these commenters asserted that covered companies would pass on increased costs to derivatives end-users, making it more expensive for commercial firms to hedge business risks.

The final rule promotes stable funding by a covered company of derivatives activities and restricts a covered company's ability to fund such activities with unstable liabilities in a manner that could generate undue risks to the safety and soundness of the covered company or impose costs on U.S. businesses, consumers, and taxpayers in the event of a disruption to the U.S. financial system. In addition, in comparison to the proposed rule, certain modifications included in the final rule will reduce the RSF amount in connection with derivative transactions, thereby also reducing any incremental funding cost increases for covered companies that would have resulted from the proposed requirement. Section X of this Supplementary Information section further discusses the expected impacts of the rule, including potential benefits and costs for covered companies and other market participants.

8. Derivatives RSF Amount Calculation

Under the final rule, a covered company must sum the required stable funding amounts calculated under § ____.107 to determine the covered company's derivatives RSF amount. A covered company's derivatives RSF amount includes the following components:

(1) The RSF amount for the current net value component, which is equal to the covered company's NSFR derivatives asset amount, multiplied by an RSF of 100 percent, as described in section VII.E.2 of this Supplementary Information section;

(2) The RSF amount for non-excess variation margin provided by the covered company, which, as described in section VII.E.2 of this Supplementary Information section, equals the carrying value of variation margin provided by the covered company that reduces the covered company's derivatives liability value of the relevant QMNA netting set or derivative transaction not subject to a QMNA netting set, multiplied by an RSF factor of zero percent;

(3) The RSF amount for excess variation margin provided by the covered company, which as described in section VII.E.2 of this Supplementary Information section, equals the sum of the carrying values of each excess variation margin asset provided by the covered company, multiplied by the RSF factor assigned to the asset pursuant to § ____.106;

(4) The RSF amount for variation margin received, which comprises the total of the carrying value of variation margin received by the covered company, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106, as described in section VII.E.2 of this Supplementary Information section; and

(5) The RSF amount for potential future valuation changes of the covered company's derivatives portfolio, which, as described in section VII.E.6 of this Supplementary Information section, equals 5 percent of the sum of the covered company's gross derivatives liabilities, calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the values of the derivative transactions, multiplied by an RSF factor of 100 percent;

(6) The fair value of a covered company's contributions to CCP mutualized loss sharing arrangements, multiplied by an RSF factor of 85 percent, as described in section VII.E.5

[217] Any change to the 5 percent calibration would be subject to the agencies' notice and comment rulemaking process.

[218] As noted above, some commenters argued that the agencies should not include the proposed treatment of variation margin exchanged characterized as settlement payments because the commenters believed such an approach would be more stringent than the Basel NSFR standard. While it is possible that covered companies could be subject to a more stringent requirement with respect to this component of the final rule than banking organizations in foreign jurisdictions that adopt a different approach, the final rule's treatment of settlement payments is necessary to prevent evasion of the final rule's requirements.

of this Supplementary Information section.

(7) The fair value of initial margin provided by the covered company, multiplied by the higher of an RSF factor of 85 percent and the RSF factor assigned to the initial margin asset pursuant to § ____.106, as described in section VII.E.5 of this Supplementary Information section.

9. Derivatives RSF Amount Numerical Example

The following is a numerical example illustrating the calculation of a covered company's derivatives RSF amount under the final rule. Table 5 sets forth the facts of the example, which assumes that: (1) Each transaction is covered by a QMNA between the covered company and each counterparty; (2) any cash and U.S. Treasury securities received as variation margin by the covered company meet the conditions specified in § ____.107(f)(1); (3) variation margin provided by the covered company is not included on the covered company's balance sheet; (4) the covered company has provided U.S. Treasuries as initial margin to its counterparties; and (5) the derivative transactions are not cleared through a CCP.

TABLE 5—DERIVATIVES RSF AMOUNT NUMERICAL EXAMPLE

	Derivatives RSF amount numerical example		
	Asset (liability) value for the covered company, prior to netting variation margin	Variation margin provided (received) by the covered company	Initial margin provided by the covered company
Counterparty A:			
Derivative 1A	10	(1) cash	2
Derivative 2A	(2)	(1) U.S. Treasury securities.	
Counterparty B:			
Derivative 1B	(10)	3 cash	1
Derivative 2B	5		
Counterparty C:			
Derivative 1C	(2)	0	0

Calculation of derivatives assets and liabilities.

(1) The derivatives asset value for counterparty A = (10 − 2) − 2 = 6.

(2) The derivatives liability value for counterparty B = (10 − 5) − 3 = 2.

(3) The derivatives liability value for counterparty C = 2.

Calculation of total derivatives asset and liability amounts.

(1) The covered company's total derivatives asset amount = 6.

(2) The covered company's total derivatives liability amount = 2 + 2 = 4.

Calculation of NSFR derivatives asset or liability amount.

(1) The covered company's NSFR derivatives asset amount = max (0, 6 − 4) = 2.

(2) The covered company's NSFR derivatives liability amount = max (0, 4 − 6) = 0.

Required stable funding relating to derivative transactions.

The covered company's derivatives RSF amount is equal to the sum of the following:

(1) NSFR derivatives asset amount × 100% = 2 × 1.0 = 2;

(2) Non-excess variation margin provided × 0% = 3 × 0.0 = 0;

(3) Excess variation provided × applicable RSF factor(s) = 0;

(4) Variation margin received × applicable RSF factor(s) = 2 × 0.0 = 0;

(5) Gross derivatives liabilities × 5% × 100% = (5+2) × 0.05 × 1.0 = 0.35;

(6) Contributions to CCP mutualized loss-sharing arrangements × 85% = 0 × 0.85 = 0; and

(7) Initial margin provided × higher of 85% or applicable RSF factor(s) = (2+1) × max (0.85, 0.0) = 2.55.

The covered company's derivatives RSF amount = 2 + 0 + 0 + 0 + 0.35 + 0 + 2.55 = 4.90.

F. NSFR Consolidation Limitations

The proposed rule would have required a covered company to calculate its NSFR on a consolidated basis. When calculating its consolidated ASF amount, the proposed rule would have required a covered company to take into account restrictions on the availability of stable funding at a consolidated subsidiary to support assets, derivative exposures, and commitments of the covered company held at entities other than the subsidiary.

To determine a consolidated ASF amount, a covered company would have calculated the contribution to its consolidated ASF and RSF amounts, respectively, associated with each consolidated subsidiary, each as calculated by the covered company for purposes of the covered company's consolidated NSFR (subsidiary ASF contribution and subsidiary RSF contribution). Where a subsidiary's ASF contribution is greater that the subsidiary's RSF contribution, the amounts above the subsidiary RSF contribution would have been considered an ''excess'' ASF amount of the subsidiary, as calculated for the purpose of the consolidated firm (excess ASF amount). The proposed rule would have permitted the covered company to include in its consolidated ASF amount each subsidiary ASF contribution: (1) Up to the subsidiary RSF contribution, as calculated from the covered company's perspective, plus (2) any excess ASF amount above the subsidiary's RSF contribution, only to the extent the consolidated subsidiary could transfer assets to the top-tier entity of the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions. This approach to calculating a covered company's consolidated ASF amount would have been similar to the approach taken in the LCR rule to calculate a covered company's HQLA amount.

ASF amounts associated with a consolidated subsidiary, in this context, refer to those amounts that would be calculated from the perspective of the covered company. That is, in calculating the ASF amount of a consolidated subsidiary that can be included in the covered company's consolidated ASF amount, the covered company would not include certain transactions between consolidated subsidiaries that are netted under GAAP. For this reason, an ASF amount of a consolidated subsidiary that is included in a covered company's consolidated NSFR calculation may not always be equal to the ASF amount of the consolidated subsidiary when calculated on a standalone basis if the consolidated subsidiary is itself a covered company.

The proposed rule would have required a covered company that includes a consolidated subsidiary's excess ASF amount in its consolidated NSFR to implement and maintain written procedures to identify and monitor restrictions on transferring assets from its consolidated subsidiaries. The covered company would have been required to document the types of transactions, such as loans or dividends, a covered company's consolidated subsidiary could use to transfer assets and how the transactions would comply with applicable restrictions. The proposed rule would have required the covered company to be able to demonstrate to the satisfaction of the appropriate agency that assets may be transferred freely in compliance with statutory, regulatory, contractual, or supervisory restrictions that may apply in any relevant jurisdiction. A covered company that did not include any excess ASF amount from its consolidated subsidiaries in its NSFR would not have been be required to have such procedures in place. The proposal also requested alternative approaches that the agencies should consider regarding the treatment of excess ASF amounts.

Two commenters requested that the agencies clarify how the proposed consolidation provisions would apply to inter-affiliate transactions, including those that qualify as regulatory capital of a covered company's consolidated subsidiary. One commenter supported the proposed rule's treatment of certain inter-affiliate transactions for purposes of determining the subsidiary ASF and RSF contributions because ignoring such inter-affiliate transactions is consistent with the GAAP accounting treatment of such transactions. Another commenter argued that the ASF and RSF contribution amounts of a consolidated subsidiary should reflect the calculation of ASF and RSF from the subsidiary's perspective on a standalone basis. For example, under this approach, the funding raised by a covered company that is downstreamed to a consolidated subsidiary and included as capital at that subsidiary (downstream funding) would be counted as ASF of the subsidiary and part of the subsidiary ASF contribution. In addition, one commenter requested that the agencies clarify whether the consolidation provisions would apply to securitization vehicles that must be consolidated on the covered company's balance sheet in accordance with GAAP.

The agencies also received comments on the calculation of the consolidated NSFR for covered companies that are subject to a reduced NSFR requirement. Several commenters requested that covered companies subject to a reduced NSFR requirement be allowed to automatically include in their consolidated NSFR a subsidiary's ASF contribution up to 100 percent of the subsidiary's RSF contribution, rather than limiting the automatically included amount based on a reduced requirement at the subsidiary. These commenters asserted that the subsidiary's ASF contribution would be available to meet its full RSF contribution without regards to a reduced consolidated requirement and that this approach would be consistent with the Board's originally proposed modified NSFR treatment.

The final rule includes the consolidation provisions as proposed. Consistent with the proposed rule, the final rule permits a covered company to include in its consolidated ASF amount any portion of the subsidiary ASF contribution of a consolidated subsidiary that is less than or equal to the subsidiary RSF contribution because the subsidiary's NSFR liabilities and NSFR regulatory capital elements generating that ASF amount are available as stable funding for the subsidiary's assets, derivative exposures, and commitments. The final rule limits the automatic inclusion of excess ASF amounts, however, because the stable funding at one consolidated subsidiary of the covered company may not always be available to support assets, derivative exposures, and commitments at another consolidated subsidiary.

For example, if a covered company calculates a subsidiary RSF contribution of $90 based on the assets, derivative exposures, and commitments of a consolidated subsidiary and a subsidiary ASF contribution of $100 based on the NSFR regulatory capital elements and NSFR liabilities of the consolidated subsidiary, the consolidated subsidiary would have an excess ASF amount of $10 for purposes of the consolidation provision in the final rule. The covered company may only include an amount of this $10 excess ASF amount in its consolidated ASF amount to the extent the consolidated subsidiary may transfer assets to the top-tier entity of the covered company (for example, through a dividend or loan from the subsidiary to the top-tier covered company), taking into account any statutory, regulatory, contractual, or supervisory restrictions. Examples of restrictions on transfers of assets that a covered company must take into account in calculating its NSFR include sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1); the Board's Regulation W (12 CFR part 223); any restrictions on a consolidated subsidiary by state or Federal law, such as restrictions imposed by a state banking or insurance supervisor; and any restrictions on a consolidated subsidiary or branches of a U.S. entity domiciled outside the United States by a foreign regulatory authority, such as a foreign banking supervisor. This limitation on the excess ASF amount of a consolidated subsidiary includable in a covered company's consolidated NSFR applies to both U.S. and non-U.S. consolidated subsidiaries.

The agencies are not modifying the consolidation provisions, as suggested by one commenter, to require a covered company to determine the excess ASF amount of a consolidated subsidiary based on ASF and RSF amounts of the subsidiary as calculated from the subsidiary's perspective on a standalone basis. The final rule aligns with the netting of exposures under GAAP at the consolidated level, and the final rule's consolidation provisions would not require a covered company to take into account, in the calculation of the subsidiary ASF contribution, ASF and RSF amounts resulting from transactions between consolidated subsidiaries that are netted under GAAP.

As described in section V of this Supplementary Information section, the NSFR uses carrying value on a covered company's balance sheet where appropriate. The calculation of subsidiary ASF contribution does not include certain inter-affiliate transactions that are eliminated when a covered company constructs its consolidated balance sheet under GAAP. For example, if consolidated subsidiary ''A'' makes a loan to consolidated subsidiary ''B'', the loan asset of subsidiary A and the liability of subsidiary B generally would be eliminated when a covered company constructs a consolidated balance sheet in accordance with GAAP. Therefore, in this example, subsidiary B's liability is not included in the calculation of subsidiary B's subsidiary ASF contribution.

The scope of the inter-affiliate transactions that are excluded from the calculation of a subsidiary's excess ASF amount includes transactions between a covered company and its consolidated subsidiary, including where the covered company downstreams funding that is recognized as capital at the consolidated subsidiary. For example, if a subsidiary's ASF contribution equals $110, consisting of $10 of capital placed by the parent and $100 of retail deposits, only the retail deposits would be subject to the excess ASF calculation. If the subsidiary's RSF contribution was $90 (calculated from the perspective of the parent covered company, after excluding inter-affiliate transactions), then there would be $10 of excess ASF.

To the extent a large depository institution subsidiary of a covered company is subject to a stand-alone NSFR requirement under the final rule, the subsidiary's compliance with its stand-alone NSFR requirement could potentially constitute a restriction on the subsidiary's ability to transfer assets to the covered company, depending on the circumstances. Such a restriction would limit the parent covered company's ability to include portions of the depository institution's excess ASF amount (calculated from the perspective of the consolidated parent covered company), but would not change the calculation of the ASF amount of the subsidiary, as calculated on a standalone basis for purposes of its NSFR requirement. Likewise, regulatory capital requirements applicable to a consolidated subsidiary of a covered company could limit the extent to which the covered company may count the excess ASF amount of the subsidiary towards the covered company's consolidated ASF amount, but would not change the calculation of the subsidiary's ASF amount.

Similar to other balance sheet items, the assets and liabilities of securitization vehicles that are consolidated onto a covered company's balance sheet under GAAP are included in the calculation of the consolidated vehicle's ASF contributions and RSF contributions. For example, securities issued by a securitization vehicle that are liabilities on a consolidated covered company's balance sheet, and assets of a securitization vehicle that are included on a covered company's balance sheet are included in the calculation of the ASF contributions and RSF contributions.

In cases where a covered company is subject to a reduced NSFR requirement, the covered company must calculate the subsidiary ASF contribution and subsidiary RSF contribution amount of each consolidated subsidiary from the perspective of the covered company for purposes of its consolidated reduced NSFR requirement. Specifically, a covered company must apply the appropriate adjustment factor to its consolidated subsidiary's RSF contribution amount when determining the amount of the subsidiary RSF contribution for purposes of determining the amount of the consolidated subsidiary's ASF that can automatically be included in the covered company's consolidated ASF amount. Any amount of the consolidated subsidiary's ASF in excess of its adjusted RSF contribution amount, as calculated by the covered company, may only be included in the covered company's consolidated NSFR to the extent the consolidated subsidiary can transfer assets to the covered company, taking into account statutory, regulatory, contractual, or supervisory restrictions. It is important that covered companies consider funding needs across the consolidated entity for the NSFR calculation as required. Accordingly, covered companies must consider the extent to which assets held at a consolidated subsidiary are transferable across the organization and ensure that a minimum level of ASF is positioned or freely available to transfer to meet funding needs at the subsidiary where they are expected to occur. Although ASF contribution amounts at a consolidated subsidiary in excess of its adjusted RSF contribution amount may be available to support that subsidiary during the NSFR's one-year time horizon, permitting the automatic inclusion of such ASF contribution amounts up to 100 percent of the subsidiary's standalone RSF contribution amounts, as requested by commenters, without appropriate consideration of transfer restrictions, may make the consolidated NSFR requirement less effective.

G. Treatment of Certain Facilities

In light of recent disruptions in economic conditions caused by the outbreak of the coronavirus disease 2019 and the stress in U.S. financial markets, the Board, with the approval of the U.S. Secretary of the Treasury, established certain liquidity facilities pursuant to section 13(3) of the Federal Reserve Act.[219]

In order to prevent disruptions in the money markets from destabilizing the financial system, the Board authorized the Federal Reserve Bank of Boston to establish the Money Market Mutual Fund Liquidity Facility (MMLF). Under the MMLF, the Federal Reserve Bank of Boston may extend non-recourse loans to eligible borrowers to purchase assets from money market mutual funds. Assets purchased from money market mutual funds are posted as collateral to the Federal Reserve Bank of Boston. MMLF collateral generally comprises securities and other assets with the same maturity date as the MMLF non-recourse loan.[220]

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, the Board authorized each of the Federal Reserve Banks to extend credit under the Paycheck Protection Program Liquidity Facility (PPPLF).[221] Under the PPPLF, each of the Federal Reserve Banks may extend non-recourse loans to institutions that are eligible to make Paycheck Protection Program (PPP) covered loans as defined in section 7(a)(36) of the Small Business Act.[222] Under the PPPLF, only PPP covered loans that are guaranteed by the Small Business Administration (SBA) with respect to both principal and accrued interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks. The maturity date of the extension of credit under the PPPLF equals the maturity date of the PPP covered loans pledged to secure the extension of credit.[223]

Eligible borrowers under the MMLF and PPPLF include certain banking organizations that are currently subject to the LCR rule and that will be subject to the final rule upon its effective date. Advances from the MMLF and PPPLF facilities are non-recourse, and the maturity of the advance generally aligns with the maturity of the collateral. Accordingly, a covered company is not

[219] 12 U.S.C. 343(3).

[220] The maturity date of a MMLF advance equals the earlier of the maturity date of the eligible collateral pledged to secure the advance and 12 months from the date of the advance.

[221] The Paycheck Protection Program Liquidity Facility was previously known as the Paycheck Protection Program Lending Facility.

[222] 15 U.S.C. 636(a)(36). Congress created the PPP as part of the Coronavirus Aid, Relief, and Economic Security Act and in recognition of the exigent circumstances faced by small businesses. PPP covered loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA) and also afford borrower forgiveness up to the principal amount and accrued interest of the PPP covered loan, if the proceeds of the PPP covered loan are used for certain expenses. Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered to be small by the SBA. The SBA reimburses PPP lenders for any amount of a PPP covered loan that is forgiven. In general, PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP covered loan forgiveness. For more information on the Paycheck Protection Program, see *https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp*.

[223] The maturity date of the loan made under the PPPLF will be accelerated if the underlying PPP covered loan goes into default and the eligible borrower sells the PPP covered loan to the SBA to realize the SBA guarantee. The maturity date of the loan made under the PPPLF also will be accelerated to the extent of any PPP covered loan forgiveness reimbursement received by the eligible borrower from the SBA.

exposed to credit or market risk from the collateral securing the MMLF or PPPLF advance that could otherwise affect the banking organization's ability to settle the loan and generally can use the value of cash received from the collateral to repay the advances at maturity.

To facilitate the use of the MMLF and the PPPLF, on May 6, 2020, the agencies published in the **Federal Register** an interim final rule to require a banking organization subject to the LCR rule to neutralize the effect on its LCR of participation in the MMLF and PPPLF (LCR interim final rule).[224] The LCR interim final rule requires a covered company to neutralize the LCR effects of the advances made by the MMLF and PPPLF together with the assets securing these advances. Specifically, the LCR interim final rule added a new definition to the LCR rule for ''Covered Federal Reserve Facility Funding'' to identify MMLF and PPPLF advances separately from other secured funding transactions under the LCR rule. The LCR interim final rule requires outflow amounts associated with Covered Federal Reserve Facility Funding and inflow amounts associated with the assets securing this funding to be excluded from a covered company's total net cash outflow amount under the LCR rule.[225] The treatment under the LCR interim final rule better aligns the treatment of these advances and collateral under the LCR rule with the liquidity risk associated with funding exposures through these facilities, and to ensure consistent and predictable treatment of covered companies' participation in the facilities under the LCR rule. The agencies received one comment letter, from a trade association, on the LCR interim final rule. The commenter supported the requirements under the LCR interim final rule, arguing that the requirements encourage participation in the facilities, which ultimately provides benefits to small businesses, households, and investors.

For the same reasons that the agencies issued the LCR interim final rule, the agencies are adopting, as final, provisions to better align the treatment of these advances and collateral under the NSFR rule with the liquidity risk associated with funding exposures through these facilities, and to ensure consistent and predictable treatment of covered companies' participation in the facilities under the NSFR rule.[226] Specifically, the final rule adds a new § ____.108 that requires liability and asset amounts associated with Covered Federal Reserve Facility Funding to be excluded from a covered company's NSFR. Consistent with the LCR rule, this new § ____.108 does not apply to the extent the covered company secures Covered Federal Reserve Facility Funding with securities, debt obligations, or other instruments issued by the covered company or its consolidated entity. This arrangement presents liquidity risk due to the asymmetric cash flows of the covered company because the covered company would not have an inflow to offset its cash outflows.

Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The agencies have determined that it is in the public interest to finalize these changes without notice and comment. The MMLF and PPPLF were established in response to urgent and severe economic disruptions, and these changes will provide certainty to covered companies regarding the NSFR treatment of transactions under the facilities, thereby facilitating the continued operation of, and covered companies' participation in the facilities. In addition, the agencies note that it may be unnecessary to provide notice or the opportunity to comment prior to adopting these changes because the public recently had an opportunity to comment on substantively similar changes to the LCR rule, and no adverse comments were submitted to the agencies in connection with those changes.

H. Interdependent Assets and Liabilities

The Basel NSFR standard provides that, subject to strict conditions and in limited circumstances, it may be appropriate for an asset and a liability to be considered interdependent and assigned a zero percent RSF factor and a zero percent ASF factor, respectively.[227] The proposed rule did not include a framework for interdependent assets and liabilities because, as stated in the proposal, the agencies did not identify transactions conducted by U.S. banking organizations that would meet the conditions in the Basel NSFR standard.

As the proposed rule noted, in order for an asset and liability to be considered interdependent, the Basel NSFR standard would require all of the following conditions to be met: (1) The interdependence of the asset and liability must be established on the basis of contractual arrangements, (2) the liability cannot fall due while the asset remains on the balance sheet, (3) the principal payment flows from the asset cannot be used for purposes other than repaying the liability, (4) the liability cannot be used to fund other assets, (5) the individual interdependent asset and liability must be clearly identifiable, (6) the maturity and principal amount of both the interdependent liability and asset must be the same, (7) the bank must be acting solely as a pass-through unit to channel the funding received from the liability into the corresponding interdependent asset, and (8) the counterparties for each pair of interdependent liabilities and assets must not be the same.

The Basel NSFR standard's conditions for establishing interdependence are intended to ensure that the specific liability will, on the basis of contractual terms and under all circumstances, remain for the life of the asset and all cash flows during the life of the asset and at maturity are perfectly matched with cash flows of the liability. Under such conditions, a covered company would face no funding risk or benefit arising from the interdependent asset and liability. For example, the proposed rule noted that if a sovereign entity establishes a program where it provides funding through financial institutions that act as pass-through entities to make loans to third parties, and all the conditions set forth in the Basel NSFR standard are met, the liquidity profile of a financial institution would not be

[224] 85 FR 26835 (May 6, 2020). The agencies also adopted interim final rules to address the capital treatment of participation in the MMLF (85 FR 16232 (Mar. 23, 2020)) and capital treatment of participation in the PPPLF (85 FR 20387 (Apr. 13, 2020)). These interim final rules were adopted as final on September 29, 2020.

[225] *See* 12 CFR 50.34 (OCC); 12 CFR 249.34 (Board); 12 CFR 329.34 (FDIC). Section ____.34 does not apply to the extent the covered company secures Covered Federal Reserve Facility Funding with securities, debt obligations, or other instruments issued by the covered company or its consolidated entity.

[226] The new definition of ''Covered Federal Reserve Facility Funding'' was added into the common definitions section of the LCR and NSFR rules. Consistent with the LCR interim final rule, the final rule does not amend the agencies' definitions of average weighted short-term wholesale funding in the common definitions section of the LCR and NSFR rules and the Board is not amending the calculation of weighted short-term wholesale funding on reporting form FR Y–15 related to § ____.108 of the final rule. Weighted short-term wholesale funding measures a banking organization's typical dependency on certain types of funding and generally does not measure funding risks related to the composition of a banking organization's assets and commitments.

[227] *See supra* note 6 at para 45.

affected by its participation in the program. As such, the assets of the financial institution created through such a program could be considered interdependent with the liabilities that would also be created through the program, and the assets and liabilities could be assigned a zero percent RSF factor and a zero percent ASF factor, respectively. The proposed rule noted that no such programs at that time existed in the United States. Therefore, the proposed rule did not include a provision for assigning zero percent RSF and ASF factors to assets and liabilities that are ''interdependent.'' However, the proposed rule requested comment as to whether any assets and liabilities of covered companies should receive such treatment under the NSFR rule.

Commenters requested that the final rule recognize as interdependent various assets and liabilities. Specifically, commenters requested interdependent treatment in connection with securities borrowing and lending transactions to facilitate client short positions; securities borrowing transactions and covered company short positions; certain client segregated assets and liabilities for client claims on those assets; assets and liabilities arising from derivatives clearing activities on behalf of clients; initial margin received by a covered company under client-facing derivative transactions and used to fund hedge positions for the derivative transactions, and assets and liabilities related to mortgage servicing activities. Commenters asserted that these transactions present no funding risk to covered companies. Discussions below address comments on the treatment of assets and liabilities as interdependent.

As discussed in section V of this Supplementary Information section, the NSFR is a broad measure of the funding profile of the whole balance sheet of a covered company at a point in time and the final rule generally does not apply separate requirements to individual lines of business or to subsets of assets and liabilities of a covered company. The treatment of specific assets and liabilities as interdependent would effectively remove these items from the assessment of the covered company's stable funding profile overall. As discussed in sections VII.C.2.a and VII.D.2.a of this Supplementary Information section, the final rule uses the remaining maturity of assets and liabilities to assess a covered company's funding risks. As a general principle, it would be inconsistent with the purposes and design of the NSFR to provide interdependent treatment to a specific asset and liability where the specified asset can contractually persist on the balance sheet of the covered company after the extinguishment of the specified liability. Additionally, the final rule generally does not consider the range of actions that a covered company may take in the future that would adjust the maturity of an asset in response to the maturity of a liability. Consistent with the purposes and design of the NSFR, as discussed above, the agencies have concluded that it would be inappropriate to recognize any assets and liabilities as interdependent. Additionally, including in the final rule the criteria under which certain transactions could qualify as interdependent would add considerable complexity and undermine the NSFR's design as a simple and standardized measure. In the discussion below, the agencies discuss concerns about why particular transactions suggested by commenters will not qualify as interdependent.

Short Sales

Commenters requested that the agencies reconsider interdependent treatment for transactions conducted by a covered company that facilitate the covered company or its customers entering into short positions. Commenters provided examples of certain secured funding transactions, such as firm shorts or loans of collateral to customers, that they asserted directly fund certain secured lending transactions, such as a reverse repurchase agreement or a securities borrowing transaction. These commenters asserted that the short sale of a security by a covered company represents a liability on its balance sheet. In a similar manner, a client short sale may result in a covered company receiving the cash proceeds as collateral for the security provided to cover the client's short position, increasing the covered company's balance sheet liability to its clients. In each case, the covered company may use the proceeds from its short sale or the cash collateral from the client's short sale to collateralize a secured lending transaction to source the security sold short. The secured lending transaction is recorded as an asset on the covered company's balance sheet.

At the time of terminating its short exposure, the covered company extinguishes its short position liability. Similarly, at the unwind of the client short transaction, the client may return the security to the covered company in return for the cash proceeds of the initial short sale, closing out the covered company's liability to the client. In either case, to close out the asset the covered company may return the security to the securities lender or reverse repurchase agreement counterparty and receive back the cash collateral. Commenters asserted that when either type of short position is unwound, the associated balance sheet liabilities and assets would roll off simultaneously. These commenters argued that such transactions are substantially similar to transactions in which a covered company acts as riskless principal; that the transactions are linked by regulation, internal procedures, and business practices; that the principal amounts of the asset and liability generated by a customer short position are generally the same; and that such treatment would be consistent with the Basel NSFR standard that provides special treatment for securities borrowing transactions. As a result, commenters requested that the agencies assign no funding requirement to the secured lending transaction that sources the security, which is the covered company's balance-sheet asset.

Commenters also noted that certain securities borrowing transactions conducted by a covered company are subject to the Board's Regulation T and requested that the agencies recognize that conducting a stock borrow for a permitted purpose under Regulation T creates a clear link between the liability to the client and the secured lending transaction. One commenter speculated that covered companies would need to raise additional long-term funding to support the stable funding requirement for activities that facilitate short positions and that the cash raised through such issuance may increase a covered company's balance sheet leverage, which in turn may cause the covered company to reduce other financial intermediation activities. One commenter argued that failing to reduce the funding requirement for facilitating short-sale activities would impede market liquidity and cited a report by the Federal Reserve Bank of New York concerning the short-sale ban in the United States from September 18, 2018, to October 8, 2018, as evidence that impeding the short-sale market would damage equities markets.

The agencies have concluded that because there is a risk that the maturities of the assets and liabilities for these transactions may not match, it would be inappropriate to treat these assets and liabilities as interdependent. It is unclear whether the consequence of the maturity of all short sales liabilities on related assets would be the same in practice. For example, the related assets may potentially persist beyond the maturity of the liability. In addition, although there are regulatory requirements that could require broker-dealers to take a capital charge if they do not return securities to a securities lender, these regulations may not subject all potential transactions to capital charges and a covered company could still technically retain a security if it is was willing to incur such capital charges.

Secured funding and lending transactions conducted by a covered company that facilitate the covered company, or its customers, entering into a short exposure contribute to the funding profile of the covered company similar to secured funding and lending transactions conducted for other purposes, such as matched book repurchase and reverse repurchase agreements. Providing interconnected treatment for assets and liabilities related to short positions could incent covered companies to engage in regulatory arbitrage by transforming some matched book repurchase agreements into customer shorts covered by sourcing an asset from a third party. Further, covered companies frequently conduct short-facilitation transactions on an open basis, or with significant embedded optionality, and with highly sophisticated financial counterparties. A covered company may have limited control over the maturity of either the related asset or liability and may be exposed to the asymmetric timing of the maturities or the termination amounts. The decision to terminate the funding received from a short sale may be influenced by a range of factors outside the control of the covered company, such as market volatility or the investment priorities of a covered company's client. In the case of a short exposure covered by a security borrow from a third party, the decision to terminate the secured lending transaction by the covered company may be influenced by the presence of alternative eligible uses for the security borrowed. The secured lending transaction maturity is also dependent upon the capacity of the securities lender to terminate the transaction by returning cash collateral on demand. Conversely, the securities lender may disrupt the symmetry of the transactions by terminating the secured lending transaction prior to the termination of the short. The covered company may not be able to source the securities elsewhere or may not be able to demand additional collateral from the customer but may have to continue facilitating the customer short. As discussed in section VII.D.3.c of this Supplementary Information section, the relatively low RSF factor applied to short-term secured lending transactions with financial counterparties is designed to address uncertainty as to whether assets may persist on the balance sheet. For these reasons, the agencies are not applying interdependent treatment to transactions facilitating short positions.

Assets Held in Certain Customer Protection Segregated Accounts and Associated Liabilities

In another example, commenters requested that the agencies recognize as interdependent assets that are required to be segregated according to regulations and the associated liabilities for client claims on these assets. In particular, a covered company may be required to hold a certain amount of segregated assets in order to comply with regulations applicable to customer funds of a broker-dealer or futures commission merchant. Under the proposed rule, segregated assets that are included on a covered company's balance sheet under GAAP would be assigned RSF factors in the same manner as other assets of the covered company. Commenters asserted that this treatment would overstate the funding requirement associated with these assets since the assets are held for the benefit of clients, covered companies have limited reinvestment rights over the assets, and the assets are funded by associated liabilities to customers. Commenters also argued that the proposed treatment would incentivize covered companies to hold segregated client assets in non-cash form rather than deposit cash with third parties.[228]

Covered companies face funding risk with respect to such segregated accounts due to potential asymmetry between the relevant assets and liabilities. Accordingly, it would be inappropriate to treat such assets and the corresponding liabilities as interdependent. Covered companies have the ability to exercise control over client assets held in segregated accounts, and covered companies may be able to earn a return on those assets depending on reinvestment choices. Additionally, the amount and maturity of segregated assets may not be directly connected to the amount and maturity of liabilities to customers. In cases where a covered company is required to segregate an amount of assets, the determination of the aggregate value segregated may be dependent on many different activities and liabilities to customers, each subject to optionality exercisable at the discretion of the customer. For example, the amount of assets to be segregated for client protection under the SEC's Rule 15c3–3 may be based on a substantial volume of individual customer free credit balances, margin loans extended to customers, and short positions.

Clearing Activities

Commenters requested that the agencies treat clearing activities conducted on behalf of clients as interdependent transactions. Under these transactions, covered companies would guarantee the performance of a client to the CCP and would collect any necessary margin requirements from the client and post them to the CCP on behalf of the client. Commenters argued that these client clearing activities should be considered as interdependent transactions, as the covered company would be acting solely on behalf of the client.

As discussed in section VII.E.4 of this Supplementary Information section, if a covered company is engaged in clearing activities as an agent for a client, it may be that the covered company would record no balance sheet entries associated with such activities. Accordingly, there would be no RSF factor assigned to such activities. Under these circumstances, interdependent treatment would be unnecessary. To the extent that a covered company guarantees the performance of its client or otherwise engages in activities that cause these transactions to be recorded on its balance sheet, it would be inappropriate to de-recognize them for purposes of the NSFR. In some situations, a covered company may continue to face funding risk as the intermediary between its client and the CCP.

Hedges of Derivative Transactions Financed With Initial Margin

Commenters stated that a covered company in certain circumstances can use initial margin that is provided by a client to purchase a security that can then be used to hedge the market risk of a client-facing derivative transaction. In these cases, commenters asserted that a covered company's liability to return initial margin may be viewed as directly funding the hedge security on the covered company's balance sheet. Commenters argued that interdependent treatment is warranted for the assets and liabilities generated by such activity because the covered company acts as an intermediary when using client funds to hedge the risk created by the client-

[228] *See* section VII.D.3.i of this Supplementary Information section, which discusses the assignment of RSF factors to assets held in certain customer protection segregated accounts.

facing derivative. Additionally, the covered company generally sells the hedge asset when the client's derivative position is unwound, regardless of the remaining maturity of the hedge asset. The commenters alternatively recommended that the agencies could limit interdependent treatment in these cases to circumstances where the sale of the hedge asset and the unwind of the derivative (together with the associated liability to return the initial margin) occur simultaneously pursuant to a contract or internal procedures. One commenter argued that contractual provisions and auditable internal policies and procedures create links between assets and liabilities that are sufficiently formal and enforceable such that interdependent treatment is warranted. For example, in the case of initial margin provided by a client and used by a covered company to purchase a security to hedge the customer-facing derivative exposure, one commenter argued that *force majeure* clauses relieve a covered company from returning initial margin to a client when the company is unable to sell the hedge security asset. In this case, the commenter argued that the hedge asset and initial margin liability are linked because the firm will not be required to return the initial margin until it is able to sell the hedge security.

In these cases, commenters requested that the agencies either assign a non-zero ASF factor for rehypothecatable initial margin received by a covered company or reduce the RSF factor assigned to the hedge asset purchased using initial margin provided by a client. Commenters asserted that the proposed rule should provide greater funding value to initial margin received by a covered company from clients and used by the covered company to hedge its derivative position with the client because this source of funding is more closely related to the covered company's derivatives activities than other sources of funding that receive higher ASF factors, like retail deposits. The commenters also expressed the view that failure to give interdependent treatment to initial margin liabilities and related hedge assets under these circumstances effectively punishes covered companies for financing corporate entities, which would adversely impact corporate financing.

While a covered company may be unlikely in practice to continue to hold a hedge asset without a corresponding liability to its client, there is generally no absolute contractual bar against this. A covered company generally could continue to hold an asset formally used as a hedge despite a change in or elimination of a particular client's derivative position. A covered company could, for example, return a client's initial margin but continue to hold the asset purchased as a hedge, if only for a short time. It is not the case that the asset and liability necessarily fall due at the same time. Accordingly, it would not be appropriate to treat these assets and liabilities as interdependent.

Mortgage Servicing

A commenter also suggested that mortgage servicing rights and deposits related to mortgage servicing be granted interdependent treatment. The commenter argued that the asset (mortgage servicing rights) and liability (mortgage borrower deposits consisting of the principal, interest, tax, and insurance payments collected from the borrowers to be remitted to investors, insurers, and state and local governments) are linked and treated as self-funding by the industry. The commenter also argued that deposits arising from mortgage servicing should be considered stable because they have predictable inflow and outflow patterns.

It would be inconsistent with the NSFR's aggregated balance sheet approach to remove from the ratio calculation, through interdependent treatment, an asset and a liability that are not each clearly identifiable or where the maturities and amounts of the asset and the liability do not align. While certain assets and liabilities may be closely linked (such as mortgage servicing rights and borrower liabilities), there is not enough certainty that the size and maturity of these assets and liabilities would always align.

Other Comments on Interdependent Assets and Liabilities

Commenters also submitted several general comments applicable to many types of transactions that they argued should receive interdependent treatment. Commenters suggested that the agencies could impose data reporting requirements to verify that internal policies and procedures are maintaining a link between the various parts of the transactions they believe should be granted interdependent treatment. Another commenter argued that, if covered companies engage in the transactions outlined above in accordance with the BCBS haircut floors for non-centrally cleared securities financing transactions,[229] then the transactions should be treated as interdependent. Several commenters also warned that failure to provide interdependent treatment for the positions described above would significantly reduce liquidity in the relevant markets.

A discussed in section V of this Supplementary Information section, the NSFR is a broad measure of the funding profile of the whole balance sheet of a covered company and the final rule does not apply separate requirements to individual lines of business or to subsets of assets and liabilities of a covered company. The treatment of specific assets and liabilities as interconnected would effectively remove these items from the assessment of the covered company's stable funding profile overall. As a general principle, it would be inconsistent with the purposes and design of the NSFR to provide interdependent treatment to a specific asset and liability where the specified asset can contractually persist on the balance sheet of the covered company after the extinguishment of the specified liability. While internal processes and procedures may increase the probability of such assets and liabilities aligning, it would be impractical to expand the final rule to create or regulate such processes in a manner that would ensure alignment.

VIII. Net Stable Funding Ratio Shortfall

As noted above, the proposed rule would have required a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The agencies expect circumstances where a covered company has an NSFR below 1.0 to arise rarely. However, given the range of reasons, both idiosyncratic and systemic, a covered company could have an NSFR below 1.0 (for example, a covered company's NSFR might temporarily fall below 1.0 during a period of extreme liquidity stress), the proposed rule would not have prescribed a particular supervisory response to address a violation of the NSFR requirement. Instead, the proposed rule would have provided flexibility for the appropriate Federal banking agency to respond based on the circumstances of a particular case. Potential supervisory responses could include, for example, an informal supervisory action, a cease-and-desist order, or a civil money penalty.

The proposed rule would have required a covered company to notify the appropriate Federal banking agency of an NSFR shortfall or potential shortfall. Specifically, the proposed rule would have required a covered company to notify its appropriate Federal banking agency no later than 10 business days, or such other period as

[229] Basel Committee, *Haircut floors for non-centrally cleared securities financing transactions* (November 2015), *available at http://www.bis.org/bcbs/publ/d340.htm.*

the appropriate Federal banking agency may otherwise require by written notice, following the date that any event has occurred that has caused or would cause the covered company's NSFR to fall below the minimum requirement.

In addition, a covered company would have been required to develop a plan for remediation in the event of an NSFR shortfall. As set forth in the proposed rule, such a plan would have been required to include an assessment of the covered company's liquidity profile, the actions the covered company has taken and will take to achieve full compliance with the proposed rule (including a plan for adjusting the covered company's liquidity profile to comply with the proposed rule's NSFR requirement and a plan for fixing any operational or management issues that may have contributed to the covered company's noncompliance), and an estimated time frame for achieving compliance. The proposed rule would have required a covered company to submit its remediation plan to its appropriate Federal banking agency no later than 10 business days, or such other period as the appropriate Federal banking agency may otherwise require by written notice, after: (1) The covered company's NSFR falls below, or is likely to fall below, the minimum requirement and the covered company has or should have notified the appropriate Federal banking agency, as required under the proposed rule; (2) the covered company's required NSFR disclosures or other regulatory reports or disclosures indicate that its NSFR is below the minimum requirement; or (3) the appropriate Federal banking agency notifies the covered company that it must submit a plan for NSFR remediation and the agency provides a reason for requiring such a plan.

Finally, the covered company would have been required to report to the appropriate Federal banking agency no less than monthly (or other frequency, as required by the agency) on its progress towards achieving full compliance with the proposed rule. These reports would have been mandatory until the firm's NSFR was equal to or greater than 1.0.

The agencies would have retained the authority to take supervisory action against a covered company that fails to comply with the NSFR requirement.[230] Any action taken would have depended on the circumstances surrounding the funding shortfall, including, but not limited to, operational issues at a covered company, the frequency or magnitude of the noncompliance, the nature of the event that caused a shortfall, and whether such an event was temporary or unusual.

The agencies received one comment requesting clarification of how frequently a covered company must calculate its NSFR to meet the proposed rule's requirement to maintain an NSFR of 1.0 on an ''ongoing basis.'' The commenter suggested that the final rule should require a covered company to calculate its NSFR in the same manner as it calculates its regulatory capital levels. The commenter argued that, because the NSFR is a long-term funding metric calculated primarily by reference to a covered company's balance sheet, it would not be possible to calculate a firm's NSFR more frequently than monthly.

The agencies also received two comments related to the proposed rule's shortfall provisions. One commenter asserted that the proposed rule did not have a mechanism similar to the LCR permitting a covered company's NSFR to fall below 1.0. Another commenter responded to the agencies' request for comment as to whether the proposed shortfall framework should include a *de minimis* exception, such that a covered company would not be required to report a shortfall if its NSFR returned to the required minimum within a short grace period. This commenter requested a *de minimis* exception when the cause of an NSFR shortfall is beyond a covered company's control and the shortfall would not be expected to increase systemic risk because of an expected short duration and minimal amount. This commenter also requested that the final rule include a cure period where a shortfall is caused by a merger or acquisition by a covered company. Another commenter requested that the requirement to submit a formal remediation plan should be determined on a case-by-case basis by the covered company's appropriate Federal banking agency. The commenter also requested that the requirement to respond to an NSFR shortfall be calibrated to the materiality and likely persistence of the shortfall.

Consistent with the proposed rule, the final rule requires a covered company to maintain an NSFR of at least 1.0 on an ongoing basis. The NSFR is designed to ensure that covered companies have the ability to serve households and businesses in both normal and adverse economic situations. The agencies would generally support a covered company that chooses to reduce its NSFR during a liquidity stress period in order to continue to lend and undertake other actions to support the broader economy in a safe and sound manner.

While the final rule requires a covered company that is a U.S. depository institution holding company or U.S. intermediate holding company to disclose its NSFR for each quarter on a semi-annual basis,[231] a covered company needs to monitor its funding profile on an ongoing basis to ensure compliance with the NSFR requirement. If a covered company's funding profile materially changes intra-quarter, the agencies expect the company to be able to calculate its NSFR to determine whether it remains compliant with the NSFR requirement, consistent with the notification requirements of § ___.110 of the final rule.[232] The agencies are adopting the shortfall provisions of the final rule as proposed. Consistent with the shortfall framework in the LCR rule, the final rule's shortfall framework provides supervisory flexibility for the appropriate agency to respond to an NSFR shortfall based on the particular circumstances of the shortfall. Depending on the circumstances, an NSFR shortfall would not necessarily result in supervisory action, but, at a minimum, would result in a notification to the appropriate agency and heightened supervisory monitoring through a remediation plan.

The agencies have determined not to include a cure period or *de minimis* exception to the shortfall notification requirement in the final rule. The shortfall notification procedures are intended to help the agencies identify a covered company that has a heightened liquidity risk profile, and identify and evaluate shortfall patterns over time and across covered companies. Timely notification of a shortfall allows the appropriate Federal banking agency to make an informed determination as to the appropriate supervisory response. As a result, the agencies are finalizing the requirement that a covered company must provide such notification no later than 10 business days, or such other period as the appropriate agency may otherwise require by written notice, following the date that any shortfall event has occurred. Similarly, timely submission of a remediation plan

[230] *See* § ___.2(c) of the final rule.

[231] *See* section IX of this Supplementary Information section.

[232] The ability for a covered company to calculate its NSFR at any point in which its funding profile materially changes intra-quarter is similar to the application of minimum capital requirements under the agencies regulatory capital rule. For example, Prompt Corrective Action requires an insured depository institution to provide written notice to its primary supervisor that an adjustment to its capital category may have occurred no later than 15 calendar days following the date that any material event has occurred that would cause the insured depository institution to be placed in a lower capital category. *See* 12 CFR 6.3 (OCC); 12 CFR 208.42 (Board); 12 CFR 324.402 (FDIC).

facilitates evaluation of shortfalls and the efforts undertaken by covered companies to address them, which assists the agencies in determining the appropriate supervisory response. Such supervisory monitoring and response could be hindered if notice were to occur or remediation plans were only submitted after a shortfall persisted in duration or increased in amount.

IX. Disclosure Requirements

A. NSFR Public Disclosure Requirements

The disclosure requirements of the proposed rule would have applied to certain bank holding companies and savings and loan holding companies. The tailoring proposals would have amended the scope of application of the proposed disclosure requirements to apply to domestic top-tier depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations subject to the proposed NSFR rule.[233] The disclosure requirements of the proposed rule would not have applied to depository institutions.[234] The proposed rule would have required public disclosure of a company's NSFR and components, as well as discussion of certain qualitative features to facilitate an understanding of the company's calculation and results. The final rule adopts the public disclosure requirements for domestic top-tier depository institution holding companies and U.S. intermediate holding companies of foreign banking organizations that are subject to the final rule (covered holding companies).

B. Quantitative Disclosure Requirements

The proposals would have required a company subject to the proposed disclosure requirements to publicly disclose the company's NSFR and its components. The proposed NSFR disclosure template would have included components of a company's ASF and RSF calculations (ASF components and RSF components, respectively), as well as the company's ASF amount, RSF amount, and NSFR. For most ASF and RSF components, the proposed rule would have required disclosure of both ''unweighted'' and ''weighted'' amounts.[235] For certain line items in the proposed NSFR disclosure template relating to derivative transactions that include components of multi-step calculations before an ASF or RSF factor is applied, a company would only have been required to disclose a single amount for the component.

Two commenters argued that the proposed NSFR disclosure template should not include certain information that is more granular than, or in addition to, the information specified in the BCBS common template, such as the requirement for additional detail regarding a company's HQLA and certain other assets. One of these commenters asserted that the proposed level of detail of required disclosures could constrain a company's ability to execute its funding and related business strategies because a firm subject to the disclosure requirements would be wary of adjusting its funding structure in a way that would appear to market participants to diverge from the funding structures of peer firms. The commenter also argued this anticipation of a market response would inappropriately force firms with different business models and funding needs to maintain similar funding structures. The commenter acknowledged that these concerns could be mitigated if firms explain the difference between their funding structures and those of other firms in the qualitative portion of the public disclosure, but argued that market participants are likely to pay more attention to the quantitative portion of a firm's disclosure. To address these concerns, the commenter argued that reducing the required granularity of the proposed disclosures would provide the market with sufficient information about a company's liquidity profile without resulting in what the commenter argued would be negative effects of overly detailed disclosures.

Other commenters suggested that the final rule require a company to disclose its average NSFR over the relevant reporting period, rather than the company's NSFR at the end of the quarter. The commenters argued that liquidity positions, and consequently a company's NSFR, can be volatile. Accordingly, disclosing a company's NSFR for the day ending a reporting period could suggest that the company's liquidity position is more volatile than an average of the company's NSFR over the entire reporting period would suggest. One commenter also argued that using an average value would be consistent with the disclosure requirements for the LCR. The final rule retains the quantitative disclosure requirements largely as proposed.[236] However, in a change from the proposal, the final rule requires covered holding companies to use simple daily averages rather than quarter end data in its public disclosures. This change from the proposal will reduce the possibility of ''window dressing'' by covered holding companies and will benefit the public by more accurately reflecting the long term funding profile of the reporting covered holding companies.

Although the final rule requires disclosure of certain liquidity data, it does not require a covered holding company to disclose specific asset-, liability-, or transaction-level details. This should limit the risk that public disclosures will prevent a covered holding company from executing its risk management and business strategies. The disclosure requirements in the final rule are generally consistent with the items specified in the BCBS common template, with some relatively small differences, as described below. By using a standardized tabular format that is generally similar to the BCBS common template, the final rule's NSFR disclosure template enables market participants to compare funding characteristics of covered holding companies in the United States and other banking organizations subject to similar requirements in other jurisdictions.

For most ASF or RSF components, the final rule's NSFR disclosure template, like the proposed NSFR disclosure template, requires separation of the unweighted amount based on maturity categories relevant to the NSFR requirement: Open maturity; less than six months after the calculation date; six months or more, but less than one year after the calculation date; one year or more after the calculation date; and perpetual. While the BCBS common template does not distinguish between the ''open'' and ''perpetual'' maturity categories (grouping them together under the heading ''no maturity''), the final rule requires a company to disclose

[233] The FBO tailoring proposal would have applied NSFR public disclosure requirements to a U.S. intermediate holding company of a foreign banking organization subject to Category II or III liquidity standards, or subject to Category IV liquidity standards with $50 billion or more in weighted short-term wholesale funding. 84 FR at 24320.

[234] The Board noted in the Supplementary Information section of the proposed rule that it may develop a different or modified reporting form that would be required for both depository institutions and depository institution holding companies subject to the proposed rule. The Board stated that it anticipated that it would solicit public comment on any such new reporting form.

[235] The ''unweighted'' amount generally refers to values of ASF or RSF components prior to applying the assigned ASF or RSF factors, whereas the ''weighted'' amount generally refers to the amounts resulting after applying the assigned ASF or RSF factors.

[236] As described in section V.E.3 of this Supplementary Information section, the final rule includes reduced NSFR requirements for certain covered companies. The final rule makes certain adjustments to the NSFR disclosure template in § ____.131 of the final rule to incorporate the reduced requirements.

amounts in the ''open'' and ''perpetual'' maturity categories separately because the categories are on opposite ends of the maturity spectrum for purposes of the final rule. The ''open'' maturity category is meant to identify instruments that do not have a stated contractual maturity and may be closed out on demand, such as demand deposits. The ''perpetual'' category is intended to identify instruments that contractually may never mature and may not be closed out on demand, such as equity securities. The final rule's NSFR disclosure template separates these two categories into different columns to improve the transparency and quality of the disclosure without undermining the ability to compare the NSFR component disclosures of banking organizations in other jurisdictions that utilize the BCBS common template because these two columns can be summed for comparison purposes. For certain ASF and RSF components that represent calculations that do not depend on maturities, such as the NSFR derivatives asset or liability amount, the final rule's NSFR disclosure template, like the proposed NSFR disclosure template, does not require a covered holding company to separate its disclosed amount by maturity category.

As described further below, the final rule, like the proposed rule, identifies the ASF and RSF components that a covered holding company must include in each row of the NSFR disclosure template, including cross-references to the relevant sections of the final rule. In some cases, the final rule's NSFR disclosure template requires instruments that are assigned identical ASF or RSF factors to be disclosed in different rows or columns, and some rows and columns combine disclosure of instruments that are assigned different ASF or RSF factors.

For consistency, the final rule's NSFR disclosure template requires a covered holding company to clearly indicate the as-of date for disclosed amounts and report all amounts on a consolidated basis and expressed in millions of U.S. dollars or as a percentage, as applicable.

1. Disclosure of ASF Components

The proposed rule would have required a company subject to the proposed requirement to disclose its ASF components, separated into the following categories: (1) Capital and securities, which includes NSFR regulatory capital elements and other capital elements and securities; (2) retail funding, which includes stable retail deposits, less stable retail deposits, retail brokered deposits, and other retail funding; (3) wholesale funding, which includes operational deposits and other wholesale funding; and (4) other liabilities, which include the company's NSFR derivatives liability amount and any other liabilities not included in other categories. The Board is adopting the ASF component disclosure categories as proposed.

The final rule's NSFR disclosure template differs from the BCBS common template by including some additional ASF categories that are not separately broken out under the Basel NSFR, such as retail brokered deposits. The final rule's NSFR disclosure template also includes additional information regarding a covered holding company's total derivatives amount. These differences from the BCBS common template provide greater transparency by requiring disclosure of additional information relevant for understanding a covered holding company's liquidity profile. These differences would not impact comparability across jurisdictions, as the more specific line items can be added together to produce a comparable total amount.

2. Disclosure of RSF Components

The proposed disclosure requirements would have required a company to disclose its RSF components, separated into the following categories: (1) Total HQLA and each of its component asset categories (*i.e.,* level 1, level 2A, and level 2B liquid assets); (2) assets other than HQLA that are assigned a zero percent RSF factor; (3) operational deposits; (4) loans and securities, separated into categories including retail mortgages and securities that are not HQLA; (5) other assets, which include commodities, certain components of the company's derivatives RSF amount, and all other assets not included in another category (including nonperforming assets); [237] and (6) undrawn amounts of committed credit and liquidity facilities.

As discussed in section VII.D.3.h of this Supplementary Information section, the proposed rule would have assigned RSF factors to encumbered assets under §§ ____.106(c) and (d). A company subject to the proposed disclosure requirements would have been required to include encumbered assets in a cell of the NSFR disclosure template based on the asset category and asset maturity rather than based on the encumbrance period. Similar treatment would have applied for an asset provided or received by a company as variation margin to which an RSF factor is assigned under § ____.107.

The final rule includes the RSF component disclosure categories as proposed with adjustments to incorporate the reduced requirements under the final rule. The final rule's NSFR disclosure template differs in some respects from the BCBS common template to provide more granular information regarding RSF components without undermining comparability across jurisdictions. For example, the final rule requires disclosure of a covered holding company's level 1, level 2A, and level 2B liquid assets by maturity category, which is not required under the BCBS common template, to assist market participants and other parties in assessing the composition of a covered holding company's HQLA portfolio.[238] Additionally, because some assets that are assigned a zero percent RSF factor under the final rule are not HQLA under the LCR rule, such as currency and coin and certain trade date receivables, the template includes a distinct category for zero percent RSF assets that are not level 1 liquid assets. The NSFR disclosure template also differs from the BCBS common template in its presentation of the components of a covered holding company's NSFR derivatives asset amount, generally to improve the clarity of disclosure by separating components into distinct rows and by including the total derivatives asset amount so that market participants and other parties can better understand a covered holding company's NSFR derivatives asset calculation.

C. Qualitative Disclosure Requirements

A company subject to the proposed disclosure requirements would have been required to provide a qualitative discussion of the company's NSFR and its components sufficient to facilitate an understanding of the calculation and results. The proposed rule would not have prescribed the content or format of a company's qualitative disclosures; rather, it would have allowed flexibility for discussion based on each company's particular circumstances. The proposed rule would, however, have provided guidance through examples of topics

[237] A company would have been required to disclose nonperforming assets as part of the line item for other assets and nonperforming assets, rather than as part of a line item based on the type of asset that has become nonperforming.

[238] The Board notes that the information to be disclosed relating to HQLA is consistent with the design and purpose of the NSFR and is different from disclosures under the LCR rule. The carrying values of the various types of liquid assets at the reporting date, together with their maturity profile, provide additional clarity regarding the structure of the reporting company's balance sheet. In contrast, the LCR rule focuses on the ability to monetize assets in a period of stress and the LCR disclosure template contains averages of market values of eligible HQLA.

that a company may discuss, to the extent they would be significant to the company's NSFR. These examples would have included: (1) The main drivers of the company's NSFR; (2) changes in the company's NSFR over time and the causes of such changes (for example, changes in strategies or circumstances); (3) concentrations of funding sources and changes in funding structure; (4) concentrations of available and required stable funding within a company's corporate structure (for example, across legal entities); and (5) other sources of funding or other factors in the NSFR calculation that the company considers to be relevant to facilitate an understanding of its liquidity profile.

One commenter requested that under the final rule a company only be required to provide a qualitative discussion of items that are ''material'' rather than ''significant'' to the company's NSFR, which the commenter argued would be consistent with disclosure requirements applicable under U.S. federal securities laws and facilitate more effective compliance.

The final rule, like the proposed rule, uses the term ''significant'' to describe the examples of items affecting a covered holding company's NSFR about which a covered holding company should provide a qualitative discussion. However, a covered holding company may determine the relevant qualitative disclosures based on a materiality concept. Information is regarded as material for purposes of the disclosure requirements in the final rule if the information's omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making investment decisions. This approach is consistent with the disclosure requirements under the Board's regulatory capital rules and the LCR public disclosure requirement.[239]

As noted above, the proposed rule would have required a company to provide a qualitative discussion of its NSFR and included an illustrative list of potentially relevant items that a company could discuss, to the extent relevant to its NSFR. Among the illustrative list of potentially relevant items was an item titled ''Other sources of funding or other factors in the net stable funding ratio calculation that the covered depository institution holding company considers to be relevant to facilitate an understanding of its liquidity profile.'' The Board has determined that this item would have been redundant given the proposed rule's general requirement that a covered holding company must provide a qualitative discussion of its NSFR. For this reason, the final rule eliminates this example.

Disclosure requirements under the LCR rule also include a qualitative disclosure section.[240] Given that the proposed rule and the LCR rule would be complementary quantitative liquidity requirements, a company subject to both disclosure requirements would have been permitted to combine the two qualitative disclosures, as long as the specific qualitative disclosure requirements of each are satisfied. In response to a comment that the Board received on the proposed rule for the LCR public disclosure requirements suggesting that required qualitative disclosures include an exemption for certain confidential or proprietary information, the final LCR public disclosure rule clarified that a firm subject to that rule is not required to include in its qualitative disclosures any information that is proprietary or confidential.[241] Instead, the covered holding company is only required to disclose general information about those subjects and provide a reason why the specific information has not been disclosed. To maintain consistency between the qualitative disclosure requirements of the LCR and final rules, the final rule does not require a covered holding company to include in the qualitative disclosure for its NSFR any information that is proprietary or confidential so long as the company discloses general information about the non-disclosed subject and provides a specific reason why the information is not being disclosed.

D. Frequency and Timing of Disclosure

The proposed rule would have required a company to provide timely public disclosures after each calendar quarter. One commenter argued that the frequency of the required disclosure should be increased to daily because market participants need more timely information to adequately adjust their risk management and business activities based on the liquidity risk of companies. The commenter also argued that quarterly NSFR disclosures could increase market instability relative to more frequent disclosures, because, the commenter argued, large changes in a company's NSFR between quarters would be more disruptive to the market compared to more frequent disclosures that revealed smaller incremental changes to a company's NSFR. Finally, the commenter argued that more frequent disclosure would make it more difficult for a company to engage in ''window dressing'' its NSFR to create the appearance that its liquidity profile is more stable than the company normally maintains.

Like the proposed rule, the final rule requires public disclosures for each calendar quarter. However, in a change from the proposal, the quarterly NSFR disclosures are required to be reported on a semiannual basis for every second and fourth calendar quarter. For example, following the end of the second quarter of 2023, covered holding companies are required to publicly disclose their NSFRs and ASF and RSF components for the first quarter of 2023 and the second quarter of 2023. This approach balances the benefits of quarterly disclosures, which includes allowing market participants and other parties to assess the funding risk profiles of covered holding companies, with the concerns that more frequent disclosure could result in unintended consequences. The Board will continue to assess the potential effects that public disclosures have on the ability of banking organizations to engage in banking activities that support the economy, especially in times of stress. The Board will work with international groups, such as the BCBS, as part of its continuing evaluation of the efficacy of timely public disclosures.

For supervisory purposes, the Board will continue to monitor on a more frequent basis any changes to a covered holding company's liquidity profile through the information submitted on the FR 2052a report.[242]

As noted above, the proposed rule would have required a company subject to the proposed requirements to publicly disclose, in a direct and prominent manner, the required information on its public internet site or in its public financial or other public regulatory reports. The Board requires that the disclosures be readily accessible to the general public for a period of at least five years after the disclosure date.

[239] *See* 12 CFR 217.62, 217.172 and ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,'' 78 FR 62018, 62129 (October 11, 2013); 12 CFR 249.91(d) and ''Liquidity Coverage Ratio: Public Disclosure Requirements; Extension of Compliance Period for Certain Companies to Meet the Liquidity Coverage Ratio Requirements,'' 81 FR 94922, 94926 (December 27, 2016).

[240] 81 FR 94922.

[241] 81 FR at 94926.

[242] The Board will issue a separate proposal for notice and comment to amend its information collection under its FR 2052a to collect information and data related to the requirements of the final rule.

The Board received no comments on this aspect of the proposed rule and are including it in the final rule without modification.

Under the proposed rule, the first reporting period for which a company would have been required to disclose its NSFR and its components would have been the calendar quarter that begins on the date the company becomes subject to the proposed NSFR requirement. Several commenters suggested that companies be given additional time to comply with disclosure and reporting requirements after becoming subject to the final rule. In addition, one commenter suggested that the disclosure requirements not be effective until at least two years after a final NSFR rule is adopted. Some argued that companies need additional time to build and implement the data collection systems necessary to meet the NSFR disclosure requirements. Other commenters argued that companies need additional time to align their existing liquidity data reporting processes under the FR 2052a and the LCR public disclosure requirements with those required for the NSFR rule. Another commenter also argued that additional time is necessary to allow the Board to clarify, through interpretation, the definitions of various terms used in the LCR rule and the proposed NSFR, and to allow companies to modify their compliance systems consistent with such interpretations.

To allow covered holding companies sufficient time to modify their reporting and compliance systems, the final rule does not require covered holding companies to provide public NSFR disclosures until the first calendar quarter that includes the date that is 18 months after the covered holding company becomes subject to the NSFR requirement.[243] This means that covered holding companies that are subject to the final rule beginning on the effective date of July 1, 2021, are required to make public disclosures for the first and second quarters of 2023 approximately 45 days after the end of the second quarter of 2023.

As discussed in the Supplementary Information section of the proposed rule, the timing of disclosures required under the Federal banking laws may not always coincide with the timing of disclosures required under other Federal laws, including disclosures required under the Federal securities laws. For calendar quarters that do not correspond to a company's fiscal year or quarter end, under the proposals the Board would have considered those disclosures that are made within 45 days of the end of the calendar quarter (or within 60 days for the limited purpose of the company's first reporting period in which it is subject to the proposed rule's disclosure requirements) as timely. In general, where a company's fiscal year end coincides with the end of a calendar quarter, the Board would have considered disclosures to be timely if they are made no later than the applicable SEC disclosure deadline for the corresponding Form 10–K annual report. In cases where a company's fiscal year end does not coincide with the end of a calendar quarter, the Board would have considered the timeliness of disclosures on a case-by-case basis.

This approach to timely disclosures is consistent with the approach to public disclosures that the Board has taken in the context of other regulatory reporting and disclosure requirements. For example, the Board has used the same indicia of timeliness with respect to the public disclosures required under its regulatory capital rules and the LCR public disclosure requirements.[244] The Board did not receive any comments regarding this aspect of the proposed rule, and the final rule includes it as proposed.

X. Impact Assessment

A. Impact on Funding

The agencies analyzed the potential impact of the final rule on the funding structure of covered companies and estimated the potential increase in funding costs for covered companies. In addition, the impact analysis considered the potential costs and benefits of an alternative policy of incorporating a small RSF requirement for level 1 liquid assets and certain short-term secured lending transactions with financial sector counterparties secured by level 1 liquid assets. Finally, this section presents responses to impact-related comments received on the NSFR proposed rule.

The agencies used bank funding data from the second quarter of 2020 to obtain the latest available view of the impact of the final rule. While the second quarter of 2020 represents a period of macroeconomic stress as a result of economic disruptions related to the COVID–19 pandemic, the banking system was healthy and bank funding markets remained open and functioning, partly due to the establishment of facilities by the Board that supported market functioning and provision of credit to households and businesses.[245] The impact of the final rule could vary through the economic and credit cycle based on the liquidity profile of a covered company's assets and appetite for funding risk. However, the agencies expect the impact of the final rule to be broadly similar if estimated using assets, commitments, and liabilities data from periods immediately preceding the onset of the COVID–19 pandemic.

The agencies approximated ASF and RSF amounts at the consolidated level for covered companies that would be subject to the full or reduced NSFR requirement, as applicable, to estimate stable funding shortfalls and excesses. These estimates were based on confidential supervisory data collected on the FR 2052a report and publicly available data from the FR Y–9C. As the available regulatory reports do not correspond perfectly to the final rule's categories of assets, commitments, and liabilities to which RSF and ASF factors are assigned, the estimation entailed the use of staff judgment, which may introduce some measurement error and hence, uncertainty into the estimates.

The scope of application for the final rule includes 20 banking organizations, 11 of which would be Category III banking organizations subject to a reduced NSFR requirement.[246] Additionally, 27 depository institutions with $10 billion or more in total consolidated assets that are consolidated subsidiaries of the 20 banking organizations described above are also covered by the final rule. The initial proposal would have included a broader set of covered companies, but the agencies subsequently established a modified scope as part of their recent efforts to tailor regulations for domestic and foreign banks to more closely match their risk profiles.[247] The final rule

[243] The LCR rule similarly does not require covered holding companies to provide public LCR disclosures until the first calendar quarter that includes the date that is 18 months after the covered holding company becomes subject to the LCR rule. 12 CFR 249.90(b).

[244] *See* 78 FR 62018, 62129 (capital); 12 CFR 249.94 (LCR).

[245] Short-term funding markets experienced a period of significant stress in March 2020 that was alleviated by financial and economic policy interventions.

[246] Eleven banking organizations that would be subject to Category III standards that have less than $75 billion in average weighted short-term wholesale funding and would be subject to a reduced NSFR requirement calibrated at 85 percent.

[247] As described above in Supplementary Information section III, the tailoring proposals would have modified the scope of application of the LCR rule and the proposed NSFR rule to apply to certain U.S. banking organizations and U.S. intermediate holding companies of foreign banking organizations, each with $100 billion or more in total consolidated assets, together with certain of their depository institution subsidiaries. In 2019, the agencies adopted a tailoring final rule that amended the scope of the LCR rule. See ''Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements,'' 84 FR 59230.

aligns its scope of application with the LCR rule.

Using the approach described above, and assuming uncertainty of 5 percent in the NSFR due to measurement errors and management buffers, the agencies estimate that nearly all of these covered companies would be in compliance with the applicable NSFR requirement in the second quarter of 2020. The agencies estimate that a small number of GSIBs subject to the full NSFR could face an expected NSFR shortfall. The total shortfall is estimated to be $10 to $31 billion of stable funding. The agencies' estimates of shortfalls at these individual covered companies range from a negligible amount to 8 percent of the company's current level of ASF of their estimated NSFR. Beyond this small number of companies with shortfalls, the additional change in stable funding necessary to comply with the final rule at other covered companies, including all depository institution subsidiaries, is zero. Considering all banking organizations that would be subject to the final rule, the agencies estimate that there is a total ASF of $8.5 trillion, a $1.3 trillion surplus over the total RSF.

As the final rule has differential effects on the use of funding of different tenors, the agencies studied the effect of the final rule on overall bank funding costs. The agencies do not expect most covered companies to incur an increase in funding costs to comply with the NSFR requirements. Across the companies with possible NSFR shortfalls, the agencies estimate that the annual funding costs of raising additional stable funding ranges from $80 to $250 million. For the individual companies, estimates of the funding costs range from a negligible amount to about 3 percent of net income from the third quarter of 2019 to the second quarter of 2020. The cost estimate assumes companies with a shortfall would elect to eliminate it by replacing liabilities that are assigned a lower ASF factor with longer maturity liabilities that are assigned a higher ASF factor. This cost is based on an estimated difference in relative interest expense between 90 day AA-rated commercial paper (assigned a zero percent ASF factor) and unsecured debt that matures in one year (assigned a 100 percent ASF factor). The estimated difference is approximately 80 basis points, based on the average cost difference between these two sources of funding from January 2002 to February 2020.

Covered companies have multiple avenues by which to adjust their funding sources to increase their NSFRs, such as raising more retail deposits, raising capital, or lengthening funding terms. In general, covered companies would be expected to adjust to changes in regulation in a manner that provides the most favorable tradeoff between revenues and the cost of compliance. For this analysis, the agencies assumed that covered companies would resolve any NSFR shortfall by increasing their use of 12-month term funding, which is the shortest term that qualifies for a 100 percent ASF factor, and thus is a good proxy for the lowest cost way of resolving an NSFR shortfall through additional funding.

Instead of changing their funding mix to increase available stable funding, covered companies with a stable funding shortfall could instead change their asset mix to reduce their required stable funding. Covered companies may do so if the forgone revenues from such assets are smaller than the cost of raising additional stable funding. In this scenario, the costs incurred by covered companies would be even smaller than the agencies' estimates. Due to the depth and competitiveness of U.S. financial markets, such portfolio changes, if they were to occur, would likely have little knock-on effects on households and businesses.

Maintaining stable funding requirements may reduce the risk of covered company failure and the vulnerability of the financial system more broadly. To assess this, the agencies examined measures of stable funding for financial institutions leading up to and during the 2007–2009 financial crisis. The agencies found that, during the crisis, financial institutions that held low amounts of stable funding were significantly more likely to fail, be resolved, or receive liquidity and funding assistance from federal programs such as the FDIC's Temporary Liquidity Guarantee Program. This analysis indicates that the final rule is likely to increase the overall resilience of the banking system.

To assess changes since the financial crisis, the agencies examined broad measures of funding stability, including the loans-to-deposits ratio and an approximation of the NSFR that, unlike the more precise measure used to estimate the shortfall, can be calculated back to the mid-2000's. These measures show clear improvement since the mid-2000's. Much of this improvement appeared soon after the financial crisis, potentially reflecting the combined effects of the post-crisis regulatory reforms as well as the release of the BCBS's draft NSFR standard in 2010. These broader improvements in funding stability suggest that the total adjustments that banking organizations have made in response to the NSFR standard and proposed rule may be greater than the stable funding shortfalls suggested by the most recent data.

To assess changes in stable funding since the NSFR notice of proposed rulemaking, the agencies compared the stable funding shortfall under the proposed rule, estimated at the time of the proposed rule (December 2015), and the stable funding shortfall under the final rule. Under the proposed rule, the agencies estimated an aggregate stable funding shortfall of $39 billion as of December 2015. The agencies estimate that, as of June 2020 under the final rule, the shortfall is between $10 and $31 billion, or a difference of $8 to $29 billion from the proposed rule in December 2015.[248] This difference is similar to the difference in stable funding requirements caused by the changes in the RSF factors in the final rule for level 1 high quality liquid assets and gross derivative liabilities from the proposal. The agencies estimate that the aggregate required stable funding needed by banking organizations to comply with the NSFR would have been $28 to $65 billion had these changes not been implemented. The comparable figures suggest that the change in the shortfall from the proposal to the final rule is comparable to the isolated impact of the changes implemented in the final rule. More broadly, the historical perspective suggests that the final rule will help lock in the gains in funding stability made since the financial crisis.

B. Costs and Benefits of an RSF Factor for Level 1 HQLA, Both Held Outright and as Collateral for Short-Term Lending Transactions

The final rule establishes a zero percent RSF factor for level 1 liquid assets held outright and short-term secured lending transactions with financial sector counterparties that are secured by level 1 high quality liquid assets. The agencies analyzed the costs and benefits of an alternate policy of a 5 percent RSF factor for such assets. As discussed above, the agencies estimated that the marginal cost of additional stable funding is about 80 basis points.[249] Based on this estimate, the

[248] The agencies have explored the methodological differences between the proposal and final rule estimates and concluded these differences likely would not substantially affect the estimates.

[249] The agencies also analyzed the costs and benefits of a 10 percent RSF factor for short-term secured lending transactions to financial sector counterparties, and came to the same conclusion as with the 5 percent RSF factor. This reflects the fact that a higher RSF factor on these assets increases both the associated costs and benefits,

agencies predict that covered companies with an NSFR shortfall would have to incur an annual cost of about four basis points for each dollar of level 1 liquid assets needed to comply with a 5 percent stable funding requirement.[250] For such a covered company, the increase in funding costs due to a 5 percent RSF factor on level 1 liquid assets would offset about 3 percent of interest revenues on U.S. Treasury and Agency securities and about 2 percent of interest revenues on reverse repurchase agreements.

By reducing the profitability of holding these assets, the funding cost of a non-zero RSF factor on level 1 liquid assets could discourage intermediation in U.S. Treasury and repo markets by covered companies that have an NSFR close to or below 100 percent or are concerned that they could have an NSFR below 100 percent under stress. To the extent that higher costs discourage private sector intermediation in these markets, these costs could reduce intermediation activity. Robust intermediation activity is seen as beneficial to the smooth functioning of these key components of the financial system. During past periods of significant market stress or impaired liquidity, the Federal Reserve has taken actions to support the smooth functioning of the markets for Treasury securities and short-term U.S. dollar funding markets. These actions have been taken to prevent strains in the Treasury market from impeding the flow of credit in the economy or to mitigate the risk that money market pressures could adversely affect monetary policy implementation.

In addition, a non-zero RSF factor for level 1 liquid assets would make it more costly for covered companies to hold level 1 liquid assets than to hold central bank reserves, which have a zero percent RSF factor. The differential treatment of these assets, which count equally towards HQLA requirements under the LCR rule, may increase demand for central bank reserves relative to other level 1 liquid assets. Having a range of high-quality assets that can serve as near substitutes for each other allows more flexibility in monetary policy implementation and supports banking organizations' ability to manage liquidity risks efficiently as the supply of these different asset types varies over time, further supporting smooth market functioning.

[250] A stable funding requirement of 5 percent multiplied by an 80 basis points stable funding annual premium equals an annual cost of four basis points.

The agencies identified two benefits of a small RSF requirement on level 1 liquid assets. The first benefit is that the stable funding requirement would help insulate covered companies against sharp price declines of level 1 liquid assets. Such price declines might put liquidity pressure on covered companies by triggering collateral and margin calls, and, in more severe cases, fire sales. Although level 1 liquid assets are less volatile and more liquid than other securities, selling large quantities of them in a short period can depress their price further. In particular, using BrokerTec data, the agencies estimated that the price impact of selling $100 million of on-the-run U.S. Treasury securities ranges from 2 to 13 basis points during financial market stress. A small RSF requirement on level 1 liquid assets would ensure that covered companies fund a small portion of these securities from stable sources, which could ease the liquidity pressure caused by price declines and thus potentially reduce the need for Federal Reserve liquidity support in times of stress.

The second benefit of a small RSF requirement is that it would insulate covered companies against the systemic risk associated with the interconnectedness of short-term financing positions secured by level 1 liquid assets. In particular, covered companies may want to provide short-term financing to counterparties during financial market stress to preserve client relationships, thus maintaining a set of interconnected positions. In the event of counterparty default, covered companies might be forced to sell the level 1 liquid asset collateral securing these positions to be able to perform on their short-term obligations. However, unwinding such interconnected positions could potentially put further liquidity stress on both covered companies and short-term financing markets, especially during periods of stress. Importantly, the agencies found that, over the last 15 years, there were several episodes where the typical 1 to 2 percent haircuts used in U.S. Treasury repurchase agreements did not provide sufficient protection against day-to-day losses on U.S. Treasury securities. A small RSF requirement would incentivize covered companies to fund level 1 liquid assets with more stable funding, which would reduce the risks associated with interconnected short-term financing positions.

After considering the above costs and benefits, importantly including the concern that a small RSF requirement could interfere with the functioning of U.S. Treasury and repo markets by disincentivizing covered companies from acting as intermediaries, the agencies are adopting as part of the final rule a zero percent RSF factor for level 1 liquid assets held as securities and for short-term secured lending transactions secured by level 1 liquid assets.

C. Response to Comments

The agencies received many comments concerning the potential impact of the proposal, most of which argued that the cost of the proposal would have been greater than predicted by the agencies. Commenters argued the impact of the NSFR alone and together with other more recently finalized regulations would have adverse impacts on banking activities, markets, and the real economy. For example, one commenter argued that the NSFR would further reduce the ability of covered companies to act as financial intermediaries, extend credit, promote price discovery, and conduct segregation and custody of client assets, which the commenters argued has already been reduced by recent regulation, including the SLR rule and the GSIB capital surcharge rule. This commenter also argued that the NSFR would reduce liquidity in the markets for securities, raise costs for derivatives end-users, make pricing less efficient, and result in a sunk cost to covered companies in the form of a liquidity buffer. The commenter further argued that the increase in costs to covered companies stemming from the NSFR could be passed on to a covered company's clients. The commenters noted that the predicted cost of the Basel NSFR standard has been cited by other jurisdictions as justification to change the standard, and that the agencies should consider changes to reduce the costs of the proposal.

In regard to commenters' concerns that the proposal would decrease financial intermediation, reduce market liquidity, and increase costs to customers, the estimates from the analysis demonstrated that nearly all covered companies are already in compliance with their NSFR requirements, and there is a substantial surplus of ASF in excess of RSF across covered companies at an aggregate level. The agencies also studied the effect of the final rule on overall bank funding costs and do not expect most covered companies to incur an increase in funding costs to comply with the final NSFR requirements. As such, the final rule would not require further changes by most covered companies to comply with the rule, limiting adverse effects on financial intermediation or market liquidity.

In developing the final rule, the agencies considered commenters' concerns regarding potential costs of specific aspects of the NSFR, and in some cases have made certain targeted changes that reduce potential negative impacts on covered companies. For example, the proposal set the RSF factors for level 1 liquid asset securities held outright and short-term reverse repos secured by level 1 liquid assets to 5 percent and 10 percent, respectively. The final rule establishes a zero percent RSF factor for both level 1 liquid asset securities held outright and short-term reverse repos secured by level 1 liquid assets, in part to avoid disincentivizing covered companies from U.S. Treasury and repo market intermediation. The proposal also required a 20 percent RSF add-on factor for gross derivatives liabilities. Many commenters expressed concerns that this treatment would reduce the willingness of covered companies to act as derivatives counterparties and could thus aggravate financial market liquidity stress. The final rule establishes a 5 percent RSF add-on factor for gross derivatives liabilities to take these concerns into account. The change in the RSF factor from 20 percent to 5 percent reduces estimated aggregate RSF by $77 billion, or 1 percent of the estimated total RSF.

Commenters also asserted that the agencies had insufficient data to estimate the impact of the NSFR on covered companies. The agencies note that the impact analysis for the final rule used publicly available FR Y–9C report data and confidential data from the FR 2052a report data from the second quarter of 2020, which is the most up-to-date and comprehensive information on covered companies.[251] Although the confidential supervisory and publicly available data in the analysis does not perfectly correspond to the categories of assets, commitments, and liabilities used in the final rule, the data is sufficient to construct informative estimates in the impact analysis.

The agencies also received comments suggesting that a point-in-time estimate of the amount of ASF relative to RSF, as provided above, is an inadequate measure of the economic effect of the NSFR. In particular, the commenters argued that the NSFR fluctuates over the business cycle because categories with high RSF factors, such as nonperforming assets and gross derivatives liabilities, tend to increase during economic downturns. The commenters expressed concerns that, as a result, the NSFR requirement could have pro-cyclical effects. The agencies partly address this concern by reducing the RSF factor for gross derivative liabilities from 20 percent to 5 percent. In addition, the agencies note that the NSFR of nearly all covered companies increased over the first half of 2020, while nonperforming assets and gross derivative liabilities increased for most covered companies. Notably, this increase in the NSFR was partly driven by the inflow of retail deposits at covered companies, which was similar to the inflow of retail deposits during the global financial crisis of 2007–2009. Therefore, the available empirical evidence currently available suggests that retail deposit inflows can partially counteract the potential pro-cyclicality of the NSFR requirement on covered companies during economic downturns.

One commenter agreed with the agencies' statement in the Supplementary Information section to the proposal that even a slight reduction in the probability of another financial crisis would far outweigh the additional costs of the proposal. This commenter cites a study showing that the estimated cost of the 2007–2009 financial crisis was greater than $20 trillion.[252] The BCBS finds banking crises typically have smaller but still very large cumulative discounted costs of 20 to 60 percent of GDP, which translates to a total cost of $4 to $12 trillion.[253] The final rule promotes safety and soundness by protecting covered companies against an extended period of liquidity and market stress by mandating a minimum amount of stable funding commensurate to the liquidity risks of their assets and certain contingent exposures.

Several commenters questioned whether the impact assessment in the proposal adequately accounts for costs to the intermediate holding companies of foreign banking organizations, noting that the impact assessment was developed prior to the finalization of the requirement that certain foreign banking organizations form an intermediate holding company in the United States under the Board's enhanced prudential standards rule. The commenters asserted that this timing likely resulted in the impact assessment in the proposal not including or underestimating the impact to intermediate holding companies. The impact analysis in the final rule considered all covered companies, including intermediate holding companies, using data from the second quarter of 2020.

XI. Effective Dates and Transitions

A. Effective Dates

Under the proposed rule, the NSFR requirement would have been effective as of January 1, 2018. At the time the proposal was issued in April 2016, the agencies set this effective date to provide covered companies with sufficient time to adjust to the requirements of the proposal, including to make any changes to ensure their assets, derivative exposures, and commitments are stably funded and to adjust information systems to calculate and monitor their NSFR ratios. The NSFR is a balance-sheet metric and its calculations would generally be based on the carrying value, as determined under GAAP, of a covered company's assets, liabilities, and equity. As a result, covered companies should generally be able to leverage current financial reporting systems to comply with the NSFR requirement.

Under the proposed rule, the updated definitions were set to become effective for purposes of the LCR rule at the beginning of the calendar quarter after finalization of the proposed NSFR rule, instead of on January 1, 2018. The agencies proposed that revisions to definitions in the LCR rule become effective sooner than the proposed NSFR effective date because they would enhance the clarity of certain definitions used in the LCR rule. Several commenters requested additional time to adjust the revised LCR definitions into their liquidity compliance systems. One commenter requested at least 180 days after the final rule is published for the revised LCR definitions to be effective. Another commenter requested that the Board issue additional guidance on how the revised definitions should be incorporated into FR 2052a reporting requirements prior to implementation of the final rule, particularly the definitions of "secured funding" and "secured lending."

Many commenters requested that the January 1, 2018 effective date be delayed to provide covered companies additional time to achieve compliance with the NSFR requirement. For example, one commenter requested that the effective date be delayed to at least January 2020. One commenter argued that the agencies should take additional time to better understand the multiple new regulatory initiatives, including

[251] The impact analysis reported in the proposal used a different data collection that was less comprehensive in its coverage of banking companies covered by the NSFR, and less detailed in its description of balance sheet items.

[252] Better Markets, *The Cost of the Crisis: $20 Trillion and Counting* (2015).

[253] The Basel Committee on Banking Supervision, *an Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements* (2010).

proposed and potential total loss absorbing capacity requirements, before introducing a new NSFR requirement. Commenters argued that covered companies should be given additional time to build and update internal reporting systems and comply with public disclosure requirements given their ongoing work to implement existing requirements under the LCR rule and the Board's FR 2052a reporting form.[254] These commenters asserted that covered companies required additional time beyond 2018 to develop necessary staffing, management, compliance, and information technology resources. Some commenters also noted that certain covered companies would likely require additional time to make structural adjustments to their balance sheets to be in compliance with the NSFR requirement and other pending rulemakings. One commenter suggested that the final rule should be implemented in three transitional phrases consisting of a study of the cumulative impacts of existing post-crisis regulatory reforms on the economy, finalizing the NSFR with an initial ratio of ASF to RSF of 0.70, and adjusting the NSFR requirement to 1.0 only for certain of the largest banking organizations.[255] The commenter also suggested that the agencies should not implement beyond the first phase if they find that economic impacts are not minimal or the rule is found to be ineffective. Another commenter suggested that the treatment for derivatives should be instituted through a phased-in transition to better align with the agencies' margin requirements for non-cleared swaps.[256]

In response to commenters' concerns and in light of the revised date on which the agencies are finalizing the NSFR rule, the agencies are revising the final rule to require covered companies to maintain an NSFR of 1.0 beginning on July 1, 2021. This effective date provides sufficient time for covered companies to take into account the new requirement and, as necessary, to make infrastructure and operational adjustments that may be required to comply with the final rule. To the extent a covered company is required to change its funding profile to comply with the final rule, the effective date should be sufficient to allow the firm to assess the prevailing market conditions to achieve optimal results.

The final rule also adopts an effective date of July 1, 2021 for revisions to definitions currently used in the LCR rule. The effective date for revisions to the definitions in the LCR rule is appropriate, as the revisions will provide additional clarity on the meaning of such terms. In addition, covered companies will be able to modify their compliance systems to incorporate the revised definitions by the effective date, especially since the revisions will likely require covered companies to make adjustments to their existing systems and not require covered companies to develop entirely new systems.

B. Transitions

1. Initial Transitions for Banking Organizations That Become Subject to NSFR Rule After the Effective Date

Under the tailoring proposals, a banking organization that would have become subject to the LCR rule or proposed rule after the effective date of the final rule would have been required to comply with the LCR rule or proposed rule on the first day of the second quarter after the banking organization became subject to it (newly covered banking organizations), consistent with the amount of time previously provided under the LCR rule or proposed rule.

Some commenters requested additional time to comply with the LCR rule, and the tailoring final rule provided an additional quarter to comply for newly covered banking organizations to comply with the LCR rule. Consistent with the LCR rule, the final rule provides an additional quarter to comply with the final rule, such that a newly covered company will be required to comply with these requirements on the first day of the third quarter after becoming subject to these requirements. A covered company becomes subject to the NSFR based on its category of applicable standards. A covered company's category is determined based on risk-based indicators as reported on its Call Report, FR Y–9LP or FR Y–15, or on averages of such reported items.

2. Transitions for Changes to an NSFR Requirement

Under the tailoring proposals, a banking organization subject to the LCR rule or proposed rule that becomes subject to a higher outflow or required stable funding adjustment percentage would have been able to continue using a lower calibration for one quarter. A banking organization that becomes subject to a lower outflow or required stable funding adjustment percentage at a quarter end would have been able to use the lower percentage immediately, as of the first day of the subsequent quarter. Some commenters requested longer transitions before a banking organization is required to meet an increased LCR requirement.

The tailoring final rule provided an additional quarter in the LCR rule to continue to use a lower outflow adjustment percentage after a banking organization becomes subject to a higher outflow adjustment percentage, but retained the one quarter transition period for a banking organization that transitions to a lower outflow adjustment percentage. Consistent with the LCR rule, the final rule allows a covered company an additional quarter to continue using a lower required stable funding adjustment percentage after becoming subject to a higher required stable funding adjustment percentage.[257] The agencies are finalizing the transition period for a banking organization that transitions to a lower required stable funding adjustment percentage as proposed. A depository institution subsidiary with $10 billion or more in total consolidated assets must begin complying on the same dates as its top-tier banking organization.[258]

[254] On November 17, 2015, the Board adopted the revised FR 2052a report to collect quantitative information on selected assets, liabilities, funding activities, and contingent liabilities from certain large banking organizations.

[255] *https://www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.*

[256] *See* 12 CFR 45.1(e) (OCC); 12 CFR 237.1(e) (Board); 12 CFR 349.1(e) (FDIC).

[257] Section ____.105 of the final rule assigns required stable funding adjustment percentages to banking organizations based on their category of standards and amount of average weighted short-term wholesale funding. A banking organization's category and average weighted short-term wholesale funding are deemed to change during the quarter in which the banking organization files the reporting form demonstrating it meets the definition of a new category or its level of average weighted short-term wholesale funding triggers an increased or decreased required stable funding adjustment percentage under section ____.105 of the final rule. Accordingly, the banking organization is deemed to be subject to a new required stable funding adjustment percentage in the quarter during which the relevant information (used to determine category eligibility or level of average weighted short-term wholesale funding) is reported. For example, if a banking organization subject to Category III standards and an 85 percent required stable funding adjustment percentage subsequently files an FR Y–15 during the fourth quarter of a calendar year (representing a September 30 as-of reporting date) that reports an amount of weighted short-term wholesale funding such that the banking organization's average weighted short-term wholesale funding is $75 billion or more, the banking organization would be deemed to be subject to the higher required stable funding adjustment percentage (100 percent) as of the fourth quarter of that calendar year. Such a banking organization would have a two-quarter transition period and be required to comply with the higher adjustment percentage by the first day of the third calendar quarter of the next calendar year (July 1st).

[258] *See supra* note 19.

TABLE 6—EXAMPLE DATES FOR CHANGES TO AN NSFR REQUIREMENT

	Continue to apply prior required stable funding adjustment percentage	Apply new required stable funding adjustment percentage
Example 1:		
Banking organization that becomes subject to a higher required stable funding adjustment percentage as of December 31, 2023,[259] as a result of having an average weighted-short-term wholesale funding level of greater than $75 billion based on the four prior calendar quarters.	1st and 2nd quarter of 2024	Beginning July 1, 2024.
Example 2:		
Covered subsidiary depository institution of banking organization that moves from Category IV to another category as of December 31, 2023.	No prior requirement	Comply with required stable funding adjustment percentage applicable to new category beginning July 1, 2024.
Example 3:		
Banking organization that becomes subject to a lower required stable funding adjustment percentage as of December 31, 2023, as a result of having an average weighted-short-term wholesale funding level of less than $75 billion based on the four prior calendar quarters.	1st quarter of 2024	Beginning April 1, 2024.

3. Reservation of Authority To Extend Transitions

The final rule includes a reservation of authority that provides the agencies with the flexibility to extend transitions for banking organizations where warranted by events and circumstances. There may be limited circumstances where a banking organization needs a longer transition period. For example, an extension may be appropriate when unusual or unforeseen circumstances, such as a merger with another entity, cause a banking organization to become subject to an NSFR requirement for the first time. However, the agencies expect that this authority would be exercised in limited situations, consistent with prior practice.

4. Cessation of Applicability

Under the tailoring proposals, once a banking organization became subject to an LCR or proposed NSFR requirement, it would have remained subject to the rule until the appropriate agency determined that application of the rule would not be appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations. The tailoring final rule repealed this provision in the LCR rule because the revised scope of application framework made this cessation provision unnecessary. Consistent with the LCR rule, the agencies are repealing this provision in the final rule. A banking organization that no longer meets the relevant criteria for being subject to the final rule will not be required to comply with the final rule.

XII. Administrative Law Matters

A. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[260] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[261]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[262]

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

B. Plain Language

Section 722 of the Gramm-Leach-Bliley Act,[263] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language in the proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act[264] (RFA) generally requires an agency to either provide a regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[265] Except as otherwise specified below, the size standard to be considered a small business for banking entities subject to the final rule is $600 million or less in consolidated assets.[266] In accordance with section 3(a) of the RFA, the Board is publishing a regulatory flexibility analysis with respect to the final rule. The OCC and FDIC are certifying that

[259] That is, the banking organization filed reports in the 4th quarter of 2023 (as of September 30 report date) demonstrating that it had an average weighted-short-term wholesale funding level of greater than $75 billion during the four prior calendar quarters.

[260] 5 U.S.C. 801 *et seq.*

[261] 5 U.S.C. 801(a)(3).

[262] 5 U.S.C. 804(2).

[263] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[264] 5 U.S.C. 601 *et seq.*

[265] U.S. SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at https://www.sba.gov/document/support-table-size-standards.*

[266] *See id.* Pursuant to SBA regulations, the asset size of a concern includes the assets of the concern whose size is at issue and all of its domestic and foreign affiliates. 13 CFR 121.103(6).

the final rule will not have a significant economic impact on a substantial number of small entities.

Board

Based on its analysis and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule is intended to implement a quantitative liquidity requirement applicable for certain bank holding companies, savings and loan holding companies, and state member banks.

Under regulations issued by the Small Business Administration, a ''small entity'' includes firms within the ''Finance and Insurance'' sector with total assets of $600 million or less.[267] The Board believes that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, bank holding companies, savings and loan holding companies, and state member banks with asset sizes of $600 million or less are small entities for purposes of the RFA.

As discussed in section V.E of this Supplementary Information section, the final rule will generally apply to certain Board-regulated institutions with $100 billion or more total consolidated assets, and certain of their depository institution subsidiaries with $10 billion or more in total assets.

Companies that are subject to the final rule therefore substantially exceed the $600 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the final rule does not apply to any company with assets of $600 million or less, the final rule is not expected to apply to any small entity for purposes of the RFA. As discussed in the Supplementary Information section, including section V of the Supplementary Information section, the Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the final rule will have a significant economic impact on a substantial number of small entities.

OCC

The OCC considered whether the final rule is likely to have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC currently supervises approximately 745 small entities. Because the final rule will only apply to OCC-regulated entities that have $10 billion or more in assets, the OCC concludes the rule will not have a significant economic impact on a substantial number of small OCC-regulated entities.

FDIC

The RFA generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[268] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than $600 million in total assets.[269] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,270 institutions,[270] of which 2,492 are considered small entities for the purposes of the RFA.[271]

The final rule applies the full NSFR requirement to companies that are subject to the Category I and Category II liquidity standards. Companies subject to the Category III liquidity standards with $75 billion or more in average weighted short-term wholesale funding are also subject to the full NSFR requirement. All other companies subject to the Category III standards, and companies subject to the Category IV standards with $50 billion or more in average weighted short-term wholesale funding, are subject to a reduced NSFR requirement calibrated at 85 percent and 70 percent, respectively. Depository institution subsidiaries of companies subject to the Category I, II, or III liquidity standards are subject to the same NSFR requirement as their top tier holding company if the depository institution subsidiary has total consolidated assets of $10 billion or more. Depository institution subsidiaries of companies subject to Category IV liquidity standards are not subject to the NSFR.

As of June 30, 2020, the FDIC supervises four depository institutions that would be subject to an NSFR requirement calibrated at 85 percent.[272] No depository institutions that are subject to the NSFR requirements would be considered small entities for the purposes of the RFA because the NSFR requirements apply only to depository institutions with at least $10 billion in total consolidated assets, and whose parent company is subject to the Category I, II, or III liquidity standards and, therefore, has least $100 billion in total consolidated assets.[273]

Because this rule does not apply to any FDIC-supervised institutions that would be considered small entities for the purposes of the RFA, the FDIC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA)[274] requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of

[267] 13 CFR 121.201.

[268] 5 U.S.C. 601 *et seq.*

[269] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[270] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[271] Call Report data, June 30, 2020.

[272] Call Report data, June 30, 2020.

[273] No companies with less than $100 billion in total consolidated assets would be subject to the capital and liquidity standards set forth in the agencies' tailoring rule. *See* 84 FR 59230, 59235 (November 1, 2019).

[274] 12 U.S.C. 4802(a).

such regulations. The agencies have considered comments on these matters in other sections of this Supplementary Information section.

In addition, under section 302(b) of the RCDRIA, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[275] Therefore, the final rule will be effective on July 1, 2021, the first day of the third calendar quarter of 2021.

E. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control numbers are 1557–0323 for the OCC, 7100–0367 for the Board, and 3064–0197 for the FDIC. These information collections will be extended for three years, with revision. The information collection requirements contained in this final rule have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The agencies did not receive any specific public comments on the PRA analysis.

The agencies have a continuing interest in the public's opinions of information collections. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** section. All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

[275] 12 U.S.C. 4802(b).

Proposed Revision, With Extension, of the Following Information Collections

Title of information collection and OMB control number: Reporting and Recordkeeping Requirements Associated with Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (1557–0323 for the OCC); Reporting, Recordkeeping, and Disclosure Requirements Associated with Liquidity Risk Measurement Standards (7100–0367 for the Board); and Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (LCR) (3064–0197 for the FDIC).

Frequency of Response: Biannually, quarterly, monthly, and event generated.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks and federal savings associations.

Board: Insured state member banks, bank holding companies, and savings and loan holding companies, and U.S intermediate holding companies of foreign banking organizations.

FDIC: State nonmember banks and state savings associations.

Current actions: The reporting requirements in the final rule are found in section ____.110, the recordkeeping requirements are found in sections ____.108(b) and ____.110(b), and the disclosure requirements are found in sections ____.130 and ____.131. The disclosure requirements are only for Board supervised entities. Since the burden estimates for the NSFR revisions were inadvertently included in the November 1, 2019, tailoring final rule (84 FR 59230), the burden estimates will not change for this submission with the exception of the FDIC's burden estimates which have been updated to reflect the addition of two additional supervised institutions.

Section ____.110 requires a covered company to take certain actions following any NSFR shortfall. A covered company would be required to notify its appropriate Federal banking agency of the shortfall no later than 10 business days (or such other period as the appropriate Federal banking agency may otherwise require by written notice) following the date that any event has occurred that would cause or has caused the covered company's NSFR to be less than 1.0. It must also submit to its appropriate Federal banking agency its plan for remediation of its NSFR to at least 1.0, and submit at least monthly reports on its progress to achieve compliance.

Section ____.108(b) provides that if an institution includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, it must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from the consolidated subsidiaries. These procedures must document which types of transactions the institution could use to transfer assets from a consolidated subsidiary to the institution and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions. Section ____.110(b) requires preparation of a plan for remediation to achieve an NSFR of at least equal to 1.0, as required under § ____.100.

Section ____.130 requires that a depository institution holding company subject to the NSFR publicly disclose on a biannual basis its NSFR calculated for each of the two immediately preceding calendar quarters, in a direct and prominent manner on its public internet site or in its public financial or other public regulatory reports. These disclosures must remain publicly available for at least five years after the date of disclosure. Section ____.131 specifies the quantitative and qualitative disclosures required and provides the disclosure template to be used.

Estimated average hour per response:

Reporting

Sections ____.40(a) and ____.110(a) (filed monthly)—0.5 hours.

Sections ____.40(b) and ____.110(b)—0.5 hours.

Sections ____.40(b)(3)(iv) and ____.110(b) (filed quarterly)—0.5 hours.

Recordkeeping

Sections ____.22(a)(2), ____.22(a)(5), and ____.108(b)—40 hours.

Sections ____.40(b) and ____.110(b)—200 hours.

Disclosure (Board only)

Sections 249.90, 249.91, 249.130, and 249.131 (filed biannually)—24 hours.

OCC:

OMB control number: 1557–0323.

Number of Respondents: 13.

Total Estimated Annual Burden: 4,722 hours.

Board:

OMB control number: 7100–0367.

Number of Respondents: 19 for Recordkeeping Sections 249.22(a)(2), 249.22(a)(5), and 249.108(b) and Disclosure Sections 249.90, 249.91, 249.130, and 249.131; 1 for all other rows.

Total Estimated Annual Burden: 2,793 hours.

FDIC:

OMB control number: 3064–0197.

Number of Respondents: 4.

Total Estimated Annual Burden: 994 hours.

F. OCC Unfunded Mandates Reform Act of 1995 Determination

The Unfunded Mandates Reform Act requires that an agency 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, adjusted for inflation (currently $157 million), in any one year. The OCC interprets ''expenditure'' to mean assessment of costs (*i.e.,* this part of our UMRA analysis assesses the costs of a rule on OCC-supervised entities, rather than the overall impact). The OCC's estimate of banks' operational costs to comply with mandates is approximately $26 million in the first year. In addition to these operational expenditures, the OCC anticipates that in order to comply with the final rule, banks may have to substitute lower RSF-factor assets for higher yielding assets that have higher RSF factors. The OCC estimates the impact of this substitution may cost two affiliated banks approximately $240 million per year. The total UMRA cost is approximately $266 million ($26 million in compliance related expenditures + $240 million in shortfall funding). Therefore, consistent with the UMRA, the OCC has concluded that the final rule will result in private sector costs that exceed the threshold for a significant regulatory action. When the final rule is published in the **Federal Register***,* the OCC's UMRA written statement will be available at: *http://www.regulations.gov,* Docket ID OCC–2014–0029.

Text of Common Rule

■ (All agencies)

PART [ ]—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING

Subpart K—Net Stable Funding Ratio

Sec.

Subpart L—Net Stable Funding Shortfall

Subpart K—Net Stable Funding Ratio

§ ____.100 Net stable funding ratio.

(a) *Minimum net stable funding ratio requirement.* A [BANK] must maintain a net stable funding ratio that is equal to or greater than 1.0 on an ongoing basis in accordance with this subpart.

(b) *Calculation of the net stable funding ratio.* For purposes of this part, a [BANK]'s net stable funding ratio equals:

(1) The [BANK]'s available stable funding (ASF) amount, calculated pursuant to § ____.103, as of the calculation date; divided by

(2) The [BANK]'s required stable funding (RSF) amount, calculated pursuant to § ____.105, as of the calculation date.

§ ____.101 Determining maturity.

For purposes of calculating its net stable funding ratio, including its ASF amount and RSF amount, under subparts K through N, a [BANK] shall assume each of the following:

(a) With respect to any NSFR liability, the NSFR liability matures according to § ____.31(a)(1) of this part without regard to whether the NSFR liability is subject to § ____.32;

(b) With respect to an asset, the asset matures according to § ____.31(a)(2) of this part without regard to whether the asset is subject to § ____.33 of this part;

(c) With respect to an NSFR liability or asset that is perpetual, the NSFR liability or asset matures one year or more after the calculation date;

(d) With respect to an NSFR liability or asset that has an open maturity, the NSFR liability or asset matures on the first calendar day after the calculation date, except that in the case of a deferred tax liability, the NSFR liability matures on the first calendar day after the calculation date on which the deferred tax liability could be realized; and

(e) With respect to any principal payment of an NSFR liability or asset, such as an amortizing loan, that is due prior to the maturity of the NSFR liability or asset, the payment matures on the date on which it is contractually due.

§ ____.102 Rules of construction.

(a) *Balance-sheet metric.* Unless otherwise provided in this subpart, an NSFR regulatory capital element, NSFR liability, or asset that is not included on a [BANK]'s balance sheet is not assigned an RSF factor or ASF factor, as applicable; and an NSFR regulatory capital element, NSFR liability, or asset that is included on a [BANK]'s balance sheet is assigned an RSF factor or ASF factor, as applicable.

(b) *Netting of certain transactions.* Where a [BANK] has secured lending transactions, secured funding transactions, or asset exchanges with the same counterparty and has offset the gross value of receivables due from the counterparty under the transactions by the gross value of payables under the transactions due to the counterparty, the receivables or payables associated with the offsetting transactions that are not included on the [BANK]'s balance sheet are treated as if they were included on the [BANK]'s balance sheet with carrying values, unless the criteria in [§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE] are met.

(c) *Treatment of Securities Received in an Asset Exchange by a Securities Lender.* Where a [BANK] receives a security in an asset exchange, acts as a securities lender, includes the carrying value of the received security on its balance sheet, and has not rehypothecated the security received:

(1) The security received by the [BANK] is not assigned an RSF factor; and

(2) The obligation to return the security received by the [BANK] is not assigned an ASF factor.

§ ____.103 Calculation of available stable funding amount.

A [BANK]'s ASF amount equals the sum of the carrying values of the [BANK]'s NSFR regulatory capital elements and NSFR liabilities, in each case multiplied by the ASF factor applicable in § ____.104 or § ____.107(c) and consolidated in accordance with § ____.109.

§ ____.104 ASF factors.

(a) *NSFR regulatory capital elements and NSFR liabilities assigned a 100 percent ASF factor.* An NSFR regulatory capital element or NSFR liability of a [BANK] is assigned a 100 percent ASF factor if it is one of the following:

(1) An NSFR regulatory capital element; or

(2) An NSFR liability that has a maturity of one year or more from the calculation date, is not described in paragraph (d)(9) of this section, and is not a retail deposit or brokered deposit provided by a retail customer or counterparty.

(b) *NSFR liabilities assigned a 95 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 95 percent ASF factor if it is one of the following:

(1) A stable retail deposit (regardless of maturity or collateralization) held at the [BANK]; or

(2) A sweep deposit that:

(i) Is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary;

(ii) Is entirely covered by deposit insurance; and

(iii) The [BANK] demonstrates to the satisfaction of the [AGENCY] that a withdrawal of such deposit is highly unlikely to occur during a liquidity stress event.

(c) *NSFR liabilities assigned a 90 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 90 percent ASF factor if it is funding provided by a retail customer or counterparty that is:

(1) A retail deposit (regardless of maturity or collateralization) other than a stable retail deposit or brokered deposit;

(2) A brokered reciprocal deposit where the entire amount is covered by deposit insurance;

(3) A sweep deposit that is deposited in accordance with a contract between the retail customer or counterparty and the [BANK], a controlled subsidiary of the [BANK], or a company that is a controlled subsidiary of the same top-tier company of which the [BANK] is a controlled subsidiary, where the sweep deposit does not meet the requirements of paragraph (b)(2) of this section; or

(4) A brokered deposit that is not a brokered reciprocal deposit or a sweep deposit, that is not held in a transactional account, and that matures one year or more from the calculation date.

(d) *NSFR liabilities assigned a 50 percent ASF factor.* An NSFR liability of a [BANK] is assigned a 50 percent ASF factor if it is one of the following:

(1) Unsecured wholesale funding that:

(i) Is not provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures less than one year from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit placed at the [BANK];

(2) A secured funding transaction with the following characteristics:

(i) The counterparty is not a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures less than one year from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit placed at the [BANK];

(3) Unsecured wholesale funding that:

(i) Is provided by a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) Matures six months or more, but less than one year, from the calculation date; and

(iii) Is not a security issued by the [BANK] or an operational deposit;

(4) A secured funding transaction with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The secured funding transaction matures six months or more, but less than one year, from the calculation date; and

(iii) The secured funding transaction is not a collateralized deposit that is an operational deposit;

(5) A security issued by the [BANK] that matures six months or more, but less than one year, from the calculation date;

(6) An operational deposit placed at the [BANK];

(7) A brokered deposit provided by a retail customer or counterparty that is not described in paragraphs (c) or (e)(2) of this section;

(8) A sweep deposit provided by a retail customer or counterparty that is not described in paragraphs (b) or (c) of this section;

(9) An NSFR liability owed to a retail customer or counterparty that is not a deposit and is not a security issued by the [BANK]; or

(10) Any other NSFR liability that matures six months or more, but less than one year, from the calculation date and is not described in paragraphs (a) through (c) or (d)(1) through (d)(9) of this section.

(e) *NSFR liabilities assigned a zero percent ASF factor.* An NSFR liability of a [BANK] is assigned a zero percent ASF factor if it is one of the following:

(1) A trade date payable that results from a purchase by the [BANK] of a financial instrument, foreign currency, or commodity that is contractually required to settle within the lesser of the market standard settlement period for the particular transaction and five business days from the date of the sale;

(2) A brokered deposit provided by a retail customer or counterparty that is not a brokered reciprocal deposit or sweep deposit, is not held in a transactional account, and matures less than six months from the calculation date;

(3) A security issued by the [BANK] that matures less than six months from the calculation date;

(4) An NSFR liability with the following characteristics:

(i) The counterparty is a financial sector entity, a consolidated subsidiary of a financial sector entity, or a central bank;

(ii) The NSFR liability matures less than six months from the calculation date or has an open maturity; and

(iii) The NSFR liability is not a security issued by the [BANK] or an operational deposit placed at the [BANK]; or

(5) Any other NSFR liability that matures less than six months from the calculation date and is not described in paragraphs (a) through (d) or (e)(1) through (4) of this section.

§ ____.105 Calculation of required stable funding amount.

(a) *Required stable funding amount.* A [BANK]'s RSF amount equals the [BANK's] required stable funding adjustment percentage as determined under paragraph (b) of this section multiplied by the sum of:

(1) The carrying values of a [BANK]'s assets (other than amounts included in the calculation of the derivatives RSF amount pursuant to § ____.107(b)) and the undrawn amounts of a [BANK]'s credit and liquidity facilities, in each case multiplied by the RSF factors applicable in § ____.106; and

(2) The [BANK]'s derivatives RSF amount calculated pursuant to § ____.107(b).

(b) *Required stable funding adjustment percentage.* A [BANK's] required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

Required stable funding adjustment percentage	Percent
Global systemically important BHC or GSIB depository institution	100
Category II [BANK]	100

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES—Continued

Required stable funding adjustment percentage	Percent
Category III [BANK] with $75 billion or more in average weighted short-term wholesale funding and Category III [BANK] that is a consolidated subsidiary of such a [BANK]	100
Category III [BANK] with less than $75 billion in average weighted short-term wholesale funding and any Category III [BANK] that is a consolidated subsidiary of such a Category III [BANK]	85
Category IV [BANK] with $50 billion or more in average weighted short-term wholesale funding	70

(c) *Transition into a different required stable funding adjustment percentage.* (1) A [BANK] whose required stable funding adjustment percentage increases from a lower to a higher required stable funding adjustment percentage may continue to use its previous lower required stable funding adjustment percentage until the first day of the third calendar quarter after the required stable funding adjustment percentage increases.

(2) A [BANK] whose required stable funding adjustment percentage decreases from a higher to a lower required stable funding adjustment percentage must continue to use its previous higher required stable funding adjustment percentage until the first day of the first calendar quarter after the required stable funding adjustment percentage decreases.

§ ____.106 RSF factors.

(a) *Unencumbered assets and commitments.* All assets and undrawn amounts under credit and liquidity facilities, unless otherwise provided in § ____.107(b) relating to derivative transactions or paragraphs (b) through (d) of this section, are assigned RSF factors as follows:

(1) *Unencumbered assets assigned a zero percent RSF factor.* An asset of a [BANK] is assigned a zero percent RSF factor if it is one of the following:

(i) Currency and coin;

(ii) A cash item in the process of collection;

(iii) A Reserve Bank balance or other claim on a Reserve Bank that matures less than six months from the calculation date;

(iv) A claim on a foreign central bank that matures less than six months from the calculation date;

(v) A trade date receivable due to the [BANK] resulting from the [BANK]'s sale of a financial instrument, foreign currency, or commodity that is required to settle no later than the market standard, without extension, for the particular transaction, and that has yet to settle but is not more than five business days past the scheduled settlement date;

(vi) Any other level 1 liquid asset not described in paragraphs (a)(1)(i) through (a)(1)(v) of this section; or

(vii) A secured lending transaction with the following characteristics:

(A) The secured lending transaction matures less than six months from the calculation date;

(B) The secured lending transaction is secured by level 1 liquid assets;

(C) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(D) The [BANK] retains the right to rehypothecate the collateral provided by the counterparty for the duration of the secured lending transaction.

(2) *Unencumbered assets and commitments assigned a 5 percent RSF factor.* An undrawn amount of a committed credit facility or committed liquidity facility extended by a [BANK] is assigned a 5 percent RSF factor. For the purposes of this paragraph (a)(2), the undrawn amount of a committed credit facility or committed liquidity facility is the entire unused amount of the facility that could be drawn upon within one year of the calculation date under the governing agreement.

(3) *Unencumbered assets assigned a 15 percent RSF factor.* An asset of a [BANK] is assigned a 15 percent RSF factor if it is one of the following:

(i) A level 2A liquid asset; or

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures less than six months from the calculation date;

(B) The borrower is a financial sector entity or a consolidated subsidiary thereof; and

(C) The asset is not described in paragraph (a)(1)(vii) of this section and is not an operational deposit described in paragraph (a)(4)(iii) of this section.

(4) *Unencumbered assets assigned a 50 percent RSF factor.* An asset of a [BANK] is assigned a 50 percent RSF factor if it is one of the following:

(i) A level 2B liquid asset;

(ii) A secured lending transaction or unsecured wholesale lending with the following characteristics:

(A) The asset matures six months or more, but less than one year, from the calculation date;

(B) The borrower is a financial sector entity, a consolidated subsidiary thereof, or a central bank; and

(C) The asset is not an operational deposit described in paragraph (a)(4)(iii) of this section;

(iii) An operational deposit placed by the [BANK] at a financial sector entity or a consolidated subsidiary thereof; or

(iv) An asset that is not described in paragraphs (a)(1) through (a)(3) or (a)(4)(i) through (a)(4)(iii) of this section that matures less than one year from the calculation date, including:

(A) A secured lending transaction or unsecured wholesale lending where the borrower is a wholesale customer or counterparty that is not a financial sector entity, a consolidated subsidiary thereof, or a central bank; or

(B) Lending to a retail customer or counterparty.

(5) *Unencumbered assets assigned a 65 percent RSF factor.* An asset of a [BANK] is assigned a 65 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of no greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION]; or

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(5)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of no greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION].

(6) *Unencumbered assets assigned an 85 percent RSF factor.* An asset of a [BANK] is assigned an 85 percent RSF factor if it is one of the following:

(i) A retail mortgage that matures one year or more from the calculation date and is assigned a risk weight of greater than 50 percent under subpart D of [AGENCY CAPITAL REGULATION];

(ii) A secured lending transaction, unsecured wholesale lending, or lending to a retail customer or counterparty with the following characteristics:

(A) The asset is not described in paragraphs (a)(1) through (a)(6)(i) of this section;

(B) The borrower is not a financial sector entity or a consolidated subsidiary thereof;

(C) The asset matures one year or more from the calculation date; and

(D) The asset is assigned a risk weight of greater than 20 percent under subpart D of [AGENCY CAPITAL REGULATION];

(iii) A publicly traded common equity share that is not HQLA;

(iv) A security, other than a publicly traded common equity share, that matures one year or more from the calculation date and is not HQLA; or

(v) A commodity for which derivative transactions are traded on a U.S. board of trade or trading facility designated as a contract market under sections 5 and 6 of the Commodity Exchange Act (7 U.S.C. 7 and 8) or on a U.S. swap execution facility registered under section 5h of the Commodity Exchange Act (7 U.S.C. 7b–3) or on another exchange, whether located in the United States or in a jurisdiction outside of the United States.

(7) *Unencumbered assets assigned a 100 percent RSF factor.* An asset of a [BANK] is assigned a 100 percent RSF factor if it is not described in paragraphs (a)(1) through (a)(6) of this section, including a secured lending transaction or unsecured wholesale lending where the borrower is a financial sector entity or a consolidated subsidiary thereof and that matures one year or more from the calculation date.

(b) *Nonperforming assets.* An RSF factor of 100 percent is assigned to any asset that is past due by more than 90 days or nonaccrual.

(c) *Encumbered assets.* An encumbered asset, unless otherwise provided in § ____.107(b) relating to derivative transactions, is assigned an RSF factor as follows:

(1)(i) *Encumbered assets with less than six months remaining in the encumbrance period.* For an encumbered asset with less than six months remaining in the encumbrance period, the same RSF factor is assigned to the asset as would be assigned if the asset were not encumbered.

(ii) *Encumbered assets with six months or more, but less than one year, remaining in the encumbrance period.* For an encumbered asset with six months or more, but less than one year, remaining in the encumbrance period:

(A) If the asset would be assigned an RSF factor of 50 percent or less under paragraphs (a)(1) through (a)(4) of this section if the asset were not encumbered, an RSF factor of 50 percent is assigned to the asset.

(B) If the asset would be assigned an RSF factor of greater than 50 percent under paragraphs (a)(5) through (a)(7) of this section if the asset were not encumbered, the same RSF factor is assigned to the asset as would be assigned if it were not encumbered.

(iii) *Encumbered assets with one year or more remaining in the encumbrance period.* For an encumbered asset with one year or more remaining in the encumbrance period, an RSF factor of 100 percent is assigned to the asset.

(2) *Assets encumbered for period longer than remaining maturity.* If an asset is encumbered for an encumbrance period longer than the asset's maturity, the asset is assigned an RSF factor under paragraph (c)(1) of this section based on the length of the encumbrance period.

(3) *Segregated account assets.* An asset held in a segregated account maintained pursuant to statutory or regulatory requirements for the protection of customer assets is not considered encumbered for purposes of this paragraph solely because such asset is held in the segregated account.

(d) *Off-balance sheet rehypothecated assets.* When an NSFR liability of a [BANK] is secured by an off-balance sheet asset or results from the [BANK] selling an off-balance sheet asset (for instance, in the case of a short sale), other than an off-balance sheet asset received by the [BANK] as variation margin under a derivative transaction:

(1) If the [BANK] received the off-balance sheet asset under a lending transaction, an RSF factor is assigned to the lending transaction as if it were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the lending transaction;

(2) If the [BANK] received the off-balance sheet asset under an asset exchange, an RSF factor is assigned to the asset provided by the [BANK] in the asset exchange as if the provided asset were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the provided asset; or

(3) If the [BANK] did not receive the off-balance sheet asset under a lending transaction or asset exchange, an RSF factor is assigned to the on-balance sheet asset resulting from the rehypothecation of the off-balance sheet asset as if the on-balance sheet asset were encumbered for the longer of:

(i) The remaining maturity of the NSFR liability; and

(ii) Any other encumbrance period applicable to the transaction through which the off-balance sheet asset was received.

§ ____.107 Calculation of NSFR derivatives amounts.

(a) *General requirement.* A [BANK] must calculate its derivatives RSF amount and certain components of its ASF amount relating to the [BANK]'s derivative transactions (which includes cleared derivative transactions of a customer with respect to which the [BANK] is acting as agent for the customer that are included on the [BANK]'s balance sheet under GAAP) in accordance with this section.

(b) *Calculation of required stable funding amount relating to derivative transactions.* A [BANK]'s derivatives RSF amount equals the sum of:

(1) *Current derivative transaction values.* The [BANK]'s NSFR derivatives asset amount, as calculated under paragraph (d)(1) of this section, multiplied by an RSF factor of 100 percent;

(2) *Variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set, to the extent the variation margin reduces the [BANK]'s derivatives liability value under the derivative transaction or QMNA netting set, as calculated under paragraph (f)(2) of this section, multiplied by an RSF factor of zero percent;

(3) *Excess variation margin provided.* The carrying value of variation margin provided by the [BANK] under each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set in excess of the amount described in paragraph (b)(2) of this section for each derivative transaction or QMNA netting set, multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(4) *Variation margin received.* The carrying value of variation margin received by the [BANK], multiplied by the RSF factor assigned to each asset comprising the variation margin pursuant to § ____.106;

(5) *Potential valuation changes.* (i) An amount equal to 5 percent of the sum of the gross derivative values of the [BANK] that are liabilities, as calculated under paragraph (b)(5)(ii) of this section, for each of the [BANK]'s derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, multiplied by an RSF factor of 100 percent;

(ii) For purposes of paragraph (5)(i) of this section, the gross derivative value of a derivative transaction not subject to a qualifying master netting agreement or of a QMNA netting set is equal to the value to the [BANK], calculated as if no variation margin had been exchanged and no settlement payments had been made based on changes in the value of the derivative transaction or QMNA netting set.

(6) *Contributions to central counterparty mutualized loss sharing arrangements.* The fair value of a [BANK]'s contribution to a central counterparty's mutualized loss sharing arrangement (regardless of whether the contribution is included on the [BANK]'s balance sheet), multiplied by an RSF factor of 85 percent; and

(7) *Initial margin provided.* The fair value of initial margin provided by the [BANK] for derivative transactions (regardless of whether the initial margin is included on the [BANK]'s balance sheet), which does not include initial margin provided by the [BANK] for cleared derivative transactions with respect to which the [BANK] is acting as agent for a customer and the [BANK] does not guarantee the obligations of the customer's counterparty to the customer under the derivative transaction (such initial margin would be assigned an RSF factor pursuant to § ____.106 to the extent the initial margin is included on the [BANK]'s balance sheet), multiplied by an RSF factor equal to the higher of 85 percent or the RSF factor assigned to each asset comprising the initial margin pursuant to § ____.106.

(c) *Calculation of available stable funding amount relating to derivative transactions.* The following amounts of a [BANK] are assigned a zero percent ASF factor:

(1) The [BANK]'s NSFR derivatives liability amount, as calculated under paragraph (d)(2) of this section; and

(2) The carrying value of NSFR liabilities in the form of an obligation to return initial margin or variation margin received by the [BANK].

(d) *Calculation of NSFR derivatives asset or liability amount.*

(1) A [BANK]'s NSFR derivatives asset amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section, less the [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section.

(2) A [BANK]'s NSFR derivatives liability amount is the greater of:

(i) Zero; and

(ii) The [BANK]'s total derivatives liability amount, as calculated under paragraph (e)(2) of this section, less the [BANK]'s total derivatives asset amount, as calculated under paragraph (e)(1) of this section.

(e) *Calculation of total derivatives asset and liability amounts.*

(1) A [BANK]'s total derivatives asset amount is the sum of the [BANK]'s derivatives asset values, as calculated under paragraph (f)(1) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(2) A [BANK]'s total derivatives liability amount is the sum of the [BANK]'s derivatives liability values, as calculated under paragraph (f)(2) of this section, for each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set.

(f) *Calculation of derivatives asset and liability values.* For each derivative transaction not subject to a qualifying master netting agreement and each QMNA netting set:

(1) The derivatives asset value is equal to the asset value to the [BANK], after taking into account:

(i) Any variation margin received by the [BANK] that is in the form of cash and meets the following conditions:

(A) The variation margin is not segregated;

(B) The variation margin is received in connection with a derivative transaction that is governed by a QMNA or other contract between the counterparties to the derivative transaction, which stipulates that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided;

(C) The variation margin is calculated and transferred on a daily basis based on mark-to-fair value of the derivative contract; and

(D) The variation margin is in a currency specified as an acceptable currency to settle obligations in the relevant governing contract; and

(ii) Any variation margin received by the [BANK] that is in the form of level 1 liquid assets and meets the conditions of paragraph (f)(1)(i) of this section provided the [BANK] retains the right to rehypothecate the asset for the duration of time that the asset is posted as variation margin to the [BANK]; or

(2) The derivatives liability value is equal to the liability value of the [BANK], after taking into account any variation margin provided by the [BANK].

§ ____.108 Funding related to Covered Federal Reserve Facility Funding.

(a) *Treatment of Covered Federal Reserve Facility Funding.* Notwithstanding any other section of this part and except as provided in paragraph (b) of this section, available stable funding amounts and required stable funding amounts related to Covered Federal Reserve Facility Funding and the assets securing Covered Federal Reserve Facility Funding are excluded from the calculation of a [BANK]'s net stable funding ratio calculated under § ____.100(b).

(b) *Exception.* To the extent the Covered Federal Reserve Facility Funding is secured by securities, debt obligations, or other instruments issued by the [BANK] or one of its consolidated subsidiaries, the Covered Federal Reserve Facility Funding and assets securing the Covered Federal Reserve Facility Funding are not subject to paragraph (a) of this section and the available stable funding amount and required stable funding amount must be included in the [BANK]'s net stable funding ratio calculated under § ____.100(b).

§ ____.109 Rules for consolidation.

(a) *Consolidated subsidiary available stable funding amount.* For available stable funding of a legal entity that is a consolidated subsidiary of a [BANK], including a consolidated subsidiary organized under the laws of a foreign jurisdiction, the [BANK] may include the available stable funding of the consolidated subsidiary in its ASF amount up to:

(1) The RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part; plus

(2) Any amount in excess of the RSF amount of the consolidated subsidiary, as calculated by the [BANK] for the [BANK]'s net stable funding ratio under this part, to the extent the consolidated subsidiary may transfer assets to the top-tier [BANK], taking into account statutory, regulatory, contractual, or supervisory restrictions, such as sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 12 U.S.C. 371c–1) and Regulation W (12 CFR part 223).

(b) *Required consolidation procedures.* To the extent a [BANK] includes an ASF amount in excess of the RSF amount of the consolidated subsidiary, the [BANK] must implement and maintain written procedures to identify and monitor applicable statutory, regulatory, contractual, supervisory, or other restrictions on transferring assets from any of its consolidated subsidiaries. These procedures must document which types of transactions the [BANK] could use to transfer assets from a consolidated subsidiary to the [BANK] and how these types of transactions comply with applicable statutory, regulatory, contractual, supervisory, or other restrictions.

Subpart L—Net Stable Funding Shortfall

§ ____.110 NSFR shortfall: Supervisory framework.

(a) *Notification requirements.* A [BANK] must notify the [AGENCY] no later than 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, following the date that any event has occurred that would cause or has caused the [BANK]'s net stable funding ratio to be less than 1.0 as required under § ____.100.

(b) *Liquidity Plan.* (1) A [BANK] must within 10 business days, or such other period as the [AGENCY] may otherwise require by written notice, provide to the [AGENCY] a plan for achieving a net stable funding ratio equal to or greater than 1.0 as required under § ____.100 if:

(i) The [BANK] has or should have provided notice, pursuant to § ____.110(a), that the [BANK]'s net stable funding ratio is, or will become, less than 1.0 as required under § ____.100;

(ii) The [BANK]'s reports or disclosures to the [AGENCY] indicate that the [BANK]'s net stable funding ratio is less than 1.0 as required under § ____.100; or

(iii) The [AGENCY] notifies the [BANK] in writing that a plan is required and provides a reason for requiring such a plan.

(2) The plan must include, as applicable:

(i) An assessment of the [BANK]'s liquidity profile;

(ii) The actions the [BANK] has taken and will take to achieve a net stable funding ratio equal to or greater than 1.0 as required under § ____.100, including:

(A) A plan for adjusting the [BANK]'s liquidity profile;

(B) A plan for remediating any operational or management issues that contributed to noncompliance with subpart K of this part; and

(iii) An estimated time frame for achieving full compliance with § ____.100.

(3) The [BANK] must report to the [AGENCY] at least monthly, or such other frequency as required by the [AGENCY], on progress to achieve full compliance with § ____.100.

(c) *Supervisory and enforcement actions.* The [AGENCY] may, at its discretion, take additional supervisory or enforcement actions to address noncompliance with the minimum net stable funding ratio and other requirements of subparts K through N of this part (see also § ____.2(c)).

[End of Proposed Common Rule Text]

List of Subjects

12 CFR Part 50

Administrative practice and procedure, Banks, Banking, Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 249

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure, Banks, Banking, Federal Deposit Insurance Corporation, FDIC, Liquidity, Reporting and recordkeeping requirements, Savings associations.

Adoption of the Common Rule Text

The proposed adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble, part 50 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, 1828, and 1462 *et seq.*

■ 2. Amend § 50.1 by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 50.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain national banks and Federal savings associations on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

* * * * *

■ 3. Amend § 50.2 by redesignating paragraph (b) as paragraph (c), adding new paragraph (b), and revising newly redesignated paragraph (c) to read as follows:

§ 50.2 Reservation of authority.

* * * * *

(b) The OCC may require a national bank or Federal savings association to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the national bank's or Federal savings association's stable funding, if the OCC determines that the national bank's or Federal savings association's stable funding requirements as calculated under this part are not commensurate with the national bank's or Federal savings association's funding risks. In making determinations under this section, the OCC will apply notice and response procedures as set forth in 12 CFR 3.404.

(c) Nothing in this part limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 4. Amend § 50.3 by:

■ a. Removing the definition for ''*Brokered sweep deposit*'', ''*Covered nonbank company*'', and ''*Reciprocal brokered deposit*'';

■ b. Adding definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''; and

■ c. Revising definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding.*''

The additions and revisions, in alphabetical order, read as follows:

§ 50.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the national bank or Federal savings association that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act

(12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that a national bank or Federal savings association receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the national bank or Federal savings association (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which a national bank or Federal savings association calculates its liquidity coverage ratio under § 50.10, and for subparts K through M of this part, any date on which a national bank or Federal savings association calculates its net stable funding ratio under § 50.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the national bank or Federal savings association, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the national bank or Federal savings association that is required to be secured under applicable law by a lien on assets owned by the national bank or Federal savings association and that gives the depositor, as holder of the lien, priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank or Federal savings association is a fiduciary and is required under 12 CFR 9.10(b) (national banks) or 12 CFR 150.300 through 150.320 (Federal savings associations) to set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the national bank or Federal savings association for which the national bank's or Federal savings association's affiliated insured depository institution is a fiduciary and where the national bank or Federal savings association under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) has set aside assets owned by the national bank or Federal savings association as security, which gives the depositor priority over the assets in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the national bank or Federal savings association to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the national bank or Federal savings association or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a national bank's or Federal savings association's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a national bank's or Federal savings association's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 3.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 3.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 3.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 3.

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 50.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the national bank or Federal savings association, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the national bank or Federal savings association enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the national bank or Federal savings association, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the national bank or Federal savings association by a customer or counterparty through a contractual feature that automatically transfers to the national bank or Federal savings association from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a national bank or Federal savings association may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the national bank or Federal savings association to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the national bank or Federal savings association that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 5. Amend § 50.22 by revising paragraph (b)(1) to read as follows:

§ 50.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 6. In § 50.30, amend paragraph (b)(3) to read as follows:

§ 50.30 Total net cash outflow amount.

* * * * *

(b) * * *

(3) Other than the transactions identified in § 50.32(h)(2), (h)(5), or (j) or § 50.33(d) or (f), the maturity of which is determined under § 50.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 7. In § 50.31, amend paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 50.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 50.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the national bank or Federal savings association should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 50.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the national bank or Federal savings association may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 50.32(h)(2), (h)(5), (j), or (k) or § 50.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 50.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 50.32 [Amended]

■ 8. Amend § 50.32 by:

■ a. Removing the phrase ''reciprocal brokered deposits'' and adding the phrase ''brokered reciprocal deposits'' in its place wherever it appears.

■ b. Removing the phrase ''brokered sweep deposits'' and adding the phrase ''sweep deposits'' in its place wherever it appears.

* * * * *

Subpart G through J [Added and Reserved]

■ 9. Add and reserve subparts G through J to part 50.

Subparts K and L [Added]

■ 10. Amend part 50 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 11. Amend subparts K and L of part 50 by:

■ a. Removing ''[AGENCY]'' and adding ''OCC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 3'' in its place wherever it appears.

■ c. Removing ''[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 3.10(c)(2)(v)(A) through (C)'' in its place wherever it appears.

■ d. Removing ''[BANK]'s'' and adding ''national bank's or Federal savings association's'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''national bank or Federal savings association'' in its place wherever it appears.

■ f. Amending § 50.105 by revising paragraph (b) to read as follows:

§ 50.105 Calculation of required stable funding amount.

* * * * *

(b) *Required stable funding adjustment percentage.* A national bank's or Federal savings association's required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

GSIB depository institution that is a national bank or Federal savings association	100
Category II national bank or Federal savings association	100
Category III national bank or Federal savings association that:	100
(1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or	

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES—Continued

(2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part.	
Category III national bank or Federal savings association that:	85
(1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or	
(2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III national bank or Federal savings association in this part.	

■ 12. Amend part 50 by adding subpart M to read as follows:

Subpart M—Transitions

§ 50.120 Transitions.

(a) *Initial application.* (1) A national bank or Federal savings association that initially becomes subject to the minimum net stable funding requirement under § 50.1(b)(1)(i) after July 1, 2021, must comply with the requirements of subparts K through M of this part beginning on the first day of the third calendar quarter after which the national bank or Federal savings association becomes subject to this part.

(2) A national bank or Federal savings association that becomes subject to the minimum net stable funding requirement under § 50.1(b)(1)(ii) must comply with the requirements of subparts K through M of this part subject to a transition period specified by the OCC.

(b) *Transition to a different required stable funding adjustment percentage.*

(1) A national bank or Federal savings association whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 50.105(c).

(2) A national bank or Federal savings association institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 50.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through M of this part as of the first day of the first calendar quarter after it is no longer subject to § 50.1(b).

(c) *Reservation of authority.* The OCC may extend or accelerate any compliance date of this part if the OCC determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the OCC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through M of this part, and the actions the national bank or Federal savings association is taking to come into compliance with the requirements of subparts K through M of this part.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, part 249 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

PART 249—LIQUIDITY RISK MEASUREMENT, STANDARDS, AND MONITORING (REGULATION WW)

■ 13. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 14. Revise the heading for part 249 as set forth above.

■ 15. Revise § 249.1 to read as follows:

§ 249.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain Board-regulated institutions on a consolidated basis, as set forth herein.

(b) *Applicability.* (1) A Board-regulated institution is subject to the minimum liquidity standard and a minimum stable funding standard, and other requirements of this part if:

(i) It is a:

(A) Global systemically important BHC;

(B) GSIB depository institution;

(C) Category II Board-regulated institution;

(D) Category III Board-regulated institution; or

(E) Category IV Board-regulated institution with $50 billion or more in average weighted short-term wholesale funding;

(ii) It is a covered nonbank company; or

(iii) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2) This part does not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(3) In making a determination under paragraph (b)(1)(iii) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

(c) *Covered nonbank companies.* The Board will establish a minimum liquidity standard and minimum stable funding standard and other requirements for a designated company under this part by rule or order. In establishing such standards, the Board will consider the factors set forth in sections 165(a)(2) and (b)(3) of the Dodd-Frank Act and may tailor the application of the requirements of this part to the designated company based on the nature, scope, size, scale, concentration, interconnectedness, mix of the activities of the designated company, or any other risk-related factor that the Board determines is appropriate.

■ 16. Amend § 249.2, by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 249.2 Reservation of authority.

* * * * *

(b) The Board may require a Board-regulated institution to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the Board-regulated institution's stable funding, if the Board determines that the Board-regulated institution's stable funding requirements as calculated under this part are not commensurate with the Board-regulated institution's funding risks. In making determinations under this section, the Board will apply notice and response procedures as set forth in 12 CFR 263.202.

(c) Nothing in this part limits the authority of the Board under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 17. Amend § 249.3 by:

■ a. Adding the definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''.

■ b. Revising the definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Covered nonbank company*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding*''.

■ c. Removing the definitions for ''*Reciprocal brokered deposit*'' and ''*Brokered sweep deposit*''.

The additions and revisions, in alphabetical order, read as follows:

§ 249.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the Board-regulated institution that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that a Board-regulated institution receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the Board-regulated institution (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which a Board-regulated institution calculates its liquidity coverage ratio under § 249.10, and for subparts K through N of this part, any date on which a Board-regulated institution calculates its net stable funding ratio under § 249.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the Board-regulated institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the Board-regulated institution that is required to be secured under applicable law by a lien on assets owned by the Board-regulated institution and that gives the depositor, as holder of the lien, priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution is a fiduciary and is required under 12 CFR 9.10(b) (national banks), 12 CFR 150.300 through 150.320 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) to set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the Board-regulated institution for which the Board-regulated institution's affiliated insured depository institution is a fiduciary and where the Board-regulated institution under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, state savings associations) has set aside assets owned by the Board-regulated institution as security, which gives the depositor priority over the assets in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Covered nonbank company means a designated company that the Board of Governors of the Federal Reserve System has required by separate rule or order to comply with the requirements of 12 CFR part 249.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the Board-regulated institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the Board-regulated institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on a Board-regulated institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in a Board-regulated institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in § 217.20 of Regulation Q (12 CFR part 217), prior to application of capital adjustments or deductions as set forth in § 217.22 of Regulation Q (12 CFR part 217), excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in § 217.22 of Regulation Q (12 CFR part 217) and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of Regulation Q (12 CFR part 217).

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 249.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the Board-regulated institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the Board-regulated institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the Board-regulated institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the Board-regulated institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the Board-regulated institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the Board-regulated institution by a customer or counterparty through a contractual feature that automatically transfers to the Board-regulated institution from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that a Board-regulated institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the Board-regulated institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the Board-regulated institution that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 18. Amend § 249.22 by revising paragraph (b)(1) to read as follows:

§ 249.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 19. In § 249.30, revise paragraph (b)(3) to read as follows:

§ 249.30 Total net cash outflow amount.

(b) * * *

(3) Other than the transactions identified in § 249.32(h)(2), (h)(5), or (j) or § 249.33(d) or (f), the maturity of which is determined under § 249.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 20. In § 249.31, revise paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 249.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 249.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the Board-regulated institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 249.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the Board-regulated institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 249.32(h)(2), (h)(5), (j), or (k) or § 249.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 249.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 249.32 [Amended]

■ 21. Amend § 249.32 by:

■ a. Removing the phrase ''reciprocal brokered deposits'' and adding the phrase ''brokered reciprocal deposits'' in its place wherever it appears.

■ b. Removing the phrase ''brokered sweep deposits'' and adding the phrase ''sweep deposits'' in its place wherever it appears.

Subparts K and L [Added]

■ 22. Amend part 249 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 23. Amend subparts K and L of part 249 by:

■ a. Removing ''[AGENCY]'' and adding ''Board'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''Regulation Q (12 CFR part 217)'' in its place wherever it appears.

■ c. Removing ''[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 217.10(c)(2)(v)(A) through (C)'' in its place wherever it appears.

■ d. Removing ''[BANK]'' and adding ''Board-regulated institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'s'' and adding ''Board-regulated institution's'' in its place wherever it appears.

■ 24. Amend part 249 by adding subparts M and N to read as follows:

Subpart M—Transitions.

§ 249.120 Transitions.

(a) *Initial application.* (1) A Board-regulated institution that initially becomes subject to the minimum net stable funding requirement under § 249.1(b)(1)(i) or (ii) after July 1, 2021, must comply with the requirements of subparts K through N of this part beginning on the first day of the third calendar quarter after which the Board-regulated institution becomes subject to this part.

(2) A Board-regulated institution that becomes subject to the minimum net stable funding requirement under § 249.1(b)(1)(iii) must comply with the requirements of subparts K through N of this part subject to a transition period specified by the Board.

(b) *Transition to a different required stable funding adjustment percentage.* (1) A Board-regulated institution whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 249.105(c).

(2) A Board-regulated institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 249.1(b)(1)(i) or (ii) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through N of this part as of the first day of the first calendar quarter after it is no longer subject to § 249.1(b).

(c) *Reservation of authority.* The Board may extend or accelerate any compliance date of this part if the Board determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Board will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through N of this part, and the actions the Board-regulated institution is taking to come into compliance with the requirements of subparts K through N of this part.

Subpart N—NSFR Public Disclosure

§ 249.130 Timing, method, and retention of disclosures.

(a) *Applicability.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to the minimum stable funding requirement in § 249.100 of this part must publicly disclose the information required under this subpart.

(b) *Timing of disclosure.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that is subject to the minimum stable funding requirement in § 249.100 of this part must provide timely public disclosures every second and fourth calendar quarter of all of the information required under this subpart for each of the two immediately preceding calendar quarters.

(2) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank holding company that is subject to this subpart must provide the disclosures required by this subpart beginning with the first calendar quarter that includes the date that is 18 months after the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company first became subject to the minimum stable funding requirement in § 249.100 of this part.

(c) *Disclosure method.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must publicly disclose, in a direct and prominent manner, the information required under this subpart on its public internet site or in its public financial or other public regulatory reports.

(d) *Availability.* The disclosures provided under this subpart must remain publicly available for at least five years after the initial disclosure date.

§ 249.131 Disclosure requirements.

(a) *General.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must publicly disclose the information required by this subpart in the format provided in Table 1 to this paragraph:

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Table 1 to Paragraph (a) – Disclosure Template

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Average Unweighted Amount					Average Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
ASF ITEM							
1	Capital and securities:						
2	NSFR regulatory capital elements						
3	Other capital elements and securities						
4	Retail funding:						
5	Stable deposits						
6	Less stable deposits						
7	Sweep deposits, brokered reciprocal deposits, and brokered deposits						
8	Other retail funding						
9	Wholesale funding:						
10	Operational deposits						
11	Other wholesale funding						
	Other liabilities:						
12	NSFR derivatives liability amount						
13	Total derivatives liability amount						
14	All other liabilities not included in categories 1 through 13 of this table						
15	**TOTAL ASF**						
RSF ITEM							
16	Total high-quality liquid assets (HQLA)						
17	Level 1 liquid assets						
18	Level 2A liquid assets						
19	Level 2B liquid assets						
20	Zero percent RSF assets that are not level 1 liquid assets or loans to financial sector entities or their consolidated subsidiaries						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Average Unweighted Amount: Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	Average Weighted Amount
21	Operational deposits placed at financial sector entities or their consolidated subsidiaries						
22	Loans and securities:						
23	Loans to financial sector entities secured by level 1 liquid assets						
24	Loans to financial sector entities secured by assets other than level 1 liquid assets and unsecured loans to financial sector entities						
25	Loans to wholesale customers or counterparties that are not financial sector entities and loans to retail customers or counterparties						
26	Of which: With a risk weight no greater than 20 percent under Regulation Q (12 CFR part 217)						
27	Retail mortgages						
28	Of which: With a risk weight of no greater than 50 percent under Regulation Q (12 CFR part 217)						
29	Securities that do not qualify as HQLA						
	Other assets:						
30	Commodities						

Quarter ended XX/XX/XXXX In millions of U.S. dollars		Average Unweighted Amount					Average Weighted Amount
		Open Maturity	< 6 months	6 months to < 1 year	≥ 1 year	Perpetual	
31	Assets provided as initial margin for derivative transactions and contributions to CCPs' mutualized loss-sharing arrangements						
32	NSFR derivatives asset amount						
33	Total derivatives asset amount						
34	RSF for potential derivatives portfolio valuation changes						
35	All other assets not included in the categories 16-33 of this table, including nonperforming assets						
36	Undrawn commitments						
37	**TOTAL RSF prior to application of required stable funding adjustment percentage**						
38	**Required stable funding adjustment percentage**						
39	**TOTAL adjusted RSF**						
40	**NET STABLE FUNDING RATIO**						

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(b) *Calculation of disclosed average amounts*—(1) *General.* (i) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must calculate its disclosed amounts:

(A) On a consolidated basis and presented in millions of U.S. dollars or as a percentage, as applicable; and

(B) As simple averages of daily amounts for each calendar quarter.

(ii) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must disclose the beginning date and end date for each calendar quarter.

(2) *Calculation of unweighted amounts.* (i) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the ''unweighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's NSFR regulatory capital elements and NSFR liabilities, as applicable, determined before applying the appropriate ASF factors, and subdivided into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(ii) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the ''unweighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, or U.S. intermediate holding company, or covered nonbank company, as applicable, determined before applying the appropriate RSF factors, and subdivided by maturity into the following maturity categories, as applicable: Open maturity; less than six months after the calculation date; six months or more, but less than one year, after the calculation date; one year or more after the calculation date; and perpetual.

(3) *Calculation of weighted amounts.* (i) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's ASF amount calculation, other than the NSFR derivatives liability amount and total derivatives liability amount, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's NSFR regulatory capital elements and NSFR liabilities, as applicable, multiplied by the appropriate ASF factors.

(ii) For each component of a covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's RSF amount calculation, other than amounts included in paragraphs (c)(2)(xvi) through (xix) of this section, the ''weighted amount'' means the sum of the carrying values of the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's assets and undrawn amounts of committed credit facilities and committed liquidity facilities extended by the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company, multiplied by the appropriate RSF factors.

(c) *Quantitative disclosures.* A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must disclose all of the information required under Table 1 to paragraph (a) of this section including:

(1) Disclosures of ASF amount calculations:

(i) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(ii) and (iii) of this section (row 1);

(ii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of NSFR regulatory capital elements described in § 249.104(a)(1) (row 2);

(iii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of securities described in §§ 249.104(a)(2), 249.104(d)(5), and 249.104(e)(3) (row 3);

(iv) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(v) through (viii) of this section (row 4);

(v) The average weighted amount and, for each applicable maturity category, the average unweighted amount of stable retail deposits and sweep deposits held at the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company described in § 249.104(b) (row 5);

(vi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail deposits other than stable retail deposits or brokered deposits, described in § 249.104(c)(1) (row 6);

(vii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of sweep deposits, brokered reciprocal deposits, and brokered deposits provided by a retail customer or counterparty described in §§ 249.104(c)(2), 249.104(c)(3), 249.104(c)(4), 249.104(d)(7), 249.104(d)(8) and 249.104(e)(2) (row 7);

(viii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of other funding provided by a retail customer or counterparty described in § 249.104(d)(9) (row 8);

(ix) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(1)(x) and (xi) of this section (row 9);

(x) The average weighted amount and, for each applicable maturity category, the average unweighted amount of operational deposits placed at the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company described in § 249.104(d)(6) (row 10);

(xi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of other wholesale funding described in §§ 249.104(a)(2), 249.104(d)(1), 249.104(d)(2), 249.104(d)(3), 249.104(d)(4), 249.104(d)(10), and 249.104(e)(4) (row 11);

(xii) In the ''unweighted'' cell, the average amount of the NSFR derivatives liability amount described in § 249.107(d)(2) (row 12);

(xiii) In the ''unweighted'' cell, the average amount of the total derivatives liability amount described in § 249.107(e)(2) (row 13);

(xiv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of all other liabilities not included in amounts disclosed under paragraphs (c)(1)(i) through (xiii) of this section (row 14);

(xv) The average amount of the ASF amount described in § 249.103 (row 15);

(2) Disclosures of RSF amount calculations, including to reflect any encumbrances under §§ 249.106(c) and 249.106(d):

(i) The sum of the average weighted amounts and the sum of the average unweighted amounts of paragraphs (c)(2)(ii) through (iv) of this section (row 16);

(ii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 1 liquid assets described in §§ 249.106(a)(1) (row 17);

(iii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 2A liquid assets described in § 249.106(a)(3)(i) (row 18);

(iv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of level 2B liquid assets described in § 249.106(a)(4)(i) (row 19);

(v) The average weighted amount and, for each applicable maturity category, the average unweighted amount of assets described in § 249.106(a)(1), other than level 1 liquid assets included in amounts disclosed under paragraph (c)(2)(ii) of this section or secured lending transactions included in amounts disclosed under paragraph (c)(2)(viii) of this section (row 20);

(vi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of operational deposits placed at financial sector entities or consolidated subsidiaries thereof described in § 249.106(a)(4)(iii) (row 21);

(vii) The sum of the average weighted amounts and, for each applicable maturity category, the sum of the average unweighted amounts of paragraphs (c)(2)(viii), (ix), (x), (xii), and (xiv) of this section (row 22);

(viii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity and the secured lending transaction is secured by level 1 liquid assets, described in §§ 249.106(a)(1)(vii), 249.106(a)(3)(ii), 249.106(a)(4)(ii), and 249.106(a)(7) (row 23);

(ix) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions that are secured by assets other than level 1 liquid assets and unsecured wholesale lending, in each case where the borrower is a financial sector entity or a consolidated subsidiary of a financial sector entity, described in §§ 249.106(a)(3)(ii), 249.106(a)(4)(ii), and 249.106(a)(7) (row 24);

(x) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions and unsecured wholesale lending to wholesale customers or counterparties that are not financial sector entities or consolidated subsidiaries thereof, and lending to retail customers and counterparties other than retail mortgages, described in §§ 249.106(a)(4)(iv), 249.106(a)(5)(ii), and 249.106(a)(6)(ii) (row 25);

(xi) The average weighted amount and, for each applicable maturity category, the average unweighted amount of secured lending transactions, unsecured wholesale lending, and lending to retail customers or counterparties that are assigned a risk weight of no greater than 20 percent under subpart D of Regulation Q (12 CFR part 217) described in §§ 249.106(a)(4)(ii), 249.106(a)(4)(iv), and 249.106(a)(5)(ii) (row 26);

(xii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail mortgages described in §§ 249.106(a)(4)(iv), 249.106(a)(5)(i), and 249.106(a)(6)(i) (row 27);

(xiii) The average weighted amount and, for each applicable maturity category, the average unweighted amount of retail mortgages assigned a risk weight of no greater than 50 percent under subpart D of Regulation Q (12 CFR part 217) described in §§ 249.106(a)(4)(iv) and 249.106(a)(5)(i) (row 28);

(xiv) The average weighted amount and, for each applicable maturity category, the average unweighted amount of publicly traded common equity shares and other securities that are not HQLA and are not nonperforming assets described in §§ 249.106(a)(6)(iii), and 249.106(a)(6)(iv) (row 29);

(xv) The average weighted amount and average unweighted amount of commodities described in §§ 249.106(a)(6)(v) and 249.106(a)(7) (row 30);

(xvi) The average unweighted amount and average weighted amount of the sum of (A) assets contributed by the covered depository institution holding company to a central counterparty's mutualized loss-sharing arrangement described in § 249.107(b)(6) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by 85 percent) and (B) assets provided as initial margin by the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company for derivative transactions described in § 249.107(b)(7) (in which case the ''unweighted amount'' shall equal the fair value and the ''weighted amount'' shall equal the unweighted amount multiplied by the higher of 85 percent or the RSF factor assigned to the asset pursuant to § 249.106) (row 31);

(xvii) In the ''unweighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the NSFR derivatives asset amount under § 249.107(d)(1) and in the ''weighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the NSFR derivatives asset amount under § 249.107(d)(1) multiplied by 100 percent (row 32);

(xviii) In the ''unweighted'' cell, the covered depository institution holding company's, U.S. intermediate holding company's, or covered nonbank company's average amount of the total derivatives asset amount described in § 249.107(e)(1) (row 33);

(xix) (A) In the ''unweighted'' cell, the average amount of the sum of the gross derivative liability values of the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company that are liabilities for each of its derivative transactions not subject to a qualifying master netting agreement and each of its QMNA netting sets, described in § 249.107(b)(5), and (B) in the ''weighted'' cell, such sum multiplied by 5 percent, as described in § 249.107(b)(5) (row 34);

(xx) The average weighted amount and, for each applicable maturity category, the average unweighted amount of all other asset amounts not included in amounts disclosed under paragraphs (c)(2)(i) through (xix) of this section, including nonperforming assets (row 35);

(xxi) The average weighted and unweighted amount of undrawn credit and liquidity facilities described in § 249.106(a)(2) (row 36);

(xxii) The average amount of the RSF amount as calculated in § 249.105(a) prior to the application of the applicable required stable funding adjustment percentage in § 249.105(b) (row 37);

(xxiii) The applicable required stable funding adjustment percentage described in Table 1 to § 249.105(b) (row 38);

(xxiv) The average amount of the RSF amount as calculated under § 249.105 (row 39);

(3) The average of the net stable funding ratios as calculated under § 249.100(b) (row 40);

(d) *Qualitative disclosures.* (1) A covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company must provide a qualitative discussion of the factors that have a significant effect on its net stable funding ratio, which may include the following:

(i) The main drivers of the net stable funding ratio;

(ii) Changes in the net stable funding ratio results over time and the causes of such changes (for example, changes in strategies and circumstances);

(iii) Concentrations of funding sources and changes in funding structure; or

(iv) Concentrations of available and required stable funding within a covered company's corporate structure (for example, across legal entities).

(2) If a covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company subject to this subpart believes that the qualitative discussion required in paragraph (d)(1) of this section would prejudice seriously its position by resulting in public disclosure of specific commercial or financial information that is either proprietary or confidential in nature, the covered depository institution holding company, U.S. intermediate holding company, or covered nonbank company is not required to include those specific items in its qualitative discussion, but must provide more general information about the items that had a significant effect on its net stable funding ratio, together with the fact that, and the reason why, more specific information was not discussed.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, part 329 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 25. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 26. Amend § 329.1 by revising paragraphs (a) and (b)(1) introductory text to read as follows:

§ 329.1 Purpose and applicability.

(a) *Purpose.* This part establishes a minimum liquidity standard and a minimum stable funding standard for certain FDIC-supervised institutions on a consolidated basis, as set forth herein.

(b) * * *

(1) An FDIC-supervised institution is subject to the minimum liquidity standard, minimum stable funding standard, and other requirements of this part if:

* * * * *

■ 27. Amend § 329.2 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 329.2 Reservation of authority.

* * * * *

(b) The FDIC may require an FDIC-supervised institution to maintain an amount of available stable funding greater than otherwise required under this part, or to take any other measure to improve the FDIC-supervised institution's stable funding, if the FDIC determines that the FDIC-supervised institution's stable funding requirements as calculated under this part are not commensurate with the FDIC-supervised institution's funding risks. In making determinations under this section, the FDIC will apply notice and response procedures as set forth in 12 CFR 324.5.

(c) Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient liquidity levels, deficient stable funding levels, or violations of law.

■ 28. Amend § 329.3 by:

■ a. Removing the definitions for ''*Brokered sweep deposit*'', ''*Covered nonbank company*'', and ''*Reciprocal brokered deposit*'';

■ b. Adding definitions for ''*Brokered reciprocal deposit*'', ''*Carrying value*'', ''*Encumbered*'', ''*NSFR liability*'', ''*NSFR regulatory capital element*'', ''*QMNA netting set*'', ''*Sweep deposit*'', ''*Unconditionally cancelable*'', and ''*Unsecured wholesale lending*''; and

■ c. Revising definitions for ''*Brokered deposit*'', ''*Calculation date*'', ''*Collateralized deposit*'', ''*Committed*'', ''*Operational deposit*'', ''*Secured funding transaction*'', ''*Secured lending transaction*'', and ''*Unsecured wholesale funding.*''

The additions and revisions, in alphabetical order, read as follows:

§ 329.3 Definitions.

* * * * *

Brokered deposit means any deposit held at the FDIC-supervised institution that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)) and the Federal Deposit Insurance Corporation's regulations.

Brokered reciprocal deposit means a brokered deposit that an FDIC-supervised institution receives through a deposit placement network on a reciprocal basis, such that:

(1) For any deposit received, the FDIC-supervised institution (as agent for the depositors) places the same amount with other depository institutions through the network; and

(2) Each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

Calculation date means, for subparts B through J of this part, any date on which an FDIC-supervised institution calculates its liquidity coverage ratio under § 329.10, and for subparts K through M of this part, any date on which an FDIC-supervised institution calculates its net stable funding ratio under § 329.100.

* * * * *

Carrying value means, with respect to an asset, NSFR regulatory capital element, or NSFR liability, the value on the balance sheet of the FDIC-supervised institution, each as determined in accordance with GAAP.

* * * * *

Collateralized deposit means:

(1) A deposit of a public sector entity held at the FDIC-supervised institution that is required to be secured under applicable law by a lien on assets owned by the FDIC-supervised institution and that gives the depositor, as holder of the lien, priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding;

(2) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution is a fiduciary and is required under applicable state law to set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding; or

(3) A deposit of a fiduciary account awaiting investment or distribution held at the FDIC-supervised institution for which the FDIC-supervised institution's affiliated insured depository institution is a fiduciary and where the FDIC-supervised institution under 12 CFR 9.10(c) (national banks), 12 CFR 150.310 (Federal savings associations), or applicable state law (state member and nonmember banks, and state savings associations) has set aside assets owned by the FDIC-supervised institution as security, which gives the depositor priority over the assets in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding.

Committed means, with respect to a credit or liquidity facility, that under the terms of the facility, it is not unconditionally cancelable.

* * * * *

Encumbered means, with respect to an asset, that the asset:

(1) Is subject to legal, regulatory, contractual, or other restriction on the ability of the FDIC-supervised institution to monetize the asset; or

(2) Is pledged, explicitly or implicitly, to secure or to provide credit enhancement to any transaction, not including when the asset is pledged to a central bank or a U.S. government-sponsored enterprise where:

(i) Potential credit secured by the asset is not currently extended to the FDIC-supervised institution or its consolidated subsidiaries; and

(ii) The pledged asset is not required to support access to the payment services of a central bank.

* * * * *

NSFR liability means any liability or equity reported on an FDIC-supervised institution's balance sheet that is not an NSFR regulatory capital element.

NSFR regulatory capital element means any capital element included in an FDIC-supervised institution's common equity tier 1 capital, additional tier 1 capital, and tier 2 capital, in each case as defined in 12 CFR 324.20, prior to application of capital adjustments or deductions as set forth in 12 CFR 324.22, excluding any debt or equity instrument that does not meet the criteria for additional tier 1 or tier 2 capital instruments in 12 CFR 324.22 and is being phased out of tier 1 capital or tier 2 capital pursuant to subpart G of 12 CFR part 324.

Operational deposit means short-term unsecured wholesale funding that is a deposit, unsecured wholesale lending that is a deposit, or a collateralized deposit, in each case that meets the requirements of § 329.4(b) with respect to that deposit and is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.

* * * * *

QMNA netting set means a group of derivative transactions with a single counterparty that is subject to a qualifying master netting agreement and is netted under the qualifying master netting agreement.

* * * * *

Secured funding transaction means any funding transaction that is subject to a legally binding agreement that gives rise to a cash obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is secured under applicable law by a lien on securities or loans provided by the FDIC-supervised institution, which gives the wholesale customer or counterparty, as holder of the lien, priority over the securities or loans in the event the FDIC-supervised institution enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured funding transactions include repurchase transactions, securities lending transactions, other secured loans, and borrowings from a Federal Reserve Bank. Secured funding transactions do not include securities.

Secured lending transaction means any lending transaction that is subject to a legally binding agreement that gives rise to a cash obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is secured under applicable law by a lien on securities or loans provided by the wholesale customer or counterparty, which gives the FDIC-supervised institution, as holder of the lien, priority over the securities or loans in the event the counterparty enters into receivership, bankruptcy, insolvency, liquidation, resolution, or similar proceeding. Secured lending transactions include reverse repurchase transactions and securities borrowing transactions. Secured lending transactions do not include securities.

* * * * *

Sweep deposit means a deposit held at the FDIC-supervised institution by a customer or counterparty through a contractual feature that automatically transfers to the FDIC-supervised institution from another regulated financial company at the close of each business day amounts identified under the agreement governing the account from which the amount is being transferred.

* * * * *

Unconditionally cancelable means, with respect to a credit or liquidity facility, that an FDIC-supervised institution may, at any time, with or without cause, refuse to extend credit under the facility (to the extent permitted under applicable law).

Unsecured wholesale funding means a liability or general obligation of the FDIC-supervised institution to a wholesale customer or counterparty that is not a secured funding transaction. Unsecured wholesale funding includes wholesale deposits. Unsecured wholesale funding does not include asset exchanges.

Unsecured wholesale lending means a liability or general obligation of a wholesale customer or counterparty to the FDIC-supervised institution that is not a secured lending transaction or a security. Unsecured wholesale lending does not include asset exchanges.

* * * * *

■ 29. Amend § 329.22, by revising paragraph (b)(1) to read as follows:

§ 329.22 Requirements for eligible high-quality liquid assets.

* * * * *

(b) * * *

(1) The assets are not encumbered.

* * * * *

■ 30. Amend § 329.30, by revising paragraph (b)(3) to read as follows:

§ 329.30 Total net cash outflow amount.

* * * * *

(b) * * *

(3) Other than the transactions identified in § 329.32(h)(2), (h)(5), or (j) or § 329.33(d) or (f), the maturity of which is determined under § 329.31(a), transactions that have an open maturity are not included in the calculation of the maturity mismatch add-on.

* * * * *

■ 31. Amend § 329.31, by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, and (a)(4) to read as follows:

§ 329.31 Determining maturity.

(a) * * *

(1) With respect to an instrument or transaction subject to § 329.32, on the earliest possible contractual maturity date or the earliest possible date the transaction could occur, taking into account any option that could accelerate the maturity date or the date of the transaction, except that when considering the earliest possible contractual maturity date or the earliest possible date the transaction could occur, the FDIC-supervised institution should exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(2) With respect to an instrument or transaction subject to § 329.33, on the latest possible contractual maturity date or the latest possible date the transaction could occur, taking into account any option that could extend the maturity date or the date of the transaction, except that when considering the latest possible contractual maturity date or the latest possible date the transaction could occur, the FDIC-supervised institution may exclude any contingent options that are triggered only by regulatory actions or changes in law or regulation, as follows:

* * * * *

(4) With respect to a transaction that has an open maturity, is not an operational deposit, and is subject to the provisions of § 329.32(h)(2), (h)(5), (j), or (k) or § 329.33(d) or (f), the maturity date is the first calendar day after the calculation date. Any other transaction that has an open maturity and is subject to the provisions of § 329.32 shall be considered to mature within 30 calendar days of the calculation date.

* * * * *

§ 329.32 [Amended]

■ 32. Amend § 329.32 by:

■ a. Removing the phrase ''reciprocal brokered deposits'' and adding the phrase ''brokered reciprocal deposits'' in its place wherever it appears.

■ b. Removing the phrase ''brokered sweep deposits'' and adding the phrase ''sweep deposits'' in its place wherever it appears.

Subparts G through J [Added and Reserved]

■ 33. Add and reserve subparts G through J to part 329.

Subparts K and L [Added]

■ 34. Amend part 329 by adding subparts K and L as set forth at the end of the common preamble.

Subparts K and L [Amended]

■ 35. Subparts K and L to part 329 are amended by:

■ a. Removing ''[AGENCY]'' and adding ''FDIC'' in its place wherever it appears.

■ b. Removing ''[AGENCY CAPITAL REGULATION]'' and adding ''12 CFR part 324'' in its place wherever it appears.

■ c. Removing ''A [BANK]'' and adding ''An FDIC-supervised institution'' in its place wherever it appears.

■ d. Removing ''a [BANK]'' and add ''an FDIC-supervised institution'' in its place wherever it appears.

■ e. Removing ''[BANK]'' and adding ''FDIC-supervised institution'' in its place wherever it appears.

■ f. Removing ''[§ ____.10(c)(4)(ii)(E)(1) through (3) of the AGENCY SUPPLEMENTARY LEVERAGE RATIO RULE]'' and adding ''12 CFR 324.10(c)(2)(v)(A) through (C)'' in its place wherever it appears.

■ g. Amending § 329.105, by revising paragraph (b) to read as follows:

§ 329.105 Calculation of required stable funding amount.

* * * * *

(b) *Required stable funding adjustment percentage.* An FDIC-supervised institution's required stable funding adjustment percentage is determined pursuant to Table 1 to this paragraph (b).

TABLE 1 TO PARAGRAPH (b)—REQUIRED STABLE FUNDING ADJUSTMENT PERCENTAGES

GSIB depository institution supervised by the FDIC	100
Category II FDIC-supervised institution	100
Category III FDIC-supervised institution that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with $75 billion or more in average weighted short-term wholesale funding; or (2) Has $75 billion or more in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	100
Category III FDIC-supervised institution that: (1) Is a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part, in each case with less than $75 billion in average weighted short-term wholesale funding; or (2) Has less than $75 billion in average weighted short-term wholesale funding and is not a consolidated subsidiary of (a) a covered depository institution holding company or U.S. intermediate holding company identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 or (b) a depository institution that meets the criteria set forth in paragraphs (2)(ii)(A) and (B) of the definition of Category III FDIC-supervised institution in this part.	85

■ 36. Amend part 329 by adding subpart M to read as follows:

Subpart M—Transitions

§ 329.120 Transitions.

(a) *Initial application.* (1) An FDIC-supervised institution that initially becomes subject to the minimum net stable funding requirement under § 329.1(b)(1)(i) after July 1, 2021, must comply with the requirements of subparts K through M of this part beginning on the first day of the third calendar quarter after which the FDIC-supervised institution becomes subject to this part.

(2) An FDIC-supervised institution that becomes subject to the minimum net stable funding requirement under § 329.1(b)(1)(ii) must comply with the requirements of subparts K through M of this part subject to a transition period specified by the FDIC.

(b) *Transition to a different required stable funding adjustment percentage.* (1) An FDIC-supervised institution whose required stable funding adjustment percentage changes is subject to the transition periods as set forth in § 329.105(c).

(2) An FDIC-supervised institution that is no longer subject to the minimum stable funding requirement of this part pursuant to § 329.1(b)(1)(i) based on the size of total consolidated assets, cross-jurisdictional activity, total nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure calculated in accordance with the Call Report, or instructions to the FR Y–9LP, the FR Y–15, or equivalent reporting form, as applicable, for each of the four most recent calendar quarters may cease compliance with the requirements of subparts K through M of this part as of the first day of the first calendar quarter after it is no longer subject to § 329.1(b).

(c) *Reservation of authority.* The FDIC may extend or accelerate any compliance date of this part if the FDIC determines such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the FDIC will consider the effect of the modification on financial stability, the period of time for which the modification would be necessary to facilitate compliance with the requirements of subparts K through M of this part, and the actions the FDIC-supervised institution is taking to come into compliance with the requirements of subparts K through M of this part.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board,

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 20, 2020.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2020–26546 Filed 2–4–21; 4:15 pm]

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