

Minimum Capital Ratios; Capital Adequacy Guidelines; Capital Maintenance; Capital: Deduction of Goodwill Net of Associated Deferred Tax Liability

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are proposing to permit banks, bank holding companies, and savings associations (collectively, banking organizations) to reduce the amount of goodwill that a banking organization must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. The proposed change would effectively reduce the amount of goodwill that a banking organization must deduct from tier 1 capital and would reflect a banking organization's maximum exposure to loss in the event that such goodwill is impaired or derecognized for financial reporting purposes.

DATES: Comments must be received on or before October 30, 2008.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title "Capital Adequacy Guidelines; Deduction of Goodwill Net of Associated Deferred Tax Liability" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal*—*"Regulations.gov"*: Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0014" to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The "How to Use This Site" link on the [Regulations.gov](http://www.Regulations.gov)

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC-2008-0014]

RIN 1557-AD13

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-1329]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AD32

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. OTS-2008-0010]

RIN 1550-AC22

home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail:*

regs.comments@occ.treas.gov.

- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1-5, Washington, DC 20219.

- *Fax:* (202) 874-4448.

- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket Number OCC-2008-0014" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:*

Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Comptroller of the Currency" from the agency drop-down menu, then click "Submit." In the "Docket ID" column, select "OCC-2008-0014" to view public comments for this rulemaking action.

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-1329, by any of the following methods:

- *Agency Web Site:* <http://www.Federalreserve.gov>. Follow the instructions for submitting comments at <http://www.Federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:*

regs.comments@Federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.Federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW., Washington, DC) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web Site:* <http://www.FDIC.gov/regulations/laws/federal/propose.html>.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

- *E-mail:* *comments@FDIC.gov.*

Instructions: Comments submitted must include "FDIC" and "RIN # 3064-AD32." Comments received will be posted generally without change to <http://www.FDIC.gov/regulations/laws/federal/propose.html>, including any personal information provided.

OTS: You may submit comments, identified by OTS-2008-0010 by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”:* Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Docket Search" option where indicated, select "Office of Thrift Supervision" from the agency drop-down menu, then click "Submit." In the

"Docket ID" column, select "OTS-2008-0010" to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The "How to Use This Site" link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- *E-mail address:*

regs.comments@ots.treas.gov. Please include OTS-2008-0010 in the subject line of the message and include your name and telephone number in the message.

- *Fax:* (202) 906-6518.

- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2008-0010.

- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, OTS-2008-0010.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the OTS Internet Site at <http://www.ots.treas.gov/Supervision&Legal.Laws&Regulations>, including any personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that could be considered confidential or inappropriate for public disclosure.

- *Viewing Comments Electronically:*

Go to <http://www.regulations.gov>, under the "More Search Options" tab click next to the "Advanced Document Search" option where indicated, select "Office of Thrift Supervision" from the agency drop-down menu and click "Submit." In the "Docket ID" column, select "OTS-2008-0010" to view public comments for this rulemaking action.

- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule

appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Paul Podgorski, Risk Expert, Capital Policy (202–874–4755); or Jean Campbell, Senior Attorney, or Ron Shimabukuro, Special Counsel, Legislative and Regulatory Activities Division (202–874–5090).

Board: Barbara Bouchard, Associate Director (202–452–3072 or barbara.bouchard@frb.gov), Mary Frances Monroe, Manager (202–452–5231 or mary.f.monroe@frb.gov), David Snyder, Supervisory Financial Analyst (202–728–5893 or david.snyder@frb.gov), Division of Banking Supervision and Regulation; or Mark Van Der Weide, Assistant General Counsel (202–452–2263 or mark.vanderweide@frb.gov) or Dinah Knight, Senior Attorney (202–452–3838 or dinah.r.knight@frb.gov), Legal Division. For users of Telecommunications Device for the Deaf (“TDD”) only, contact 202–263–4869.

FDIC: Christine M. Bouvier, Senior Policy Analyst (Bank Accounting) (202–898–7289), Accounting and Securities Disclosure Section, Division of Supervision and Consumer Protection; Nancy Hunt, Senior Policy Analyst (202–898–6643), Capital Markets Branch, Division of Supervision and Consumer Protection; Mark Handzlik, Senior Attorney (202–898–3990), or Michael Phillips, Counsel (202–898–3581), Supervision Branch, Legal Division.

OTS: Christine A. Smith, Project Manager, Capital Policy (202–906–5740); Marvin Shaw, Senior Attorney, Regulations and Legislation (202–906–6639); Patricia M. Hildebrand, Senior Policy Accountant, Accounting (202–906–7048); or Craig Phillips, Senior Policy Accounting Fellow, Accounting (202–906–5628).

SUPPLEMENTARY INFORMATION:

Proposed Capital Treatment for Goodwill Arising From a Taxable Business Combination

Under the Agencies’ existing regulatory capital rules, a banking organization¹ must deduct certain assets from tier 1 capital.² A banking

¹ Unless otherwise indicated, the term “banking organization” includes banks, savings associations, and bank holding companies (BHCs). The terms “bank holding company” and “BHC” refer only to bank holding companies regulated by the Board.

² See the Agencies’ capital rules for more detail on what assets are required to be deducted from regulatory capital and how these deductions are calculated. See 12 CFR part 3 (national banks); 12

organization is permitted to net any associated deferred tax liability against some of those assets prior to deduction from tier 1 capital. Included among those assets are certain intangible assets arising from a nontaxable business combination. Such netting generally is not permitted for goodwill and other intangible assets arising from a taxable business combination. In these cases, the full or gross carrying amount of the asset is deducted.

Statement of Financial Accounting Standards No. 141, *Business Combinations* (FAS 141), requires that all business combinations be accounted for using the purchase method of accounting for financial reporting purposes under generally accepted accounting principles (GAAP).³ FAS 141 also requires that the acquiring entity assign the cost of the acquired entity to each identifiable asset acquired and liability assumed. The amounts assigned are based generally upon the fair values of such assets and liabilities at the acquisition date. If the cost of the acquired entity exceeds the net of the amounts so assigned, the acquiring entity must recognize the excess amount as goodwill.

Statement of Financial Accounting Standards No. 142, *Goodwill and Other Intangible Assets* (FAS 142), prohibits the amortization of goodwill for financial reporting purposes under GAAP and requires periodic testing of the carrying amount of goodwill for impairment. However, a banking organization generally amortizes goodwill for tax purposes. This difference in treatment generally results in the recognition of a deferred tax liability under GAAP. The deferred tax liability increases over time and is reflected in corresponding reductions in earnings for financial reporting purposes until the goodwill has been fully amortized for tax purposes. The deferred tax liability generally is not reduced or reversed for financial

CFR part 208 (state member banks); 12 CFR part 225 (bank holding companies); 12 CFR part 325 (state nonmember banks); and 12 CFR part 567 (savings associations). This proposal is focused on the deduction of goodwill from tier 1 capital.

³ Under FAS 141, application of the purchase method to combinations between mutual institutions was deferred, pending the issuance of interpretive guidance. A revised statement issued in December 2007, FAS 141(R), supersedes FAS 141 for financial reporting years starting after December 15, 2008. The revisions to FAS 141 incorporated in FAS 141(R) do not conflict with this proposal. FAS 141(R) retains the fundamental requirements in FAS 141 that the acquisition method of accounting (which FAS 141 called the “purchase method”) be used for all business combinations and extends these requirements to combinations between two or more mutual institutions. This proposal uses the term “purchase method” in order to be consistent with the current terminology under GAAP.

reporting purposes unless the associated goodwill is written down upon a finding of impairment, or is otherwise derecognized.

The Agencies have received requests from several banking organizations to permit the amount of goodwill arising from a taxable business combination that must be deducted from tier 1 capital to be reduced by any associated deferred tax liability. The Agencies believe that this treatment would appropriately reflect a banking organization’s maximum exposure to loss if the goodwill becomes impaired or is derecognized under GAAP.

Accordingly, the Agencies are proposing to amend their respective capital rules to permit a banking organization to reduce the amount of goodwill it must deduct from tier 1 capital by the amount of any deferred tax liability associated with that goodwill. However, a banking organization that reduces the amount of goodwill deducted from tier 1 capital by the amount of the associated deferred tax liability would not be permitted to net this deferred tax liability against deferred tax assets when determining regulatory capital limitations on deferred tax assets. The proposed change would permit a banking organization to effectively reduce its regulatory capital deduction for goodwill to an amount equal to the maximum regulatory capital reduction that could occur as a result of the goodwill becoming completely impaired or derecognized. This would increase a banking organization’s tier 1 capital, which is used to determine the banking organization’s leverage ratio and risk-based capital ratios.

For example, assume that goodwill in the amount of \$9,000 arises from a taxable business combination. For income tax purposes, this goodwill is amortized over 15 years at a rate of \$600 per year (\$9,000/15 years). However, the banking organization cannot recognize the \$600 annual tax deduction for goodwill amortization in current income for financial reporting purposes. Assuming an income tax rate of 30 percent, each year the banking organization would have an income tax reduction of \$180 (\$600 × 30%) and would recognize this amount as a deferred tax liability. Under GAAP, at the end of the first year, the banking organization would report a deferred tax liability of \$180. At the end of the 15-year tax amortization period, it would report a cumulative deferred tax liability of \$2,700 (\$180 × 15 years).⁴

⁴ This example assumes that, throughout the tax amortization period, there is no impairment or

Under the Agencies' existing regulatory capital rules, the full carrying amount of goodwill (\$9,000) is deducted from tier 1 capital. However, since the amortization of this asset for income tax purposes reduces income taxes by \$2,700 over the 15-year period, the maximum amount of reduction in tier 1 capital that the banking organization could experience in the event of total impairment of the goodwill at the end of the 15-year period is \$6,300 (\$9,000 minus \$2,700), not \$9,000. Under this proposed rule, the total deduction from tier 1 capital at the end of the first year would be \$8,820 (\$9,000 minus \$180) and, at the end of the fifteenth year, the deduction from tier 1 capital would be \$6,300.

The Agencies request comment on all aspects of this proposal. Specifically, the Agencies request comment on the impact that the proposed treatment could have on a banking organization's regulatory capital ratios.

The Agencies are considering for purposes of any final rule whether they should extend the treatment proposed for goodwill to other intangible assets acquired in a taxable business combination that currently are not deductible from tier 1 capital net of associated deferred tax liabilities.⁵ Accordingly, the Agencies request comment on whether they should permit any additional intangible assets to be deducted from tier 1 capital net of associated deferred tax liabilities. For such assets, the Agencies request information regarding the type of intangible asset and an estimate of the potential impact on banking organizations' capital ratios from extending this proposal to cover those assets, as well as any other relevant data or pertinent information.

Other Revisions

The OCC is proposing to consolidate the various provisions permitting a bank to deduct assets from tier 1 capital on a basis net of any associated deferred tax liability together in one section of the regulatory text to make it easier to locate. In addition, the current regulatory text's special treatment of intangible assets acquired due to a nontaxable purchase business combination exempts purchased mortgage servicing rights and purchased credit card relationships but does not

make clear whether those assets may be netted, and also does not make clear whether intangible assets acquired in a taxable purchase business combination may be netted.

The OCC is clarifying the appropriate treatment of disallowed servicing assets and purchased credit card relationships to be as follows: (1) Disallowed servicing assets may be deducted net of any associated deferred tax liability, regardless of the method by which the bank acquired such assets; and (2) servicing assets that are includable in tier 1 capital and purchased credit card relationships may not be deducted net of any associated deferred tax liability, regardless of the method by which the bank acquired such assets. The OCC is proposing these changes for the following reasons. The term "purchased mortgage servicing rights" is obsolete under GAAP. The OCC is replacing this term with the broader term "servicing assets" and making other clarifying changes to more accurately reflect the OCC's existing interpretation of the current regulatory text.

The OCC also is proposing technical changes to its regulatory capital rules. The OCC is proposing to amend the definition of goodwill to conform to FAS 141 and FAS 142. These changes are non-substantive and are being made because portions of the existing regulatory text became obsolete when FAS 141 made application of the purchase method of accounting for business combinations mandatory. In addition, the OCC is proposing technical amendments to revise cross references and other miscellaneous changes.

The Board also is proposing technical changes to conform the definition of goodwill in its regulatory capital rules to GAAP, in particular, to the terminology used in FAS 141 and FAS 142.⁶ These changes are non-substantive and are being made because parts of the existing regulatory text became obsolete when FAS 141 made application of the purchase method of accounting for business combinations mandatory. Further, the Board is proposing to amend Appendix A to 12 CFR part 225 to remove obsolete text that relates to goodwill recognized by a BHC prior to December 31, 1992.

The OTS is proposing four changes to its capital regulations. First, OTS is proposing a change to amend its definition of "intangible assets" in 12 CFR 567.1 to delete obsolete text that

excluded servicing assets from the definition of intangible assets, and to add regulatory text to the definition to include servicing assets as intangible assets. Second, OTS is proposing a change to its definition of "intangible assets" in 12 CFR 567.9 that would reference servicing assets as intangible assets according to 12 CFR 567.1. Third, OTS is proposing a change to conform its regulatory text to that of the other Agencies by adding regulatory text that provides for netting a deferred tax liability specifically related to an intangible asset (other than disallowed servicing assets that are already permitted to be deducted on a basis net of associated deferred tax liabilities, and purchased credit card relationships that may not be deducted on a basis net of associated deferred tax liabilities) arising from a nontaxable business combination against that intangible asset. Fourth, OTS is proposing other regulatory rule text changes that will conform its regulatory text to that of the other Agencies by adding language to its rules addressing the regulatory capital limitation on deferred tax assets.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.⁷ The RFA provides that an agency is not required to prepare and publish an initial regulatory flexibility analysis if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.⁸

Under regulations issued by the Small Business Administration,⁹ a small entity includes a bank holding company, commercial bank, or savings association with assets of \$175 million or less (collectively, small banking organizations).¹⁰ The proposed rule would permit a banking organization to compute its deduction from regulatory capital of goodwill net of any associated deferred tax liability. The Agencies believe that this proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed rule is elective and, thus, does not require a bank to

derecognition of the goodwill and there is no change in the income tax rate.

⁵ As discussed above, under the Agencies' existing regulatory capital rules, the full amount of any intangible asset acquired in a taxable business combination generally is deducted from tier 1 capital, without netting of any associated deferred tax liability.

⁶ The FDIC's and OTS's regulatory capital rules do not include a definition of goodwill. Therefore, this aspect of the proposal would not affect the FDIC's or OTS's regulations.

⁷ See 5 U.S.C. 603(a).

⁸ See 5 U.S.C. 605(b).

⁹ See 13 CFR 121.201.

¹⁰ As of December 31, 2007, there were approximately 2,785 small bank holding companies, 932 small national banks, 467 small state member banks, 3,274 small state nonmember banks, and 428 small savings associations.

compute its deduction from regulatory capital of goodwill net of any associated deferred tax liability. Each agency certifies that the proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agencies reviewed the proposed rule regarding the deduction of goodwill net of associated deferred tax liability as required by the Office of Management and Budget.¹¹ No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule. However, implementation of this proposed rule would necessitate clarifications to the Agencies' quarterly regulatory reports¹² to reflect the proposed change in a banking organization's tier 1 capital.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the Agencies have sought to present the proposed rule in a simple and straightforward manner. The Agencies invite comment on whether the Agencies could take additional steps to make the proposed rule easier to understand.

OCC and OTS Executive Order 12866 Determinations

Executive Order 12866 requires Federal agencies to prepare a regulatory impact analysis for agency actions that are found to be significant regulatory actions. Significant regulatory actions include, among other things, rulemakings that have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The OCC and OTS each have determined that its portion of the proposed rule is not a significant regulatory action.

OCC and OTS Executive Order 13132 Determinations

The OCC and OTS each determined that its portion of the proposed

rulemaking does not have any federalism implications for purposes of Executive Order 13132.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (UMRA) 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 annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS each have determined that its proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$133 million or more. Accordingly, neither OCC nor OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 3

Accounting, Administrative practice and procedure, Banks, Banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Administrative practice and procedure, Banks, Banking, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 225

Accounting, Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Reporting and recordkeeping requirements, Risk.

12 CFR Part 325

Accounting, Banks, Banking, Administrative practice and procedure, Capital, Reporting and recordkeeping requirements, Risk.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Risk, Savings associations.

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 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907 and 3909.

2. In appendix A to part 3, Section 1 is amended by:

a. Removing, in paragraph (c)(1), the third sentence, the phrase "section 1(c)(8)" and by adding in lieu thereof the phrase "section 1(c)(10)"; and

b. Revising paragraph (c)(17) to read as follows:

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(17) *Goodwill* is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed.

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3. In appendix A to part 3, Section 2 is amended by:

a. Removing, in paragraphs (c) introductory text and (c)(1) introductory text, the word "items", and by adding in lieu thereof the word "assets";

b. Removing, in paragraph (c)(1)(iii), the phrase "section 2(c)(3)" and by adding in lieu thereof the phrase "sections 2(c)(3) and (2)(c)(6)";

c. Removing, in paragraph (c)(1)(iv), the phrase "section 4(a)(3)" and by adding in lieu thereof the phrase "section 4(a)(2)";

d. Removing, in footnote 6, the phrase "section 1(c)(14)" and by adding in lieu thereof the phrase "section 1(c)(18)", and removing the phrase "section 4(a)(3)" and by adding in lieu thereof the phrase "section 4(a)(2)";

e. Removing paragraph (c)(2)(iv);

f. Adding a heading to paragraph (c)(3)(i);

g. Removing paragraph (c)(3)(iii) and redesignating paragraph (c)(3)(iv) as paragraph (c)(3)(iii);

h. Removing paragraph (c)(4)(iii);

¹¹ See 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1.

¹² Consolidated Reports of Condition and Income (Call Report) (OMB Nos. 7100-0036, 3064-0052, 1557-0081), Thrift Financial Report (TFR) (OMB No. 1550-0023), Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) (OMB No. 7100-0128).

i. Redesignating paragraph (c)(6) as paragraph (c)(7) and adding a new paragraph (c)(6) to read as follows; and j. Revising the introductory text of newly designated paragraph (c)(7) by removing the word "items" and adding in lieu thereof the word "assets".

The revision and addition are set forth below.

Section 2. Components of Capital.

* * * * *

(c) * * *

(3) * * * (i) *Net unrealized gains and losses on available-for-sale securities.* * * *

(6) *Netting of Deferred Tax Liability.* (i) Banks may elect to deduct the following assets from Tier 1 capital on a basis that is net of any associated deferred tax liability:

(A) Goodwill;

(B) Intangible assets acquired due to a nontaxable purchase business combination, except banks may not elect to deduct from Tier 1 capital on a basis that is net of any associated deferred tax liability, regardless of the method by which they were acquired:

(1) Purchased credit card relationships; and
(2) Servicing assets that are includable in Tier 1 capital;

(C) Disallowed servicing assets;

(D) Disallowed credit-enhancing interest-only strips; and

(E) Nonfinancial equity investments, as defined in section 1(c)(1) of this appendix A.

(ii) Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income as calculated under section 2(c)(1)(iii) of this appendix A.

* * * * *

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 92(a), 248(a), 248(c), 321–328a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835(a), 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In appendix A to part 208, amend section II.B. by revising paragraphs 1.a., 1.e.iii., and 1.f. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

a. *Goodwill.* Goodwill is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed. Goodwill is deducted from the sum of core capital elements in determining Tier 1 capital.

* * * * *

e. * * *

iii. Banks may elect to deduct goodwill, disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

f. *Valuation.* Banks must review the book value of goodwill and other intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's goodwill, other intangible assets, or credit-enhancing I/Os.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

3. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

4. In appendix A to part 225, amend section II.B. by revising paragraphs 1.a., 1.e.iii., and 1.f. to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

1. * * *

a. *Goodwill.* Goodwill is an intangible asset that represents the excess of the cost of an acquired entity over the net of the amounts assigned to assets acquired and liabilities assumed. Goodwill is deducted from the sum of core capital elements in determining tier 1 capital.

* * * * *

e. * * *

iii. Bank holding companies may elect to deduct goodwill, disallowed mortgage servicing assets, disallowed nonmortgage servicing assets, and disallowed credit-enhancing I/Os (both purchased and retained) on a basis that is net of any associated deferred tax liability. Deferred tax liabilities netted in this manner cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

f. *Valuation.* Bank holding companies must review the book value of goodwill and other intangible assets at least quarterly and make adjustments to these values as necessary. The fair value of mortgage servicing assets, nonmortgage servicing assets, purchased credit card relationships, and credit-enhancing I/Os also must be determined at least quarterly. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates. Examiners will review both the book value and the fair value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank holding company's goodwill, other intangible assets, or credit-enhancing I/Os.

* * * * *

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the common preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

2. Section 325.5 is amended by revising paragraph (g)(5) to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(g) * * *

(5) *Goodwill and other intangible assets.* This paragraph (g)(5) provides the capital treatment for intangible assets acquired in a nontaxable business combination, and goodwill acquired in a taxable business combination.

(i) *Intangible assets acquired in nontaxable purchase business combinations.* A deferred tax liability that is specifically related to an intangible asset (other than mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships) acquired in a nontaxable purchase business combination may be netted against this intangible asset. Only the net amount of this intangible asset must be deducted from Tier 1 capital.

(ii) *Goodwill acquired in a taxable purchase business combination.* A deferred tax liability that is specifically related to goodwill acquired in a taxable purchase business combination may be netted against this goodwill. Only the net amount of this goodwill must be deducted from Tier 1 capital.

(iii) *Treatment of a netted deferred tax liability.* When a deferred tax liability is netted in accordance with paragraph (g)(5)(i) or (ii) of this section, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of such assets.

(iv) *Valuation.* The FDIC in its discretion may require independent fair value estimates for goodwill and other intangible assets on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the common preamble, part 567 of chapter V of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising the definition for *intangible assets* to read as follows:

§ 567.1 Definitions.

* * * * *

Intangible assets. The term *intangible assets* means assets considered to be intangible assets under generally accepted accounting principles. These assets include, but are not limited to, goodwill, core deposit premiums, purchased credit card relationships, favorable leaseholds, and servicing assets (mortgage and non-mortgage). Interest-only strips receivable and other nonsecurity financial instruments are not intangible assets under this definition.

* * * * *

3. Section 567.5 is amended by adding new paragraph (a)(2)(vii) to read as follows:

§ 567.5 Components of capital.

* * * * *

(a) * * *

(2) * * *

(vii) Deferred tax assets that are not includable in core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

* * * * *

4. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirements.

* * * * *

(c) * * *

(1) Intangible assets (as defined in § 567.1) and credit enhancing interest-only strips not includable in tangible capital under § 567.12.

* * * * *

5. Section 567.12 is amended by:

- a. Revising the heading and paragraphs (a) and (b)(3);
- b. Adding paragraph (b)(5);
- c. Revising paragraph (e)(3); and
- d. Adding paragraph (h) to read as follows:

§ 567.12 Purchased credit card relationships, servicing assets, intangible assets (other than purchased credit card relationships and servicing assets), credit-enhancing interest-only strips, and deferred tax assets.

(a) *Scope.* This section prescribes the maximum amount of purchased credit card relationships, serving assets, intangible assets (other than purchased credit card relationships and servicing assets), credit-enhancing interest-only strips, and deferred tax assets that savings associations may include in calculating tangible and core capital.

(b) * * *

(3) Intangible assets, as defined in § 567.1 of this part, other than purchased credit card relationships described in paragraph (b)(1) of this section, servicing assets described in paragraph (b)(2) of this section, and core deposit intangibles described in paragraph (g)(3) of this section, are deducted in computing tangible and core capital, subject to paragraph (e)(3)(ii) of this section.

* * * * *

(5) Deferred tax assets may be included (that is not deducted) in computing core capital subject to the restrictions of paragraph (h) of this section, and may be included in tangible capital in the same amount.

* * * * *

(e) * * *

(3) * * *

(i) For purposes of computing the limits and sublimits in paragraphs (e) and (h) of this section, core capital is computed before the deduction of disallowed servicing assets, disallowed purchased credit card relationships, disallowed credit-enhancing interest-only strips (purchased and retained), and disallowed deferred tax assets.

(ii) A savings association may elect to deduct the following items on a basis net of deferred tax liabilities:

- (A) Disallowed servicing assets;
- (B) Goodwill such that only the net amount must be deducted from Tier 1 capital;

(C) Disallowed credit-enhancing interest only strips (both purchased and retained); and

(D) Other intangible assets arising from non-taxable business combinations. A deferred tax liability that is specifically related to an intangible asset (other than purchased credit card relationships) arising from a nontaxable business combination may be netted against this intangible asset. The net amount of the intangible asset must be deducted from Tier 1 capital.

(iii) Deferred tax liabilities that are netted in accordance with paragraph (e)(3)(ii) of this section cannot also be netted against deferred tax assets when determining the amount of deferred tax assets that are dependent upon future taxable income.

* * * * *

(h) *Treatment of deferred tax assets.*

For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes) deferred tax assets are subject to the conditions, limitations, and restrictions described in this section.

(1) Deferred tax assets that are dependent upon future taxable income. These assets are:

(j) Deferred tax assets arising from deductible temporary differences that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related deferred tax effects are reported on the balance sheet) fully reverse at the calendar quarter-end date; and

(ii) Deferred tax assets arising from operating loss and tax credit carryforwards.

(2) Tier 1 capital limitations. (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on a projected future taxable income for that year; or

(B) Ten percent of the amount of Tier 1 capital that exists before the deduction of any disallowed servicing assets, any disallowed purchased credit card relationships, any disallowed credit-enhancing interest-only strips, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital.

(iii) Notwithstanding paragraph (h)(2)(B)(ii) of this section, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a savings association that is part of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the association could reasonably expect to have refunded by its parent.

(3) Projected future taxable income. Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected

future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.

(4) Unrealized holding gains and losses on available-for-sale debt securities. The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

Dated: September 18, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 23, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of September 2008.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: September 23, 2008.

By the Office of Thrift Supervision.

John Reich,

Director.

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