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The Proposed Capital Rules: Application to Bank Assets

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Introduction

The publication on June 7, 2012, of three related capital proposals by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation present myriad issues for a large segment of the U.S. banking industry.[1]

The proposals will require all of the covered banks[2] to revisit a fundamental question: how to use capital most efficiently. The answer will be based partly on the necessary components of capital, but for day-to-day operations, the issue is how particular assets will be treated for capital purposes. The Standardized Approach Proposal deals exclusively with this issue and revamps the risk-weighting process in several respects that could significantly affect the business models of some banks. For example, the treatment of residential mortgage loans has become more granular and effectively penalizes the origination of all but the most conservatively underwritten loans. Banks will see a 50% increase in the weight of their commercial real estate loans unless borrowers provide substantial, up-front equity contributions. Banks that own tranches of securitized mortgages or other assets no longer may use credit ratings to determine risk weights and will be required to apply a more complex analysis. Other changes may seem to be on the margins, including the treatment of credit risk mitigants and conversions of off-balance sheet assets but nevertheless could have substantial impact in particular situations.

The Standardized Approach Proposal is not, however, the sole set of rules that will affect the return on capital of particular assets. The Basel III Proposal requires that banks deduct certain assets from regulatory capital or make adjustments to capital based on such assets—effectively resulting in onerous if not prohibitive capital charges. Indeed, certain assets must in part be deducted from or otherwise used to adjust common equity Tier 1 capital; remaining amounts must be risk weighted, often at new risk weights.

Given the complexity of the proposed rules, a specific asset-by-asset review of the new capital requirements is in order. Indeed, the federal banking agencies unveiled a "Regulatory Capital Estimation Tool" for just this purpose.[3] More recently, the OCC

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[1] The proposals were formally published in the Federal Register on August 30, 2012. *See* 77 Fed. Reg. 52792 (Aug. 30, 2012) ("Basel III Proposal"), available at http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-16757.pdf; 77 Fed. Reg. 52888 (Aug. 30, 2012) ("Standardized Approach Proposal"), available at http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-17010.pdf; 77 Fed. Reg. 52978 (Aug. 30, 2012) ("Market Risk Proposal"), available at http://www.gpo.gov/fdsys/pkg/FR-2012-08-30/pdf/2012-16761.pdf. The proposals do not cover small bank holding companies—those with less than $500 million in assets.

[2] Throughout this paper, and unless otherwise indicated, we use "bank" in its collective sense to encompass national and state member and nonmember banks, federal and state savings associations, bank holding companies, savings and loan holding companies, and subsidiaries of any of these institutions. In a few instances, capital standards vary among different types of banking institutions, and we have so indicated in the tables below.

[3] The tool is available at http://www.federalreserve.gov/bankinforeg/basel/basel3tools.htm. We have analyzed the estimation process in a recent news bulletin, *Regulatory Capital Estimation Tool: Some*

published guidance on stress testing for capital adequacy by community banks.[4] The annual cycle of stress testing and capital planning for large banks is under way.[5]

Readers are cautioned that changes to the proposed rules are entirely possible when they are adopted in final form (perhaps by the end of 2012). In addition to the possibility of changes to specific risk-weightings or capital requirements, the scope of the proposals' broad application to all U.S. banks has been strongly challenged by the banking industry and state financial regulators, among others. The Basel standards were designed for "internationally active" banks, and international regulators have not required that the Basel requirements be pushed down to other banks. The objections have found support in Congress and even on the part of at least one regulator.[6] Recent Congressional hearings have highlighted these concerns.[7]

Putting aside the scope of the Basel-based proposals, the agencies intend that to the extent the proposals are based on Basel, they be consistent with the international capital standards. In that regard, the Basel Committee recently has conducted a preliminary "Level 2" assessment of the United States' compliance with the Basel Accord, which focused on the consistency of final or proposed rules with the internationally agreed-upon Basel requirements.[8] While the Basel review gave the United States a general "incomplete" grade based on the fact that the major U.S. capital

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Observations (Oct. 1, 2012), available at http://www.mofo.com/files/Uploads/Images/121001-Regulatory-Capital-Estimation-Tools.pdf.

[4] OCC, *Community Bank Stress Testing Supervisory Guidance*, OCC Bull. 2012-33 (Oct. 18, 2002), available at http://www.occ.treas.gov/news-issuances/bulletins/2012/bulletin-2012-33.html.

[5] The Comprehensive Capital Analysis and Review covers 19 banks (all of which have been subject to previous testing and planning requirements; the summary instructions and guidance are available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20121109b1.pdf. 11 other banks (that together with the 19 banks, constitute all of the U.S. banks with total consolidated assets of $50 billion or more) and that have not previously been subject to a formal testing and planning program must participate in the Capital Plan Review; the summary instructions and guidance are available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20121109b2.pdf. Both programs test capital adequacy against baseline, adverse, and severely adverse scenarios. The FRB issued the assumptions and other content in the scenarios on Nov. 15, 2012. The scenarios are available through links at http://www.federalreserve.gov/newsevents/press/bcreg/20121115a.htm.

[6] *See* Letter from Senators Sherrod Brown and David Vitter (Oct. 17, 2012), available at http://www.brown.senate.gov/newsroom/press/release/sens-sherrod-brown-david-vitter-ask-us-banking-agencies-to-simplify-and-strengthen-bank-capital-standards; Remarks of Thomas J. Curry, Comptroller of the Currency before the American Bankers Association (Oct. 15, 2012), available at http://www.occ.treas.gov/news-issuances/speeches/2012/pub-speech-2012-144.pdf. While the formal deadline for comments is October 22, 2012, the FDIC recently requested comments from banks with less than $175 million in assets on the application of the Regulatory Flexibility Act to the capital proposals. The deadline for comments is November 16, 2012.

[7] *See Examining the Impact of the Proposed Rules to Implement Basel III Capital Standards,* Hearing before the House Comm. on Financial Services (Nov. 29, 2012) (testimony available at http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=312618); *Oversight of Basel III: Impact of Proposed Capital Rules*, Hearing before the Sen. Comm. on Banking, Housing, and Urban Affairs (Nov. 14, 2012) (testimony available at http://banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=9415a6b1-5316-4954-bbb6-c1fd467e34d5).

[8] Basel Committee on Banking Supervision, *Basel III Regulatory Consistency Assessment (Level 2) Preliminary Report: United States of America* (October 2012).

rule changes still are in the proposal stage, it also found that in 12 of 13 key components of the Basel Accord, the United States was either fully or largely compliant with Basel's capital standards and requirements. The one area that was found to be materially noncompliant was the U.S. agencies' proposed alternative regulatory capital treatment of securitization exposures, which unlike the Basel Accord, would not use external credit agency ratings in determining securitization exposure capital requirements. This alternative approach, however, is mandated by section 939A of the Dodd-Frank Act, which generally requires federal financial regulators to use their own standards of credit-worthiness in lieu of external credit agency ratings.

This paper contains a series of tables that summarize the treatment, including the underlying analysis, of bank assets and compares them to the existing rules, to which banks are accustomed. The tables are organized along the lines of the Standardized Approach Proposal, followed by a table that outlines the Basel III Proposal's rules on deductions from or adjustments to capital. Pertinent acronyms and definitions appear at the end.

I. General Risk Weights (__.32(a)-(f), (*l*))

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr><td colspan="3">Sovereign and public sector debt—United States</td></tr>
<tr><td>U.S. sovereign debt – U.S. government, its agencies, and Federal Reserve</td><td>• 0%</td><td>• 0%</td></tr>
<tr><td>U.S. government – conditional claims</td><td>• 20%</td><td>• 20%</td></tr>
<tr><td>U.S. PSEs</td><td>• Depends on source of funds:
- General obligations: 20%
- Revenue bonds: 50%</td><td>• Depends on source of funds
- General obligations: 20%
- Revenue bonds: 50%</td></tr>
<tr><td>Claims on GSEs</td><td>• Debt obligations: 20%
• Preferred stock: 100% (although national banks may risk weight at 20%).</td><td>• Debt obligations: 20%
• Equity exposures: 100% (no different treatment for national banks).</td></tr>
<tr><td colspan="3">Sovereign and public sector debt—foreign</td></tr>
<tr><td>Foreign sovereign debt</td><td>Depends on OECD status:
• Most claims on OECD members and local currency claims on non-OECD members: 0%.
• Non-OECD members: 20%.</td><td>• Depends on country risk classification from OECD:
<table><tr><td>CRC</td><td>Risk Weight</td></tr><tr><td>0-1</td><td>0%</td></tr><tr><td>2</td><td>20%</td></tr><tr><td>3</td><td>50%</td></tr><tr><td>4-6</td><td>100%</td></tr><tr><td>7</td><td>150%</td></tr><tr><td>None</td><td>100%</td></tr><tr><td>Default</td><td>150%</td></tr></table></td></tr>
<tr><td>Foreign PSEs</td><td>Depends on OECD status
• OECD countries – general obligations: 20%
• OECD countries – revenue obligations: 50%
• Non-OECD countries: 100%</td><td>• Based on OECD country risk classification for home country and on whether exposure is general obligation of PSE or funded by tax revenue.
<table><tr><td>CRC</td><td>Gen.</td><td>Rev.</td></tr><tr><td>0-1</td><td>20%</td><td>50%</td></tr><tr><td>2</td><td>50%</td><td>100%</td></tr><tr><td>3</td><td>100%</td><td>100%</td></tr><tr><td>4-7</td><td>150%</td><td>150%</td></tr><tr><td>None</td><td>100%</td><td>100%</td></tr><tr><td>Default</td><td>150%</td><td>150%</td></tr></table>
• Alternatively, bank may elect lower risk weight assigned by home-country supervisor to the PSE exposure, provided weight is not lower than the risk weight for sovereign exposures to that country.</td></tr>
<tr><td>Certain supranational entities and MDBs</td><td>• 20%</td><td>• 0%
• Broader definition of MDB than in current rules</td></tr>
</table>

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr><td colspan="3">Bank and other financial institution debt</td></tr>
<tr><td>U.S. banks and other insured depository institutions, including credit unions</td><td>• 20%
• Instruments that qualify as capital issued by other banking organizations: 100%.</td><td>• 20%
• Exposures includable in the regulatory capital of bank: 100%.</td></tr>
<tr><td>Foreign banks</td><td>• Short-term claims on banks in both OECD and non-OECD countries: 20%
• Long-term claims on banks in OECD countries: 20%
• Long-term claims on banks in non-OECD countries: 100%
• Equity investment included in issuing foreign bank's regulatory capital: 100%</td><td>• Based on OECD country risk classification for home country:
<table><tr><th>CRC</th><th>Risk Weight</th></tr><tr><td>0-1</td><td>20%</td></tr><tr><td>2</td><td>50%</td></tr><tr><td>3</td><td>100%</td></tr><tr><td>4-7</td><td>150%</td></tr><tr><td>No CRC</td><td>100%</td></tr><tr><td>Default</td><td>150%</td></tr></table>
• Instrument included in issuing financial institution's regulatory capital; see below.</td></tr>
<tr><td>Bank holding companies/savings and loan holding companies</td><td>• 100%
• For investments in BHCs and SLHCs and possible adjustments to capital, see Tables VII and VIII below.</td><td>• 100%
• For investments in BHCs and SLHCs and possible adjustments to capital, see Tables VII and VIII below.</td></tr>
<tr><td>"Financial institutions"</td><td>• Nondepository financial institutions: 100%
• For investments in financial institutions and possible adjustments to capital, see Tables VII and VIII below.</td><td>• Exposure includable in the regulatory capital of the institution: 100%.
• If financial institution is foreign bank where sovereign is in default: 150%.
• If exposure is an equity exposure or must be deducted in whole or in part from regulatory capital, see Tables VII and VIII below.</td></tr>
<tr><td>Qualifying securities firms</td><td>• 20%, provided either:
- Firm has either an issuer rating in one of top three categories, at least one issue of long-term debt in one of top three categories, or a guarantee from parent company with such a rating; or
- Exposure is a repo, reverse repo, or securities borrowing or lending transaction where transaction is collateralized by liquid and readily marketable debt or equity securities that are marked to market daily and subject</td><td>• 100%
• Note Basel III would continue 20% risk weight, but U.S. agencies have rejected this possibility.</td></tr>
</table>

	Current Rule	Proposal
	to a daily margin maintenance requirement, *and* where contract can be liquidated, terminated, or accelerated immediately in bankruptcy or similar proceeding, and cannot be stayed or avoided. - Not available if firm uses the instrument to satisfy applicable capital requirements.	
ABCP—investment in commercial paper	• Risk weight of commercial paper depends on external ratings: - AAA, AA: 20% - A: 50% - BBB: 100% - BB: 200%. • If not rated, risk weighted at same weight as next-most-senior rated position.	• If ABCP program fully supported by sponsor, risk weighted according to credit risk of sponsor.
Other assets		
Cash	• 0%	• 0%
Gold bullion	• 0%	• 0%
Cash items in process of collection	• 20%	• 20%
Industrial development bonds	• If issued under auspices of PSE of OECD member country: 50%. • All other industrial development bonds: 100%.	• 100%
Consumer loans	• 100%	• 100%
Corporate exposures	• 100%	• 100%
Deferred tax assets arising from temporary differences that *could be* realized through NOL carrybacks (for netting of DTLs, *see Table VIII below*).[9]	• 100%	• 100%
DTAs arising from temporary differences that *could not be* realized through NOL carrybacks	• 100%	• 250% for amount not deducted from CET1 using the 10%/15% thresholds.
Mortgage servicing assets	• 100% • Only 90% of fair value of readily marketable MSAs may be included in regulatory capital (i.e., 10% haircut) under 12 USC 1828 note.	• 250% for amount not deducted from CET1 using the 10%/15% thresholds and applying 10% haircut under 12 USC 1828 note.

[9] Both this and the following category of DTAs are net of any related valuation allowances and net of DTLs.

	Current Rule	Proposal
Policy loans	• Not addressed - Few BHCs have insurance subsidiaries that would make such loans. - Banks and savings associations could not hold such subsidiaries.	• 20%
Deferred acquisition costs	• No provision	• 100%
Value of business acquired	• No provision	• 100%

II. Residential Mortgage Lending (__.31(g)-(i))

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr>
<td>First-lien mortgages</td>
<td>• Amount to be risk weighted is unpaid principal balance.
• First-lien residential mortgage “made in accordance with prudent underwriting standards:” 50%.
- Generally, LTV of 90% or less.
- PMI or certain collateral may be used to bring LTV down to 90%.
- Value is lower of purchase price or appraised value.
• All other residential mortgages: 100%.
• In the early 2000s, regulators began to require that subprime loans be risk weighted at 200-300%.
• No change in risk weight for modified or restructured loans.
• Past-due loans: 100%.</td>
<td>• Amount to be risk weighted is unpaid principal balance. Risk weights depend on two sets of factors: category and loan-to-value ratio.
• Category 1:
- 30-year maturity or less.
- Regular periodic payments.
- Underwriting takes into account all of borrower’s obligations.
- Conclusion that borrower able to repay based on (i) maximum interest rate in first five years and (ii) original loan amount is maximum balance over the life of the loan.
- Interest rate may adjust no more than 2% in twelve-month period and no more than 6% over life of the loan.
- Borrower’s income documented and verified.
- Loan is not more than 90 days past due or on non-accrual status.
- Not a junior-lien loan.
• Category 2:
- Fails to meet any Category 1 condition.
- All principal payment optional loans
- All loans with balloon payments
- All “low-doc” and “no-doc” loans

• LTVs—four tiers, with risk weights by category as follows:
<table>
<tr><th>LTV</th><th>Cat. 1</th><th>Cat. 2</th></tr>
<tr><td><60%</td><td>35%</td><td>100%</td></tr>
<tr><td>60-80%</td><td>50%</td><td>100%</td></tr>
<tr><td>80-90%</td><td>75%</td><td>150%</td></tr>
<tr><td>>90%</td><td>100%</td><td>200%</td></tr>
</table>

• Value in LTV is lesser of actual acquisition cost or</td>
</tr>
</table>

	Current Rule	Proposal
		appraised value at origination or restructuring. • PMI may *not* be used to reduce LTV to permissible level.
HELOCs	• 100%	• May be treated as Category 1 if underwriting is based on maximum principal and interest rate payments.
Junior-lien mortgages	• 100%	• Category 2, but holder of both first- and junior-lien mortgages, with no intervening mortgagee, may treat both loans as Category 1, if terms meet Category 1 requirements. • Loan amount for determining LTV ratio is outstanding balance plus maximum contractual principal amounts of more senior-lien mortgage loans, as of date junior-lien mortgage was originated.
Restructured or modified mortgages	• Original risk weight: 50% or 100%. • Loan modified under HAMP is not treated as a restructured loan and retains original risk weight.	• Assigned to Category 1 or 2 based on new terms and conditions. • If new appraisal is performed, mortgage is risk weighted by LTV ratio. • If no new appraisal: - Category 1: 100%. - Category 2: 200%. • Loan modified solely under HAMP retains original risk weight.
FHA and VA loans	• 0%	• 0%
Mortgage loans sold with recourse	• After 120 days, converted to on-balance sheet assets at 100%.	• Immediately converted to on-balance sheet assets at 100%. • No 120-day grace period
Pre-sold residential construction loans	• 50%, if (as required by 12 USC § 1831n note): - Lender has documentation from mortgage lender that purchaser has ability to obtain sufficient mortgage. - Purchaser has made substantial earnest money deposit, by statute not less than 1%, in order to defray costs if purchase contract is cancelled. • Additional regulatory requirements.	• 50%, if same statutory requirements are met and if following regulatory requirements are met: - Prudent underwriting standards. - Purchaser is individual intending to occupy house as resident. - Legally binding written sales contract. - Purchaser has not cancelled contract. - Purchaser has firm written

	Current Rule	Proposal
	- Builder has substantial project equity. - Property is presold under legally binding written contract. - Purchaser has firm written commitment for permanent financing. • 100% by statute, if purchase contract is cancelled.	commitment for permanent financing upon completion of construction. - Purchaser has made substantial earnest money deposit of no less than 3% of sales price, to be forfeited if sales contract terminated by purchaser. - Earnest money deposit held in escrow. - Builder must incur at least first 10% of direct construction costs before drawdown on facility. - Loan may not exceed 80% of sales price. - Loan is not more than 90 days past due or on nonaccrual. • 100%, if purchase contract is cancelled.
Past-due mortgages	• 100%	• Loan becomes a Category 2 loan and is risk weighted by LTV tier.
Multifamily mortgages	• 50% if following statutory conditions (12 USC § 1831n note) are satisfied: - Loan is secured by first lien. - LTV does not exceed 80% on fixed rate mortgage or 75% on floating rate. - All P&I payments are on time for at least the preceding year. - Amortization of P&I must occur over a period not more than 30 years. - Original maturity for repayment is not less than seven years. - Annual net operating income (before debt service) generated by property is at least 120% of annual debt service (115% for floating rate). • 100%, if any condition above is not met.	• 50%, if same statutory conditions satisfied and following regulatory requirements are met: - Prudent underwriting standards. • Loan not more than 90 days past due or on nonaccrual. - In the case of a cooperative or other not-for-profit project, property must generate sufficient cash flow to provide protection comparable to the 120%/115% revenue-to-debt-service standards. • 100%, if any condition above is not met.
Privately issued MBS	• 50%, if: - Structure meets certain criteria, including bankruptcy remoteness. - All mortgages in underlying	Two approaches available (*see also discussion of securitization exposures in Table VIII below*). • Simplified supervisory

	Current Rule	Proposal
	pool are qualified for 50% risk weight at time pool is originated. - If re-securitization, all underlying MBS qualify for 50% risk weight. - If pool backed by multifamily mortgages, P&I payments are not 30 days or more past due. • 20% and 50% risk weights available if externally rated A or above • 200%, if externally rated below investment grade. • 100% otherwise. • Gross-up approach also available, *see Table VI*.	approach: risk weight determined beginning with weighted average risk weight of assets in pool but adjusting for other factors that will result in higher risk weight. • Gross-up approach also available, *see Table VI*. - 20% minimum risk weight.
Agency MBS	• 20%	• 20%
Mortgage servicing assets	• Together with other servicing assets and purchased credit card relationships, capped at 100% of Tier 1 capital. • Excess to be deducted from Tier 1 (*see Table VIII*). • Non-deducted amount risk weighted at 100%.	• Series of deductions from CET1 under 10%/15% thresholds (*see Table VIII, Deduction Methodologies*). • Minimum deduction from CET1 of 10% of fair value. • Non-deducted amount risk weighted at 250%.

III. Commercial Real Estate Lending (__.32(j))

	Current Rule	Proposal
Acquisition, development, or construction loans	• 100%, if loan does not exceed maximum LTV in supervisory guidance: - Acquisition: 65% - Development: 75% - Construction: 80%	• 100%, if loan meets these criteria: - LTV ratio is less than or equal to maximum supervisory ratios (same as current requirement). - Borrower makes capital contribution in cash or marketable securities or pays development expenses out of pocket that equal at least 15% of the appraised "as completed" value. - Contribution made before bank advances funds. - Contribution is contractually required to remain in the project through the life of the project—facility converted to permanent financing or loan sold or paid in full. • Loan that does not meet any one of these criteria is a "high volatility commercial real estate loan" and is risk weighted at 150%.
Past-due loans	• No change to original risk weight.	• 150% for non-guaranteed and unsecured portion of loan that is 90 days or more past due or on nonaccrual.

IV. OTC Derivative Contracts, Cleared Transactions, and Unsettled Transactions (§§ __.34, .35, .38)

	Current Rule	Proposal
OTC derivative contracts		
Definition	• Interest rate contracts • Exchange rate contracts • Equity derivative contracts • Commodity (including precious metal) derivative contracts	• Any 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. Includes derivatives defined under current rules and: - Any transaction between bank as clearing member and counterparty where bank acts as financial intermediary and enters into a cleared transaction with CCP that offsets first transaction. - Any transaction in which bank as clearing member provides a CCP with a guarantee on the performance of the counterparty to the transaction. • Any credit derivative. • Unsettled securities, commodities, and foreign 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 (e.g., DvP/PvP transactions with contractual settlement periods longer than normal settlement period) are treated as derivative contracts. • Does not include cleared transactions.
OTC derivative contracts—exposure amount		
Total exposure	• Total exposure under a single contract is sum of current exposure and PFE (*see below*). • Effect of qualified master netting agreements is recognized.	• Total exposure under a single contract is sum of current exposure and PFE (*see below*). • Current exposure is the greater of the mark-to-market value or zero. • Netting agreements for multiple contracts are

	Current Rule	Proposal
		recognized, subject to stricter requirements on enforceability of contract in bankruptcy.
PFE	• PFE is product of notional principal amount of contract multiplied by credit conversion factor. • Conversion factor depends on reference index or asset and remaining maturity, with factors ranging from 0% to 15%. - References include interest rates, foreign exchange and gold, equities, commodities, and precious metals. - Three tiers of maturities: less than 1 year, 1 to 5 years, and more than 5 years. • No PFE for credit derivatives.	• PFE calculated in the same way as under current rules, but proposal requires use of *effective* notional principal amount. • Proposal adopts existing conversion factors, based on both the reference and the remaining maturity. • New PFE for credit derivatives: - 5%, if reference asset is investment grade. - 10%, if reference asset is not investment grade.
Qualified master netting agreement—effect on exposure amount	• Bilateral netting recognized if: - Written contract that creates single legal obligation covering all included contracts in which party would have claim to receive or duty to pay net amount of sum of positive and negative mark-to-market values, in the event counterparty fails to perform due to default, insolvency, liquidation or similar circumstances. - Bank obtains written, reasoned legal opinion that concludes that in the event of a legal challenge (including trigger events above), authorities would find bank's exposure to be net amount under law of counterparty's jurisdiction, law that governs the individual contracts underlying the agreement, and law that governs netting contract. - Bank maintains procedures to monitor changing law that might affect netting contracts. - Bank maintains	• Somewhat more stringent • Bilateral netting agreement recognized if: - Single legal obligation for all transactions covered by agreement in event of default, including receivership, insolvency, liquidation, or similar proceeding. - Bank has right to accelerate, terminate, and close out on a net basis all covered transactions and to liquidate or set off collateral promptly upon event of default, provided exercise of rights cannot be stayed or avoided except in bank receivership, OLA proceeding, or similar GSE proceeding. - Sufficient legal review for bank to conclude with a "well-founded basis" (and maintains documentation of the review) that agreement meets requirements above; that in the event of a legal challenge, the relevant legal authority would find

	Current Rule	Proposal
	documentation to support netting, including agreement and legal opinions. - No walkaway clause. • Bank represents its compliance to FRB. • Credit equivalent amount of contract subject to netting agreement is (i) net current exposure and (ii) sum of PFEs on all underlying contracts, as adjusted (two alternative approaches).	the agreement legal, valid, binding, and enforceable under law of relevant jurisdiction. - Bank monitors possible changes in law that would affect compliance. - No walkaway clause.
Multiple OTC derivative contracts subject to qualifying master netting agreement—effect on exposure amount	• Credit equivalent amount is the sum of net current exposure and the sum of all PFEs on contracts subject to the agreement, adjusted to reflect effects of netting contract. - Net current exposure is sum of all positive and negative mark-to-market values of individual contracts in netting agreement. Net exposure cannot be less than zero for capital purposes. - Adjustments of PFE to reflect netting contract primarily a function of the ratio of net current exposure to gross current exposure.	• Exposure amount is sum of net current credit exposure and adjusted sum of all PFE amounts of contracts subject to netting. - Net current exposure same as under current rules. - Sum of PFEs adjusted in the same way as under current rules.
Equity derivative contracts	• Exposure amount determined as for other derivative contracts.	• Exposure amount determined as for other derivative contracts but risk weighted differently (*see below*).
Credit derivative contracts	• For bank as protection provider, total amount of credit-enhanced assets for which bank assumes credit risk.	• For bank as protection provider, off-balance sheet exposure determined as above: current exposure plus PFE. • New conversion factors for calculating PFE of credit derivative: - 5% for all credit derivatives with reference asset that is investment grade. - 10% for all credit derivatives with reference asset that is not investment grade. - Factors are constant across all maturities.

	Current Rule	Proposal
OTC derivative contracts—risk weighting		
General rule	• Transaction involving standard risk obligor risk weighted at 50%. • Transactions with other counterparties risk weighted as general obligation of counterparty but risk weight capped at 50%. • Exchange rate contracts with original maturity of 14 or fewer calendar days may be excluded from risk-based ratio calculation.	• For single contract not subject to qualifying master netting agreement, risk weight is general risk weight assigned to counterparty, eligible guarantor, or collateral. • Special risk weighting rules for collateralized derivative contracts, credit derivatives, and equity derivatives. • 50% risk weight cap eliminated.
Collateralized or guaranteed derivative contracts	• Risk weighted on basis of collateral or guarantor. *See Table V.*	• May recognize financial collateral either through: - Simple approach. *See Table V.* - General risk weight applied (as if contract was not collateralized) and exposure amount adjusted using "collateral haircut" approach (*see Table V*). For this option, collateral must be marked to market daily and be subject to daily margin maintenance requirement.
OTC credit derivatives	• For protection purchaser, no risk weight required. • For protection provider, risk weighted on basis of reference asset obligor in underlying transaction, as well as on the basis of credit risk exposure to counterparty.	• For protection purchaser, no risk weight required, if contract satisfies requirements for credit risk mitigant (*see Table V*) and if contract is not a covered position under market risk rules. • For protection provider, contract may be risk weighted on basis of underlying reference asset. - If contract is covered position under market risk rules, bank must calculate supplemental counterparty credit risk amount. • Both types of banks must elect one option for all credit derivatives and cannot pick and choose.
OTC equity derivatives	• Risk weighted in the same way as other derivative contracts.	• Treated as equity exposure and risk weighted under equity exposure rule (*see Table VII*).

	Current Rule	Proposal
		• If treated as a covered position, bank also must calculate risk-based capital requirement for counterparty credit risk. - Special rules for equity derivatives as covered positions if bank uses simple risk weight approach, as described in Table VII.
Cleared transactions		
Definition	• No specific definition • Special rules for derivatives traded on exchanges with certain daily margin requirements—not included in risk-weighted assets (*see risk weight discussion below*). • Otherwise, risk weighted as OTC transactions: sum of current exposure and PFE multiplied by risk weight of obligor.	• Outstanding derivative contract or repo-style transaction that a bank or clearing member has entered into with a CCP, including: - Transaction between bank as clearing member and CCP for bank's own account. - Transaction between bank as clearing member and CCP where bank is acting as financial intermediary on behalf of client and transaction offsets transaction described immediately below. - Transaction between bank as clearing member client and clearing member where clearing member acts as financial intermediary and enters into offsetting transaction with CCP (as described immediately above). Certain conditions apply. - Transaction between clearing member client and CCP where clearing member guarantees performance and transaction otherwise meets certain conditions. • A cleared transaction does not include exposure of bank as clearing member to client where bank enters into offsetting transaction with CCP or guarantees client performance to CCP.

	Current Rule	Proposal
QCCP versus non-QCCP	• Not applicable – no different treatment for cleared transactions than for OTC derivatives.	• QCCP criteria: - CCP designated by FSOC as systemically important FMU under Dodd-Frank Title VIII. - FSOC has designated eight clearing facilities as FMUs.
Bank as clearing member client—exposure amount	• Same as for OTC derivatives: current exposure (or replacement cost) plus estimated amount of potential future credit exposure.	• If cleared transaction would qualify as derivative (if traded OTC), "trade exposure" is sum of: - Exposure amount as calculated under rules for OTC derivatives, plus - Fair value of collateral posted by bank that is held by CCP or clearing member in manner that is *not* bankruptcy remote. • If cleared transaction is repo-style transaction, trade exposure is sum of: - Exposure amount as calculated for collateralized transactions (*see Table V*). - Fair value of collateral posted by bank that is held by CCP or clearing member in manner that is *not* bankruptcy remote. • Note special rule for collateral below.
Bank as clearing member client—risk weighting	• Derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from risk-based ratio calculation. • Otherwise, 50%. • Lower risk weight available if contract backed by appropriate collateral or guarantee.	• For transaction cleared through QCCP, depends on protection of collateral: - 2% if collateral is protected from any losses due to default, insolvency, liquidation, or receivership of QCCP or QCCP member, and bank has conducted sufficient legal review to assure itself of that result. - 4% otherwise. • For transaction cleared through non-QCCP, general risk weight of clearing party. *See Table I.* • Note special rule for collateral immediately below.
Bank as clearing member client—treatment of collateral	• Not applicable.	• Additional risk-weighting requirements may apply to

	Current Rule	Proposal
		collateral. • Collateral provided to CCP, clearing member, or custodian must be risk weighted according to general risk weight rules (*see Table I*). • Exception: no risk-weighting required for collateral held by custodian in manner that is bankruptcy remote from the CCP, clearing member, and other clearing member clients of clearing member.
Bank as clearing member—trade exposure amount	• Exposure to CCP risk weighted under general rules in Table I.	• Same as for bank as clearing member client. • If transaction would qualify as a derivative contract, sum of: - Exposure amount as calculated for OTC derivatives, plus - Fair value of posted collateral that is not bankruptcy remote. • If transaction is repo-style transaction, sum of: - Exposure amount as calculated for collateralized transactions (*see Table V*), plus - Fair value of posted collateral that is not bankruptcy remote.
Bank as clearing member—risk weight	• Derivative contracts traded on exchanges that require daily receipt and payment of cash variation margin may be excluded from risk-based ratio calculation.	• 2% for transaction with QCCP • General counterparty risk weight (*see Table I*) for non-QCCP
Bank as clearing member—collateral	• Collateral risk weighted under general risk weight rules in Table I. • Exposure amount is current market value.	• Additional risk-weighting requirements may apply. • Collateral provided to CCP, clearing member, or custodian must be risk weighted according to general risk weight rules (*see Table I*). • Exception: no risk weighting required for transaction in which collateral is held by custodian in manner that is bankruptcy remote from the CCP. • Exposure amount is fair market value of collateral.

	Current Rule	Proposal
Bank as clearing member—action as intermediary on behalf of bank client	• Maximum potential exposure risk weighted under general risk weight rules.	• Treated as OTC derivative and risk weighted accordingly.
Bank as clearing member—default fund contribution	• Not applicable	• Risk-weighted contribution includes funds contributed and commitments under CCP's mutualized loss-sharing agreement. • For non-QCCP, 1,250% • For QCCP, bank's proportional allocation of capital requirement for each QCCP, multiplied by 1,250%. - Capital requirement is complex calculation. - Calculation varies, depending on whether default fund is supported by funded commitments.
Unsettled Transactions		
DvP/PvP transactions with a normal settlement period—exposure amount	• Not specifically addressed	• Exposure is difference between transaction value at the agreed settlement price and current market price. Capital charge required if difference results in credit exposure to bank. • Potential exposure created when counterparty fails to make payment or delivery within 5 business days after settlement date.
DvP/PvP transactions—risk weight	• Not specifically addressed	• For transactions with a normal settlement period, net credit exposure risk weighted based on period of time after failure to settle: Days Late / Risk Weight 1-4 / 0% 5-15 / 100% 16-30 / 625% 31-45 / 937.5% 46 or more / 1,250% • DvP/PvP transactions without a normal settlement period are treated as derivative contracts and risk weighted accordingly.
Non-DvP/PvP transactions—exposure amount	• Amount of on-balance sheet receivable from failed performance	• Current market value of deliverables owed to bank.

	Current Rule	Proposal
Non-DvP/PvP transaction—risk weights	• Risk weighted according to general risk-weighting rules.	• Deliverables not received within 1-4 business days: risk weight of counterparty under general rules. • Deliverables not received 5 business days or later: 1,250%.
Waiver of capital charges	• Not addressed	• Regulators may waive requirements in event of a system-wide failure of a settlement, clearing system, or CCP.
Transactions not subject to rules on unsettled transactions	• Not applicable	• Cleared transactions that are marked to market daily and subject to daily receipt and payment of variation margin. • Repo-style transactions, including those that are unsettled. • One-way cash payments on OTC derivative contracts. • Transactions with contractual settlement period longer than normal settlement period (which are treated as OTC derivative contracts).

V. Credit Risk Mitigants and Collateralized Transactions (§§ __.36, .37)

	Current Rule	Proposal
Guarantees and credit derivatives		
Eligible guarantor	• Eligible guarantors limited to sovereign governments (both OECD and non-OECD), U.S. government agencies and GSEs, PSEs in OECD countries, U.S. depository institutions, foreign banks, multilateral lending institutions, certain regional development banks, and qualifying securities firms in OECD countries.	• Eligible guarantors include all currently eligible guarantors. • Expanded to include any entity (other than an SPE): - With an outstanding unsecured debt security that is investment grade. - Whose creditworthiness is not positively correlated with the credit risk of the exposure to be guaranteed. - That is not an insurance company predominately engaged in providing credit protection.
Eligible guarantee	• No formal or explicit requirements, but regulators expect guarantee to be in writing, legally enforceable, and available upon counterparty default.	• Guarantee must meet nine requirements: - Written. - Either unconditional or a contingent obligation of U.S. government or its agencies as to which enforceability depends on action by beneficiary of the guarantee or a third party. - Covers all or a pro rata portion of all contractual payments. - Gives beneficiary direct claim against provider. - Not unilaterally cancellable by provider other than for contract breach by beneficiary. - Legally enforceable in jurisdiction where provider has sufficient assets to satisfy judgment. - Provider to make payment upon occurrence of default, without need for beneficiary to take legal action against counterparty. - Cost of guarantee does not rise in response to deterioration in credit quality of underlying exposure. - If provider is part of a

	Current Rule	Proposal
		banking organization, provider must be insured depository institution, foreign bank, broker-dealer, or insurance company, and provider does not control banking organization and is subject to consolidated supervision.
Eligible credit derivative	• Instrument that transfers credit risk of on- or off-balance sheet asset to another party. Value dependent at least in part on reference asset. • No formal or explicit eligibility requirements, but regulators expect credit derivative to be structured to settle promptly upon default of the hedged exposure.	• Instrument in the form of a credit default swap, nth-to-default swap, total return swap, or other form approved by primary federal supervisor. • Meets conditions for eligible guarantee. • Assignment of contract confirmed by all parties. • For credit default swaps or nth-to-default swaps, must contain two credit events: (i) failure to pay amount due or (ii) receivership, insolvency, or similar proceeding, or failure or inability to pay debts. • Terms and conditions of settlement contained in contract. • If cash settlement, robust valuation process to estimate loss and post-credit event valuation of reference exposure. • If purchaser is to transfer exposure to provider at settlement, terms of exposure must provide that consent to transfer shall not be unreasonably withheld. • For credit default swap or nth-to-default swap, contract identifies parties responsible for determining if credit event has occurred, specifies that decision is not solely responsibility of provider, and gives purchaser the right to notify provider of credit event. • For total return swap, if bank records net payments received on the swap as net income, bank records offsetting deterioration in

	Current Rule	Proposal
		value of hedged exposure. • If eligible credit derivative hedges an exposure different from the reference exposure used for cash settlement value, deliverable obligation, or occurrence of credit event, risk mitigation recognized only if: - Reference exposure ranks *pari passu* with or is subordinated to hedged exposure. - Reference exposure and hedged exposure are to same legal entity, and legally enforceable cross-default or other clauses ensure that payments will be triggered upon default on hedged exposure. • Credit derivative that does not include restructuring of the hedged exposure as a credit event remains eligible but 40% reduction in its effective notional amount.
Substitution approach	• Substitution of risk weight of guarantor or credit derivative provider for that of underlying obligor on protected amount of assets.	• Same.
Substitution approach—protection amount	• Full amount of credit-enhanced assets. • No adjustments for maturity mismatches, contracts without restructuring as a credit event, or currency mismatches	• Effective notional amount, with adjustments below. • Effective notional amount is lesser of notional amount of mitigant or exposure amount of hedged exposure, multiplied by percentage coverage of mitigant. • Three adjustments to the effective notional amount may be necessary: - Maturity mismatch adjustment, where shortest possible residual maturity of mitigant is less than longest possible residual maturity of hedged exposure. Adjustment is 25% reduction where maturity of derivative is one year, declining as maturities are longer.

	Current Rule	Proposal
		- Adjustment for credit derivatives without restructuring of the hedged exposure as a credit event: reduce notional amount of mitigant (after maturity mismatch adjustment) by 40%. - Currency mismatch adjustment (after adjustments for maturity mismatch and lack of restructuring event), if hedged exposure and mitigant are in different currencies. Presumptive 8% adjustment, unless bank cleared to use own adjustment. Adjustment scales up if bank revalues mitigant less frequently than once every 10 business days. • Multiple credit risk mitigants—*see below*. • Bank providing credit protection in synthetic securitization must risk weight guarantee or credit derivative under securitization framework.
Substitution approach—risk weight	• Risk weight of protection provider as determined under general rules (*see Table I*). • Since eligible guarantors limited to sovereign governments, certain government-related entities, and banks, risk weight is either 0% or 20%.	• Risk weight applicable to guarantor or protection provider under general rules (*see Table I*). • 20% floor, however.
Multiple guarantees or credit derivatives covering single exposure	• No specific rule, although bank usually could begin risk weighting protection amount at lowest available risk weight and moving to higher levels as such protection amount is exhausted.	• Hedged exposure may be treated as multiple separate exposures, each covered by a single guarantee or credit derivative. • For each separate exposure, separate risk weight amount may be calculated. • If multiple mitigants are from single provider but with different maturities, mitigants should be subdivided into separate layers of protection.

	Current Rule	Proposal
Single guarantee or credit derivative covering multiple exposures with different residual maturities	• No specific rule, although protection would be deemed to protect exposures with shorter maturities first.	• Each hedged exposure must be treated as covered by a separate guarantee. • Separate risk-weight amount must be calculated for each exposure. • Maturity mismatch may be an important issue here.
Collateralized transactions		
Eligible collateral	• Cash on deposit. • Securities issued or guaranteed by U.S. government, central governments of OECD-based group of countries, U.S. government agencies, U.S. GSEs. • Securities issued by multilateral lending institutions or certain regional development banks. • Perfected first-priority interest assumed. • No explicit risk management requirements as under proposed rule.	• Same collateral as under current rules. • Expanded to include the following if bank has a perfected first-priority security interest: - Gold bullion. - Short- and long-term debt securities that are investment grade (and are not resecuritization exposures). - Equity securities and convertible bonds that are publicly traded. - Money market fund shares and other mutual fund shares if price is publicly quoted daily. - Partial collateralization recognized. • Risk management requirements: - Sufficient legal review to ensure that all documentation is binding and legally enforceable in all relevant jurisdictions. - Bank to consider correlation of risks of underlying exposure and collateral risks. - Bank to take into account time and cost of realizing proceeds from liquidation of collateral and effect of timing on value. - Legal mechanism exists to ensure bank can take possession of and liquidate collateral. - All steps have been taken that are necessary to maintain enforceable security interest.

	Current Rule	Proposal
		- Procedures in place for observation of legal conditions required for declaring default. - Procedures for conservatively estimating, on a regular basis, fair value of collateral. - Procedures for promptly requesting and receiving additional collateral.
Risk mitigating effect—"simple approach"	• Sole approach for recognizing effect of collateral. • Risk weight of collateral substituted for that of obligor on hedged exposure.	• One of two approaches for recognizing effect of collateral. • Risk weight of collateral substituted for that of obligor on hedged exposure. • Approach limited to two types of collateral: - Financial collateral. - Collateral for a repo-style transaction that is included in bank's VaR measure. • Three prerequisites: - Collateral agreement is for at least the life of the exposure. - Collateral is revalued at least every six months. - Collateral (other than gold) and exposure denominated in same currency.
Simple approach—collateralized amount	• Current market value of collateral substituted for exposure amount as determined under applicable capital rule.	• Same.
Simple approach—risk weight	• Given definition of eligible collateral, 20% minimum risk weight, except 0% if: - Collateral is cash on deposit in bank or securities issued or guaranteed by OECD central governments (including United States) or U.S. government agencies. - On daily basis, exposure is overcollateralized. • Local currency in non-OECD countries also may qualify for 0% risk weight to the extent bank books liabilities in that currency.	• 20% minimum risk weight, except: - 0% generally for exposure collateralized by cash on deposit. - For OTC derivative, 0% to extent contract is collateralized by cash on deposit and only if contract is marked to market on a daily basis and is subject to daily margin maintenance requirement. - 0% where collateral is an exposure to a sovereign that qualifies for 0% risk

	Current Rule	Proposal
		weight (*see Table I*) and bank has discounted market value of collateral by 20%. • 10% for exposure to OTC derivative contract that is marked to market on a daily basis and subject to daily margin requirement, to extent collateralized by exposure to sovereign eligible for 0% risk weight.
Risk mitigating effect—“collateral haircut approach”	• No comparable provision	• Approach based on adjustments to exposure amount of collateralized transaction but without changing original risk weight. • Two types of collateral qualify for this approach: - Financial collateral—if it secures an eligible margin loan, repo-style transaction, collateralized derivative contract, or single product netting set of such transactions. - For bank subject to market risk rules, any collateral that secures a repo-style transaction included in bank’s VaR-based measure under the market risk rules.
Collateral haircut approach—amount subject to risk weighting	• Not applicable	• Amount to be risk weighted: - Net position—current market value of exposure less current market value of collateral, adjusted for market volatility and currency mismatches. - Market volatility haircut is function of issuer of collateral and residual maturity. Haircuts range from 0.5% (e.g., U.S. Treasuries one year or less) to 25% (non-sovereign issuers risk weighted at 100% and most publicly traded equities). - Foreign exchange haircut of 8% required if collateral denominated in different

	Current Rule	Proposal
		currency. - Reduced haircuts available for repo-style transactions. - Increased haircuts required if trades within a netting set exceed 5,000 at any time within a quarter. • With regulatory approval, bank may use its own haircuts.
Collateral haircut approach—risk weight	• Not applicable	• Risk weight on underlying exposure—i.e., no change to the risk weight.

VI. Securitization Exposures (§§ __.41-.45)

	Current Rule	Proposal
Operational requirements and due diligence		
Operational requirements—traditional securitization	• Transfer of exposures to SPE must meet true sale requirements. • Supervisory guidance requires: - Risk management that identifies, quantifies, and monitors risks. - Clear communication of risks to board and senior management. - Ongoing stress testing. - Adequate internal standards for allowances or liabilities. - Requisite knowledge of accounting, legal, and risk-based capital nuances. - Appropriate valuation, which is documented.	• In traditional securitization, exposures transferred to SPE may be excluded from transferring bank's risk-weighted assets, if: - Exposures not reported on originating bank's consolidated balance sheet under GAAP. - Credit risk associated with exposures transferred to third parties. - Any clean-up calls meet eligibility requirements (*see below*). - Securitization does not include revolving credit facilities (e.g., credit card receivables) with early amortization provisions. • Mortgage-backed pass-through securities do not qualify as securitizations because there is no tranching of credit risk. For risk weights of these securities, *see Table II*.
Operational requirements—synthetic securitization	• Three general requirements: - Transfer of virtually all of the risk to third parties, including absence of early-amortization clauses or other credit performance-contingent clauses. - Bank has ability to evaluate remaining banking-book risk exposures and provide adequate capital support. - Public disclosure of synthetic transactions regarding risk profile and capital adequacy.[10]	• Transaction that meets four requirements: - Credit risk of underlying exposures is transferred to third parties through credit derivative or guarantee. - Credit risk has been separated into at least two tranches reflecting different levels of seniority. - Performance of securitization exposures depends on performance of underlying exposures. - All or substantially all of the underlying exposures are financial exposures. • In synthetic securitization, bank may recognize use of credit risk mitigant to hedge underlying exposures if:

[10] *See* Joint Agency Guidance on Synthetic Collateralized Loan Obligations (Nov. 15, 1999), as amended by OCC Interp. Ltr. 988 (April 2004). *See also* OCC Interp. Ltr. 1091 (Dec. 2007).

	Current Rule	Proposal
		- Mitigant is financial collateral, an eligible credit derivative, or an eligible guarantee. - Credit risk of underlying exposures is transferred to third parties through mitigant, where terms and conditions do not, in the event of deterioration in the quality of the underlying exposures, (i) allow for termination, (ii) require replacement of exposures, (iii) increase bank's cost of credit protection, or (iv) increase yield payable to other parties. - Terms and conditions of mitigant do not provide for any increases in any form of credit support from the bank after inception of the securitization. - Bank obtains well-reasoned legal opinion that confirms enforceability of mitigant in all relevant jurisdictions. - Any clean-up calls meet eligibility requirements. • Bank that provides credit protection to a synthetic securitization must use securitization framework to risk weight its exposures, even if originating bank failed to meet requirements above.
Due diligence	• No formal rule or specific requirements, although operational requirements above imply due diligence. • As part of general duty to conduct adequate risk management, bank expected to understand risks associated with a securitization, including appropriate due diligence, and to document its understanding. • Adequate risk management would also involve periodic review of performance of any securitization exposures.	• Demonstrate to regulator "comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure." • Analysis of risk characteristics prior to acquisition and periodically thereafter: - Structural features. - Information on performance of underlying exposures. - Market data. - For resecuritizations, performance information

	Current Rule	Proposal
		on underlying securitization exposures. • Analysis to be updated at least quarterly.
Exposures		
On-balance sheet securitization exposures	• Amortized cost, if asset not held for trading. • Fair value, if asset held for trading.	• For on-balance sheet securitization exposure: carrying value. - For derivative contract, exposure is carrying value only with regulatory approval and if contract has first-priority claim on cash flows from underlying exposures. • Note that if gross-up approach is used, amount to be risk weighted includes carrying value, plus pro rata share of all more senior positions. - Pro rata share based on percentage of bank's position in the particular tranche.
On-balance sheet repo-style transactions, eligible margin loans, OTC derivative contract (other than a credit derivative) in connection with securitizations	• Greater of mark-to-market value or zero, plus PFE (determined through application of a table).	• Carrying value rule does not apply. • For these transactions, exposure amount is as calculated for either: - OTC derivative contracts—greater of mark-to-market value or zero, plus PFE (note table differs slightly from table used under current rule).. - Collateralized transactions—complex formulas.
Off-balance sheet securitization exposures	• Notional principal amount • CCFs - 100%, if existing risk of loss - 50%, if exposure is contingent	• For off-balance sheet securitization exposure, notional amount. - For derivative contract, exposure is notional amount only with regulatory approval and if contract has first-priority claim on cash flows from underlying exposures.
Off-balance sheet repo-style transactions, eligible margin loans, OTC derivative contracts (other than credit derivatives)	• Notional principal amount • CCFs - 100%, if existing risk of loss - 50%, if exposure is contingent	• Notional amount rule does not apply. • For these transactions, exposure amount is as calculated for either: - OTC derivative contracts—

	Current Rule	Proposal
		greater of mark-to-market value or zero, plus PFE (note table differs slightly from table used under current rule). - Collateralized transactions—complex formulas.
Off-balance sheet securitization exposure to ABCP program, including eligible ABCP facility	• Exposure amount is notional principal amount • Eligible ABCP liquidity facility exposure amount is converted to on-balance sheet asset as follows: - CCF of 10% for unused portions of commitments by eligible ABCP liquidity facilities with an original maturity of one year or less. - CCF of 50% for unused portions of commitments by eligible ABCP liquidity facilities with original maturity of more than one year. • If overlapping exposures, overlapped portion is risk-weighted only one time in a way that will result in highest capital charge. • Facilities that provide for bank to purchase below investment grade assets out of program also treated as direct credit substitutes. • If program does not meet definition (and therefore must include program assets in its risk-weighted assets) or if bank chooses to include program assets in its risk-weighted assets, no capital requirement assessed against facility.	• Notional amount is exposure amount. - Notional amount may be reduced to maximum potential amount bank could be required to fund given program's current underlying assets (without regard to current credit quality). • CCF for exposure of eligible ABCP facility is: - 50%, if gross-up approach or alternative approach is used for risk weighting. - 100%, if SSFA is used.
Off-balance sheet securitization exposure to non-eligible ABCP facility	• Non-eligible facilities treated as recourse obligations or direct credit substitutes. • Exposure amount is full amount of assets for which bank has assumed credit risk • No low level recourse. • CCF of 100%.	• Same
ABCP program—bank required to consolidate program assets	• Program assets included in bank's risk-weighted assets	• Same

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr><td>on balance sheet</td><td>base.
Sponsoring bank must assess appropriate risk-based capital charge against any exposures, including any credit enhancements.</td><td></td></tr>
<tr><td colspan="3">Risk weights</td></tr>
<tr><td>Approaches</td><td>External ratings and related approaches where specific exposure is not rated.
Gross-up approach
No SSFA
Fixed ratings
- ABS backed by nonmortgage assets: 100%.
- MBS guaranteed by U.S. government (Ginnie Mae pass-through securities): 0%.
- MBS issued by GSE: 20%.
- Residual interests and subordinated classes of GSE securitizations: 100%.
- Private MBS assigned to risk weight of underlying loans, if certain conditions are met; otherwise, 100%.</td><td>No use of external ratings
SSFA
Gross-up approach
Fixed ratings
- ABS backed by nonmortgage assets: 100%
- MBS guaranteed by U.S. government (Ginnie Mae pass-through securities): 0%.
- MBS issued by GSE: 20%.
- Residual interests and subordinated classes of GSE securitizations: 100%.
- Private MBS assigned to risk weight of underlying loans, if certain conditions are met; otherwise, 100%.</td></tr>
<tr><td>Use of credit ratings</td><td>- For traded exposures that are externally rated, risk weights based on such ratings.
<table><tr><td>Rating</td><td>Risk Weight</td></tr><tr><td>AAA, AA</td><td>20%</td></tr><tr><td>A</td><td>50%</td></tr><tr><td>BBB</td><td>100%</td></tr><tr><td>BB or lower</td><td>200%</td></tr></table>
Comparable risk weighting designed for positions that are not traded or are not externally rated.</td><td>Eliminated (per section 939A of Dodd-Frank Act).</td></tr>
<tr><td>Simplified supervisory formula approach</td><td>No formal counterpart to SSFA.</td><td>Available to banks regardless of whether bank is subject to market risk capital rules.
If used, SSFA must be applied to all securitization exposures; bank cannot pick and choose between SSFA and gross-up approach.
Derived from Supervisory Formula Approach applicable to advanced approaches</td></tr>
</table>

	Current Rule	Proposal
		banks under Basel II. • Complex calculations, with three steps: - Determine weighted average risk weight of underlying exposures and adjust for (a) credit quality and (b) whether transaction is securitization or resecuritization. - Determine ratios associated with attachment point (amount of losses before exposure suffers losses) and detachment point (where position has ceased to suffer losses). - One of three different algorithms then applies, depending on relationship of the attachment and detachment ratios to the adjusted weighted average risk weight. • Most subordinated position risk weighted at 1,250%. • Minimum risk weight: 20%. • Eligible ABCP liquidity facility may be risk weighted using SSFA; if so, CCF is 100%.
Gross-up approach	• Exposure amount is dollar amount of position, plus all more senior positions. • Risk weighted according to risk weight of obligor or, if present, collateral or guarantee. - Weighted average risk weight of all underlying exposures. • No minimum risk weight. • Capital charge is product of grossed-up amount x risk weight x 8%. • Capital charge cannot exceed full capital charge on underlying assets. • Exposures in trading book of bank subject to market risk capital rules and risk weighted according to those rules.	• Amount to be risk weighted is carrying value or notional amount of position (depending on whether position is on- or off-balance sheet) plus pro rata share of all more senior positions. Pro rata share based on percentage of bank's position in particular tranche. • Risk weighted according to weighted average risk weight of underlying exposures. • 20% minimum risk weight. • Capital charge generally is product of exposure amount x risk weight x 8%. • Note capital charge could exceed full capital charge on underlying assets. • Available only to banks *not* subject to market risk capital rules. • If used, must be used for all

	Current Rule	Proposal
		securitization exposures; bank cannot pick and choose between gross-up approach and SSFA.
"Alternative" or default approach	• 1,250%	• 1,250% for any securitization exposure to which SSFA and gross-up approach are not applied, except for particular exposures below.
Eligible ABCP liquidity facility	• Highest risk weight applicable to any of the individual underlying exposures covered by the facility. • Differentiated from non-eligible facility through calculation of exposure amount.	• Three options - SSFA - Gross-up approach - Highest risk weight applicable to any of the underlying individual exposures. Bank must know composition of assets at all times.
Non-eligible ABCP liquidity facility	• Highest risk weight applicable to any of the individual underlying exposures covered by the facility.	• First-loss position: risk weights of all assets supported by facility. • Second-loss position or better to ABCP program: the greater of 100% or highest risk weight of any underlying exposures, if all of the following are met: - Bank knows composition of underlying exposures at all times. - Exposure not an eligible ABCP liquidity facility. - Exposure economically in second-loss position or better, and first-loss position provides "significant" credit protection to second-loss position. - Exposure qualifies as investment grade. - Bank holding the exposure does not retain or provide protection for first-loss position. • If conditions above are not met, exposure risk weighted at 1,250%.
Servicer cash advance facility	• Mortgage servicer cash advance treated as securitization exposure, if - Servicer is entitled to full reimbursement, and this right is not subordinated to	• Treated as securitization exposure, three options: - SSFA - Gross-up approach - 1,250%

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr><td></td><td>other claims on cash flows from underlying asset pool.
- For any one loan, servicer's obligation to make non-reimbursable advances is contractually limited to an insignificant of outstanding principal balance of loan.
• If conditions not met, facility treated a recourse obligation or direct credit substitute.</td><td></td></tr>
<tr><td>Undrawn portion of servicer cash advance facility</td><td>• For eligible servicer cash advance facility, no risk-based capital required.
• For non-eligible servicer cash advance facility, treated as any other off-balance sheet securitization exposure.</td><td>• Same</td></tr>
<tr><td>Non-credit-enhancing interest-only MBS</td><td>• 100%</td><td>• Minimum risk weight of 100%</td></tr>
<tr><td>Securitizations of small business loans and leases on personal property transferred with retained contractual exposure</td><td>• Dictated by statute, more favorable risk weighting if certain conditions are met.</td><td>• Same</td></tr>
<tr><td colspan="3">Credit Enhancements</td></tr>
<tr><td>Recourse
• Credit-enhancing reps and warranties
• Retained servicing with responsibility for losses
• Retained subordinated interests that absorb more than pro rata share of losses
• Assets sold under agreement to repurchase
• Loan strips sold without contractual recourse when maturity of transferred loans is shorter than maturity of commitments under which loan is drawn
• Credit derivatives that absorb more than pro rata share of losses
• Clean-up calls at inception that are greater than 10% of the balance of original pool</td><td>• For off-balance sheet recourse obligations, exposure amount in general is full amount of assets supported, with CCF of 100%.
• Risk weight is weight assigned to underlying exposures, after considering associated guarantees or collateral.
• If pooled assets have different risk weights, highest risk weight applies.
• If recourse obligation is traded and is externally rated (e.g., a retained interest), risk weights per the following:
<table><tr><td>Rating</td><td>Risk Weight</td></tr><tr><td>AAA, AA</td><td>20%</td></tr><tr><td>A</td><td>50%</td></tr><tr><td>BBB</td><td>100%</td></tr><tr><td>BB or lower</td><td>200%</td></tr></table>
• If recourse obligation is not traded and is externally rated, same risk weights apply, if certain conditions are satisfied.
• If obligation is not externally</td><td>• If bank provides implicit support to securitization in addition to contractual obligations, bank must:
- Include all underlying exposures associated with securitization in risk-weighted assets.
- Deduct from CET1 any after-tax gain-on-sale resulting from securitization, even though favorable securitization treatment no longer available.
- Disclose publicly the fact of implicit support and the impact on risk-based capital.</td></tr>
</table>

<table>
<tr><th></th><th>Current Rule</th><th>Proposal</th></tr>
<tr><td></td><td>rated, two possibilities
- Rating for more junior rated position may apply.
- Obligation may be rated at 100%, if a program rating, or a rating generated by a computer program determines that obligation is equivalent to investment grade obligation. If not investment grade, 200%.
• Low-level recourse rule: if maximum contractual exposure assumed in connection with recourse obligation is less than effective risk-based capital requirement for the enhanced assets, risk-based capital requirement is limited to maximum contractual exposure, less any recourse liability under GAAP.
- Does not apply to residual interests or credit enhancements beyond contractual obligations.
• If bank complies with market risk rules, exposures in the trading book are risk weighted under the market risk rules.</td><td></td></tr>
<tr><td>Direct credit substitutes
• Financial standby letters of credit that support claims on third party that exceed bank's pro rata share of losses
• Guarantees, surety arrangements, credit derivatives and similar arrangements backing financial claims that exceed bank's pro rata share in the claim
• Purchased subordinated interests that absorb more than pro rata share of losses
• Credit derivatives under which bank assumes more than its pro rata share of credit risk on a third-party exposure
• Loans or lines of credit that provide credit</td><td>• For off-balance sheet substitute, exposure amount in general is full amount of assets supported, with CCF of 100%.
• For on-balance sheet substitute, exposure amount is sum of direct credit substitute and full amount of all more senior positions in the structure.
• If substitute is externally rated, risk weights as follows:
<table><tr><td>Rating</td><td>Risk Weight</td></tr><tr><td>AAA, AA</td><td>20%</td></tr><tr><td>A</td><td>50%</td></tr><tr><td>BBB</td><td>100%</td></tr><tr><td>BB or lower</td><td>200%</td></tr></table>
• If obligation is not externally rated, three possibilities, if certain conditions are met:
- Rating for more junior rated</td><td>• Guarantees and credit derivatives generally:
- Exposure amount: securitization exposure's principal interest, either in full or pro rata, depending on scope of coverage.
- Risk weighted as if bank holds portion of the covered reference exposure.
• Nth-to-default credit derivative:
- Exposure amount: largest notional dollar amount of all underlying exposures.
- Risk weight: as determined under SSFA, using special rules for calculating attachment and detachment points.
- If SSFA not used, risk weight is 1,250%.</td></tr>
</table>

	Current Rule	Proposal
enhancement for financial obligations of account party • **Purchased loan servicing assets either if servicer is responsible for credit losses or if servicer makes or assumes credit-enhancing reps and warranties. Certain mortgage-servicer cash advances exempt.** • **Clean-up calls on third-party assets of more than 10%**	position may apply. - Obligation may be rated at 100%, if a program rating, or a rating generated by a computer program determines that obligation is equivalent to investment grade obligation. If not investment grade, 200%. - Bank's own internal rating system may apply to direct credit substitute assumed in connection with ABCP program. • Low-level recourse rule: if maximum contractual exposure assumed in connection with direct credit substitute is less than effective risk-based capital requirement for the enhanced assets, risk-based capital requirement is limited to maximum contractual exposure, less any recourse liability under GAAP.	
Residuals (other than CEIOs)	• If externally rated, same risk weights for recourse obligations apply. • Otherwise, dollar for dollar against remaining amount of residual interest retained on balance sheet. • If transaction results in retention of credit risk associated with transferred residual, residual will be treated as though it were retained on balance sheet. • Low-level recourse rule does not apply.	• Dollar-for-dollar capital charge will result from application of any of the three methods.
CEIOs	• Limited to 25% of Tier 1 capital. • Dollar-for-dollar capital on permissible amount of CEIO strip (net of any associated DTLs). • Not eligible for external ratings-based approach. • If transaction results in retention of credit risk associated with transferred CEIO strip, strip will be treated as though it were retained on balance sheet.	• Risk weighted at 1,250%. • Amount that represents after-tax gain on sale associated with a securitization must be deducted from CET1.

	Current Rule	Proposal
Representations and warranties—protections for third-party investors	• Certain protections for third-party investors will not result in capital charges: - Early default clauses involving first mortgage loans risk weighted at 50% permissible if default period does not exceed 120 days from date of transfer and loan originated within one year of date of transfer. - Premium refund clauses on assets guaranteed by U.S. government, agency, or GSE are permissible, provided refund period does not exceed one year from date of transfer. - Warranties for misrepresentation, fraud, or incomplete documentation with respect to original exposure.	• No representation or warranty exempt from capital charge. • Such protections now treated as off-balance sheet guarantees with CCF of 100%.
Clean-up calls	• No effect on capital treatment of securitization if: - Call is for 10% or less of original pool balance - Originator has sole discretion to exercise. • Otherwise, risk weighted as a direct credit substitute.	• No effect on capital treatment if: - Call exercisable solely at discretion of originator *or* servicer. - Call not structured to avoid allocating losses or to provide credit enhancement. - For traditional securitization, exercisable only when 10% or less of original principal amount is outstanding. - For synthetic securitization, exercisable only when 10% or less of principal amount of reference portfolio is outstanding. - If SPE structured as a master trust, call with respect to particular series or tranche is eligible if outstanding principal amount of series is 10% or less of original amount. - If call fails any condition, - Full amount of transferred assets returns to bank's balance sheet.

	Current Rule	Proposal
		• If call fails any condition, then assets transferred in transaction must be returned to bank's balance sheet for regulatory capital purposes. - Any after-tax gain on sale arising out of transaction must be deducted from CET1, notwithstanding fact that transferred assets have returned to bank.
Overlapping exposures	• Applicable risk-based capital treatment of overlapped exposure that results in highest capital charge.	• Same.
Servicer cash advances	• Not treated as recourse obligation or direct credit substitute. • 100% on drawn portion of facility. • 0% on undrawn portion.	• 100% on drawn portion of facility. • 0% on undrawn portion.
Credit Risk Mitigants		
Mitigants generally	• General rules on credit risk mitigation apply. *See Table V.* • Basel II-based rules recognize mitigating effect of financial collateral, eligible guarantees, and eligible credit derivatives.	• Either originating bank or investing bank may recognize mitigant as guarantee, credit derivative, or collateralized transaction (§§ __. 36, .37). • Conditions for use of guarantee or credit derivative: - Eligible guarantor. - Adjustments for maturity mismatch, derivatives without restructuring as a credit event, and currency mismatches (§__.36(d)-(f)). - For synthetic securitization with multiple hedged exposures of differing maturities, longest residual maturity applies in calculating maturity mismatch. • If bank cannot or does not recognize credit derivative as above, capital charge determined under general rules for counterparty credit risk. *See Table I.*
Nth-to-default credit derivatives—protection provider	• Exposure amount is largest notional dollar amount of all underlying exposures.	• Exposure amount is largest notional dollar amount of all underlying exposures. • Two risk weighting alternatives:

	Current Rule	Proposal
		- SSFA, using particular calculations of attachment and detachment points. - 1,250%
First-to-default derivatives—protection purchaser	• Rules on credit risk mitigation apply, e.g., nth-to-default swaps. See Table V.	• For first-to-default derivatives, if derivative meets rules of recognition for eligible guarantee or credit derivative (§ __. 36(b)), exposure risk weighted as though bank had synthetically securitized underlying exposure with smallest risk-weighted amount (and had obtained no credit risk mitigant on other underlying exposures).. • If derivative does not meet rules of recognition, risk weighted as an OTC derivative. • For all other nth-to-default derivatives, If derivative does not satisfy rules of recognition, risk weighted as an OTC derivative.
Nth-to-default derivatives—protection purchaser	• Rules on credit risk mitigation apply, e.g., nth-to-default swaps. See Table V.	• Similar to above, risk-weighted as if bank had only synthetically securitized the underlying exposure with the smallest risk weight. • Treatment available if (a) derivative meets rules of recognition and (b) (i) bank has obtained credit protection on same underlying exposures through an (n-1) to default derivative (or if n-1 of the underlying exposures have already defaulted). • If derivative not eligible, risk weighted as nth-to-default OTC derivative.
Guarantees and credit derivatives other than nth-to-default credit derivatives—protection provider	• Treated as direct credit substitute - Exposure amount is full amount of credit-enhanced assets, with CCF of 100%. - For on-balance sheet asset, exposure is sum of direct credit substitute and full amount of assets supported (i.e., all more senior positions) - Risk weighted by the risk	• Risk weighted as if protection provider holds the portion of the reference exposure covered by the guarantee or credit derivative.

	Current Rule	Proposal
	category appropriate to obligor in underlying transaction	
Guarantees and credit derivatives other than nth-to-default credit derivatives—protection purchaser	• See treatment of eligible guarantees and eligible credit derivatives in Table V.	• If bank is permitted to recognize guarantee or credit derivative as a credit risk mitigant, then general rules on credit risk mitigation apply. • If bank cannot (or does not) recognize a credit derivative that references a securitization exposure as a credit risk mitigant, then risk weight based on general counterparty credit risk rules.

VII. Equity Exposures (§§ __.51-.53)

	Current Rule	Proposal
Investments in nonfinancial firms that are not investment companies	• General rule: portions of adjusted carrying value of non-financial equity investments deducted in increasing amounts (at a marginal rate) from core capital as amount of investments increases as a percentage of Tier 1 capital: - 8% deduction for investments that constitute less than 15% of Tier 1 capital. - 12% deduction for any additional investments up to 25% of Tier 1 capital. - 25% of any additional investments of 25% or more of Tier 1 capital. - Greater deductions may be required if investments exceed 50% of Tier 1 capital. - Remaining amounts *excluded* from bank's risk-weighted assets. • Special rules for SBICs: - If aggregate of all nonfinancial investments held through a consolidated SBIC and investments in an unconsolidated SBIC are 15% or less of Tier 1 capital, no deduction required and investments are risk-weighted at 100% (and included in bank's consolidated risk-weighted assets. - If such aggregate exceeds 15% of Tier 1 capital, marginal deductions from core capital must be made, as above. • Note scope of permissible investments in nonfinancial firms varies among banks, savings associations, BHCs, and SLHCs.	Simple risk-weight approach. • Lowest applicable risk weight applies. • Seven categories: - Sovereigns, MDBs: 0% - PSEs, FHLBs, Farmer Mac: 20% - Community development, effective portion of hedge pairs, non-significant equity exposures (*see below*): 100% - Significant investments in capital of unconsolidated financial institutions not deducted from capital: 250% - Publicly traded equities: 300% - Non-publicly traded equities: 400% - Investment firm that would meet definition of traditional securitization (except that the relevant agency has determined that it does not) and with greater than immaterial leverage: 600% Exposure Amount • On-balance sheet exposure: carrying value. • Unconditional commitment to acquire equity exposure: effective notional principal amount of exposure with CCF of 100%. • Conditional commitment to acquire equity exposure: effective notional principal amount multiplied by: - 20% for commitment with original maturity of one year or less. - 50% for commitment with original maturity of more than one year. • Off-balance sheet exposure that is not a commitment: effective notional principal amount, calculated as a hypothetical on-balance sheet

	Current Rule	Proposal
		position.
Investments in financial firms that are not investment companies	• 100%	• Investments in financial subsidiaries: fully deducted from CET1 (*see Table VIII*). • Significant investments in capital of unconsolidated financial institutions in form of common stock – to extent not deducted from CET1 using 10%/15% thresholds (*see Table VIII*): risk weighted at 250%. • Significant investments in capital of unconsolidated financial institutions in a form other than common stock: deducted from capital using corresponding deduction approach (see *Table VIII*). • Non-significant investments in capital of unconsolidated financial institutions: amount that exceeds 10% of CET1 deducted from capital using corresponding deduction approach, Adjusted carrying value of remaining amount risk weighted at 100%.
Investments in insurance underwriting subsidiaries	• No provision	• Capital deduction, *see Table VIII.*
Investments in investment companies	Two approaches, at bank's option: • Generally, investment assigned to risk category appropriate for highest risk-weighted asset that fund may hold under stated investment objectives in prospectus. (Largely equivalent to simple modified look-through approach.) • Pro rata risk weighting: investments may be assigned to different risk weights on a pro rata basis according to investment limits in prospectus. (Largely equivalent to alternative modified look-through approach.) - Minimum risk weight of 20%. - Risk weighting unaffected by "insignificant" amount of	Similar approaches, plus a third, at bank's option: • Simple modified look-through approach: adjusted carrying value of investment risk-weighted at highest risk weight for investments permitted in fund prospectus or other documents. • Alternative modified look-through approach: adjusted carrying value of bank investment assigned on a pro rata basis different risk weight categories based on investment limits in prospectus or other documents. If sum of investment limits exceeds 100%, any overlaps are to be resolved in favor of higher risk weight. Certain derivative contracts used for hedging may be excluded.

	Current Rule	Proposal
	assets held in the form of short-term highly liquid securities of superior credit quality that do not qualify for preferential risk weight. - Risk weighting also unaffected by prudent use of hedging instruments.	• Full look-through approach: assets actually held by fund (as opposed to permitted under prospectus) risk weighted as appropriate and multiplied by bank's proportional ownership of fund. • New rules for hedge pair, if bank does not use Full Look-Through Approach: - Ineffective portion treated as investment in fund and risk weighted under investment fund rules. - Effective portion constitutes its own risk-weighted amount (i.e., risk weighted at 100%). • Special rules for investments in community development investment funds.
Non-significant equity investments	• If not deducted from Tier 1 capital, 100% risk weight on adjusted carrying value.	• Flat 100% risk weight for "non-significant" equity exposures. • Non-significant: adjusted carrying value of those exposures that do not exceed 10% of bank's total capital. • Certain exposures may be excluded from calculations for the purpose of the 10% ceiling, but excluded assets must be risk weighted according to other rules. - Exposures risk weighted at 0% or 20% - Effective portion of hedge pairs - Equity exposure of hedge pair with the smaller adjusted carrying value - Proportion of equity exposure to investment fund equal to proportion of fund assets that are not equity exposures or that constitute community development equity exposures. Bank may base calculation on investments permissible under prospectus or other document.

	Current Rule	Proposal
		- In calculating assets to be included in 10% bucket, bank must first include certain SBIC equity exposures, then publicly traded equity exposures, and then nonpublicly traded equity exposures.
Hedge pairs	• No specific treatment. • Hedging instruments in the form of equity instruments may be deducted from Tier 1 capital. • Hedging instruments in the form of debt instruments generally risk weighted at 100%. • Certain forms of prudent hedging may not require separate capital treatment (e.g., prudent hedging in connection with investment in investment fund).	• 100% risk weight for effective portion. • 300% for ineffective portion. • Hedge pair consists of two equity exposures that either are publicly traded or have a return based on a publicly traded equity exposure. • Hedge is effective only if both exposures have the same remaining maturity or each has a remaining maturity of at least three months; the hedge relationship is formally documented prospectively; the documentation specifies the measure of effectiveness; and, when measured, the hedge has an effectiveness of 0.8 or greater. • A bank must measure effectiveness quarterly, using one of three approaches: dollar-offset, variability-reduction, or regression.

VIII. Deductions from and Adjustments to Capital (§ __.22)

	Current Rule	Proposal
Intangibles		
Goodwill	• Deducted from Tier 1 capital in full at bank level. • No deduction at holding company level.	• Amount net of associated DTLs deducted from CET1 in full. • Deduction required at both bank and holding company levels.
Goodwill embedded in significant investments in common stock of unconsolidated financial institution	• No comparable provision, but significant investments deducted in full from Tier 1 capital.	• Deducted in full from CET1.
Nonmortgage servicing assets, marketable mortgage servicing assets, purchased credit card relationships—in aggregate	Three limits on inclusion in Tier 1 capital; excess amounts must be deducted from Tier 1. • Total amount of MSAs, NMSAs and PCCRs limited to 100% of Tier 1 capital. • Separately, total amount of NMSAs and PCCRs limited to 25% of Tier 1 capital. • Total amount includable in capital may not exceed either 90% of fair value (10% haircut) or book value. Different deductions follow. - If amount after haircut exceeds 100% of Tier 1 capital but by an amount that is less than amount of the 10% haircut, then bank must use 90% amount in calculating capital but no formal capital deduction is required. - If amount after haircut exceeds 100% of Tier 1 capital by amount that is greater than haircut amount, then amount above 100% of Tier 1 capital must be deducted, without use of haircut. • For these purposes, Tier 1 capital is net of goodwill deduction and net of all intangible assets other than the covered servicing assets and PCCR, but before deductions for disallowed deferred tax assets and	• NMSAs and PCCRs deducted in full from CET1. • MSAs - 10%/15% thresholds (*see Deduction methodologies below*). • Thresholds apply to MSAs net of DTLs • In applying 15% threshold, amounts of certain DTAs and significant investments in financial institution common stock come into play. - Remainder after application of thresholds risk weighted at 250%. - Same 90% of fair value/10% haircut rules apply—minimum deduction from CET1 of 10% of fair value of MSAs.

	Current Rule	Proposal
	nonfinancial equity investments. • Bank may elect to deduct from Tier 1 capital amount that is also net of DTLs, but, if so, cannot net DTAs against DTLs for purpose of DTA deduction.	
CEIOs (both purchased and retained)	• 25% limit on inclusion in Tier 1 capital. • Amount within limit risk weighted at 100%. • Excess to be deducted. • Amount of CEIOs based on fair value. • Includable amount not eligible for external ratings-based approach.	• Amount that represents after-tax gain-on-sale associated with a securitization deducted from CET1. • Remainder risk weighted at 1,250%.
Gain-on-sale associated with securitization exposure	• No deduction	• Full deduction from CET1
Deferred tax assets	• Amount of DTAs dependent on future taxable income and net of valuation allowance for DTAs must be deducted by the greater of: - Amount that exceeds10% of Tier 1 capital, or - Amount that exceeds amount of DTAs bank expects to realize within one year of calendar quarter end date, based on projections of future taxable income. • DTAs may be netted against DTLs for purpose of determining DTA amount subject to 10% test, but only if sum of NMSAs, MSAs, and PCCRs have not been netted against DTLs for the purpose of deduction of those assets in aggregate. • For purpose of 10% limit, Tier 1 capital is net of deductions for goodwill and intangibles but before deductions for disallowed nonmortgage servicing assets, MSAs, PCCRs, CEIOs, DTAs, and nonfinancial equity investments. • No Tier 1 capital limit for DTAs that can be realized from taxes paid in prior carry-back years or from future reversals of	• Full deduction from CET1 for DTAs that arise from operating loss and tax credit carry-forwards net of any related valuation allowances and net of DTLs. • 10%/15% thresholds apply to DTAs that arise from temporary differences that bank could not realize through operating loss carrybacks, net of any related valuation allowances and net of DTLs. *See Deduction methodologies below.* - In applying 15% threshold, amounts of MSAs and significant investments in financial institution common stock come into play.

	Current Rule	Proposal
	temporary differences.	
Use of associated deferred tax liabilities	• Two choices: - DTLS may be netted against total amount of goodwill, servicing assets, and CEIO with which DTLs are associated before such intangibles are deducted from Tier 1 capital. - DTLs may be netted against DTAs for the purpose of DTA deduction.	• May be netted against assets subject to deduction if: - DTL is associated with asset. - DTL would be extinguished if associated asset were to become impaired or is derecognized under GAAP. - DTL is netted only against single asset. • Rules for netting against DTAs: - DTA and DTL must relate to taxes levied by the same taxation authority and are eligible for offsetting by that authority. - Where DTLs may be netted against the two types of DTAs subject to deduction from capital, DTLs must be allocated proportionally between the two.
Expected credit loss	• No deduction.	• Applies only to Basel II advanced approaches banks • Amount of expected credit loss that exceeds eligible credit reserves deducted from CET1.
Cash flow hedges—gains and losses	• No adjustment.	• Deduction from CET1 for unrealized gain on cash flow hedges included in AOCI, net of applicable tax effects that relate to hedging of items not recognized at fair value. • Addition to CET1 for unrealized losses on such hedges.
Changes in fair value of liabilities dues to changes in bank's own credit risk	• No adjustment.	• Deduction from CET1 for unrealized gain. • Addition to CET1 for unrealized losses on such changes. • Special rule for Basel II advanced approaches banks: deduct credit spread premium over the risk-free rate for derivatives that are liabilities.
Defined benefit pension fund assets	• No deduction required. • Presumptively risk-weighted at 100%.	• Restrictions do not apply to insured depository institutions. • Net of associated DTLs, fully

	Current Rule	Proposal
		deducted from CET1. • Regulator may permit deduction net of funds to which bank has unrestricted and unfettered access. Funds netted out must be risk-weighted as though held on bank's balance sheet.
Other intangibles	• Deducted in full from Tier 1 capital.	• Net of associated DTLs, fully deducted from CET1.
Other required actions	• All intangibles to be valued at least quarterly. • Valuation to include adjustments for any significant changes in original valuation assumptions.	• No specific discussion, but reporting requirements would necessitate quarterly valuation, including appropriate adjustments for changes in assumptions.
Investments		
Own capital instruments	• No specific requirement but may be deducted in practice.	• Investments in bank's own capital instruments deducted from category of capital to which instrument is assigned. • Deductible amount includes instruments for which bank has contractual obligation to purchase. • Deduction from CET1 not required for common stock instruments that fail to meet standards for CET1 and so are not included in capital. • For any deduction, gross long positions may be netted against short positions in same underlying instrument, provided short position involves no counterparty risk. • Look-through of any holdings of index securities required to identify and deduct holdings of bank's own instruments: - Gross long positions in index may be netted against short positions in same index. - Special rules on hedges involving the index.
Reciprocal holdings of capital instruments with other banks	• Full deduction from total capital. • Deduction generally limited to intentional cross-holdings.	• Corresponding Deduction Approach. *See Deduction methodologies below.*
Investments in consolidated bank subsidiaries and other subsidiaries engaged in	• No deduction. • Consolidated on parent's balance sheet.	• Same result.

	Current Rule	Proposal
activities permissible for national banks directly	• Same result for savings associations	
Investments in "finance subsidiaries" not consolidated on balance sheet	• Generally, ownership of more than 50% of outstanding voting stock. • Deduction from total capital of all equity and debt instruments treated as capital in subsidiary.	• No specific rule. • Subsumed in investments in financial subsidiaries immediately below.
Investments in "financial subsidiaries"	• Generally, ownership of 25% or more of a class of voting securities or ability to control subsidiary. • "Financial subsidiary" is a term limited to certain subsidiaries of national and state banks and deduction requirement does not apply to other banking organizations. • By statute for national banks (12 USC 24a(c)): - Aggregate amount of outstanding equity investments, including retained earnings, deducted from tangible capital and total capital. - Consolidation not permitted. • State member and nonmember banks subject to same requirements as national banks by statute (12 USC 1831w). • Financial subsidiaries must be de-consolidated from bank. • No deduction or adjustment required for savings associations. A savings association may establish service corporations with the same powers as financial subsidiaries, but no deduction required on that basis. • For BHCs and SLHCs, no deduction required.	• Similar rules, except deduction must be from CET1. (Statutory provisions remain in effect.) • Deductions now required for investments by BHCs and SLHCs. • Savings associations now subject both to this deduction and the deduction for investments in non-includable subsidiaries. For an investment subject to both rules, a single deduction is required. • Deductions under this provision take precedence over other deductions that may apply to same investment.
Investments in "non-includable subsidiaries"	• Concept of "non-includable subsidiary" reserved for savings associations and similar but not identical to "financial subsidiaries" of national and state banks. • All investments in non-includable subsidiaries must be deducted from Tier 1	• Same rule, except deduction is from CET1.

	Current Rule	Proposal
	capital. • De-consolidation required. • Modified rules for grandfather-type investments and investments in other domestic depository institutions.	
"Significant" investments in "financial institutions" in the form of common stock	• No specific deduction required if investment is less than 25% of voting stock. If greater than 25%, deductions for investments in financial subsidiaries may apply. • Risk weighted as equity exposure. *See Table VII above*.	• 10%/15% thresholds apply. *See Deduction methodologies below*. - 15% threshold calculated together with MSAs and certain DTAs. - Remainder after application of deductions risk weighted at 250%.
Significant investments in financial institutions in a form other than common stock	• Equity, debt capital, and any other instruments deemed to be capital in such institutions deducted in full from total capital. • Exemptions for stake-out investments and DPC stock.	• Corresponding deduction approach. *See Deduction methodologies below.*
"Non-significant" investments in financial institutions in any form	• Equity, debt capital, and any other instruments deemed to be capital in such institutions deducted in full from total capital. • Exemptions for stake-out investments and DPC stock.	• Corresponding deduction approach. *See Deduction methodologies below.*
Advances to unconsolidated bank or finance subsidiaries	• No deduction required. • On-balance sheet advances risk-weighted at 100%. • Collateralized advances risk weighted assigned to appropriate category for collateral or guarantees. • Off-balance sheet advances converted to balance sheet based on appropriate CCF and risk weighted at 100%. • Agency may require deduction if advance presents risks similar to equity exposure or in light of other factors. Lack of collateral may be one factor.	• Not specifically addressed. • No deduction required. • Risk weighted according to requirements in Table I above.
Significant investments in capital of unconsolidated bank or finance subsidiaries *in a form of other than common stock*	• All other equity, debt capital, and any other instruments deemed to be capital deducted in full from total capital. • Exemptions for stake-out investments and DPC stock apply.	• Corresponding deduction approach. *See Deduction Methodologies below.*
Investments in insurance underwriting subsidiaries	• No provision	• Consolidation required.

	Current Rule	Proposal
		• Deduction of minimum capital requirement imposed by state insurance regulators on insurance underwriting subsidiaries. • Deduction is 50% from Tier 1 capital (CET1 plus additional Tier 1) and 50% from Tier 2 capital.
Separate accounts	• Assets in account assigned to risk-weight categories depending on risk weights of underlying assets.	• 0%, if separate account is - Not guaranteed by bank (i.e., bank could not contractually guarantee a minimum return or account value, and insurance company not required to hold reserves for assets in account pursuant to contract); and - All losses passed on the contract holders. • If any condition not met, risk weighting according to current rule.
Investments in nonfinancial companies	• May be deducted by regulator for purpose of determining capital adequacy without reliance on investments in such subsidiaries. • Otherwise, *see Table VII, Equity Exposures.*	• No deduction required. *See Table VII, Equity Exposures.*
Deduction methodologies		
Corresponding deduction approach	• No counterpart • Investments subject to corresponding deduction approach under Standardized Approach Proposal currently deducted from total capital. • Advances to unconsolidated financial subsidiaries may also be deducted from total capital (rather than risk weighted at 100%), at discretion of regulator.	• Applies to three asset classes: - Reciprocal cross holdings - Non-significant investments in the capital of unconsolidated financial institutions - Non-common stock significant investments in the capital of unconsolidated financial institutions • Rule: instrument is deducted from component of capital for which instrument would qualify if issued by the bank. • If amount exceeds amount of applicable capital component, remainder to be deducted from next higher (more subordinated) capital component.

	Current Rule	Proposal
		• If instrument is assigned to CET1 and exceeds CET1, bank is CET1 insolvent but no deduction from additional Tier 1 capital. • Special rules for: - Instruments issued by non-regulated financial institutions. - Instruments issued by regulated financial institutions but that do not meet CET1, additional Tier 1, or Tier 2 criteria.
10%/15% threshold	• No counterpart.	• Applies to three asset classes: - Certain DTAs (*see above*). - MSAs. - Significant investments in capital of unconsolidated financial institutions in the form of common stock. • Each asset class netted against associated DTLs; special rules in § __.22(e). • 10% threshold: - Amount of asset class that on individual basis exceeds 10% of CET1 is deducted from CET1. • 15% threshold: - Remaining amounts of each class after application of 10% threshold are aggregated. - Amount of aggregate amount that exceeds 17.65% of CET1 after deductions and adjustments (including 10% deductions under this threshold) deducted from CET1 capital. • Assets that remain includable in capital risk weighted at 250%.

IX. Off-Balance Sheet Conversion Factors (§ __.33)

	Current Rule	Proposal
Unconditionally cancellable commitments	• 0%	• 0%
Short-term unfunded commitments	• 0%	• 20%
Short-term, self-liquidating, trade-related contingent claims that arise from the movement of goods—commercial letters of credit and other LOCs collateralized by underlying shipment	• 20%	• 20%
Short-term ABCP liquidity facilities	• 10%	• 20%
Long-term ABCP liquidity facilities	• 50%	• 50%
Long-term unfunded commitments (original maturity exceeding one year)	• 50%	• 50%
Transaction-related contingent items, including performance bonds, bid bonds, warranties, and performance standby LOCs	• 50%	• 50%
Participations in commitments, sold by bank	• 0%, but • 100% if bank retains obligation to pay, if participating bank defaults. • Risk weight on converted amount is lower of risk weight of the obligor or of risk weight of acquirer.	• 0%, but • 100% if bank retains obligation to pay, if participating bank defaults. • Risk weight on converted amount is lower of risk weight of the obligor or of risk weight of acquirer.
Guarantees, sale and repurchase agreements, securities lending transactions, standby letters of credit, forward agreements	• 100%	• 100%
Repo-style transactions	• On-balance sheet exposure (e.g., receivable created in securities borrowing transaction) risk-weighted under general rules. • No conversion to balance sheet for other amounts.	• 100% for full amount.
Credit-enhancing reps and warranties	• 100% • 0%, where enhancement contains certain early default clauses, certain premium refund clauses covering assets guaranteed in whole or in part by U.S. government, agency, or GSE.	• 100% on all such reps and warranties.

Acronyms and Definitions[11]

ABCP: asset-backed commercial paper

ABCP Program: program established primarily for the purpose of issuing commercial paper that is investment grade and backed by underlying exposures held in a bankruptcy remote SPE.

ABS: asset-backed securities

Adjusted carrying value: aggregate value at which investments are carried on the balance sheet, reduced by any unrealized gains on those investments that are reflected in such carrying value but excluded from Tier 1 capital and associated DTLs.

AOCI: accumulated other comprehensive income

Associated company: generally, company in which bank owns 20 to 50 percent of voting stock

BHC: bank holding company

CCF: credit conversion factor

CCP: central clearing party

CEIO: credit-enhancing interest-only strip

CET1: common equity Tier 1 capital

Control: (a) direct or indirect ownership, control, or power to vote 25% or more of any class of voting securities of a company; (b) control in any manner of the election of a majority of the directors or trustees of a company; or (c) determination by the FRB of direct or indirect controlling influence over the management or policies of a company.

Covered fund: a hedge fund or a private equity fund (i.e., a fund that is or would be exempt from the requirements of the Investment Company Act under sections 3(c)(1) or 3(c)(7) of the Act) that, if held by a bank or a bank subsidiary or affiliate is subject to the requirements of the Volcker Rule.

Deferred acquisition costs: costs incurred by an insurance company in the acquisition of a new contgract or renewal insurance contract that are capitalized pursuant to GAAP.

DPC stock: stock acquired in lieu of a debt previously contracted

DTA: deferred tax assets

DTL: deferred tax liabilities

DvP Transaction: delivery-versus-performance. A securities or commodities transaction in which the buyer is obligated to make payment only if the seller has made delivery of the securities or commodities and the seller is obligated to deliver the securities or commodities only if the buyer has made payment. The parties are to perform simultaneously.

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[11] These acronyms and definitions are not all taken verbatim from the relevant statutes, proposed and final rules, and agency guidance and are offered here only as an unofficial aid in understanding the requirements and limitations in Tables I – IX.

Eligible ABCP liquidity facility: liquidity facility supporting ABCP program that is subject to an asset quality test at the time of draw that precludes funding against assets that are 90 days or more past due or in default. If there is no asset quality test, facility also eligible if funded exposures are guaranteed by a sovereign that qualifies for 20% risk weight or lower. (Under current rule, guarantee from U.S. government, U.S. agency, or central government of OECD country qualifies.)

Farmer Mac: Federal Agricultural Mortgage Corporation

FDIC: Federal Deposit Insurance Corporation

FHLB: Federal Home Loan Bank

Finance subsidiary: Not specifically defined but generally understood to mean an entity (i) in which a bank holds an ownership interest of more than 50% (in contrast to typical definition in which a bank's ownership of 25% or more of a class of voting securities of an entity causes the entity to become a subsidiary) and (ii) that engages in roughly the same activities as a financial subsidiary. The term appears in the current Basel I-based rules but not in the Basel III or Standardized Approach Proposals.

Financial collateral: collateral in the form of

(1) (i) cash on deposit with the bank (including cash held for the bank by a third-party custodian or trustee),

(ii) gold bullion,

(iii) long-term debt securities that are not resecuritization exposures and that are investment grade,

(iv) short-term debt instruments that are not resecuritization exposures and that are investment grade,

(v) equity securities that are publicly traded,

(vi) convertible bonds that are publicly traded, and

(vii) money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) in which the bank has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent).

Financial institution:

(1) (i) A bank holding company, savings and loan holding company, nonbank financial institution supervised by the FRB under Title I of the Dodd-Frank Act, depository institution, foreign bank, credit union, insurance company, or securities firm;

(ii) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));

(iii) An entity that is a covered fund for purposes of the Volcker Rule;

(iv) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002) (other than an employee benefit plan established by bank for the benefit of its employees or the employees of its affiliates);

(v) Any other company predominantly engaged in the following activities:

(A) Lending money, securities or other financial instruments, including servicing loans;

(B) Insuring, guaranteeing, indemnifying against loss, harm, damage, illness, disability, or death, or issuing annuities;

(C) Underwriting, dealing in, making a market in, or investing as principal in securities or other financial instruments;

(D) Asset management activities (not including investment or financial advisory activities); or

(E) Acting as a futures commission merchant;.

(vi) Any entity not domiciled in the United States (or a political subdivision thereof) that would be covered by any of paragraphs (1)(i) through (v) of this definition if such entity were domiciled in the United States; or

(vii) Any other company that the relevant federal agency may determine is a financial institution based on the nature and scope of its activities.

(2) For the purposes of this definition, a company is “predominantly engaged" in an activity or activities if:

(i) 85 percent or more of the total consolidated annual gross revenues (as determined in accordance with applicable accounting standards) of the company in either of the two most recent calendar years were derived, directly or indirectly, by the company on a consolidated basis from the activities; or

(ii) 85 percent or more of the company's consolidated total assets (as determined in accordance with applicable accounting standards) as of the end of either of the two most recent calendar years were related to the activities.

(3) For the purpose of the capital rules, a “financial institution” does not include the following entities:

(i) GSEs;

(ii) Entities described in section 13(d)(1)(E) of the Bank Holding Company Act (12 U.S.C. 1851(d)(1)(E)) and regulations issued thereunder (exempted entities) and entities that are predominantly engaged in providing advisory and related services to exempted entities; and

(iii) Entities designated as Community Development Financial Institutions under 12 U.S.C. 4701 et seq. and 12 CFR part 1805.

Financial subsidiary: any company that is controlled by one or more insured depository institutions, other than a subsidiary that

(1) Engages solely in activities that national banks may engage in directly and that are conducted subject to the same terms and conditions that govern the conduct of these activities by national banks; or

(2) A national bank is specifically authorized to control by the express terms of a Federal statute (other than section 5136A of the Revised Statutes), and not by implication or interpretation, such as by section 25 of the Federal Reserve Act (12 USC 601-604a), section 25A of the Federal Reserve Act (12 USC. 611-631), or the Bank Service Company Act (12 USC 1861 *et seq.*)

The activities of a financial subsidiary are those that (i) are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by national banks) or (ii) have been defined as financial in nature or incidental to a financial activity for bank holding companies pursuant to 12 USC 1843(k)(4) or that the Secretary of the Treasury has determined that are financial in nature or incidental to a financial activity. Notwithstanding clause (ii), however, a financial subsidiary may not (i) insure guarantee, or indemnify against loss, harm, damage, illness, disability, or death (except as permitted under 15 USC 6712 or 6713(c)); (ii) provide or issue certain annuities with certain favorable tax treatment; (iii) real estate investment or development (unless otherwise expressly authorized); (iv) merchant banking activities; and (v) insurance company investment activities.

FMU: financial market utility

FRB: Federal Reserve Board

GAAP: generally accepted accounting principles

GSE: government-sponsored enterprise. Includes Fannie Mae and Freddie Mac.

HAMP: Home Affordable Modification Program

Investment fund: a company (i) where all or substantially all of the assets of the company are financial assets; and (ii) that has no material liabilities. Note that this definition could encompass both a “covered fund” as that term is defined in the Volcker Rule and a securitization.

LOC: letter of credit

MBS: mortgage-backed securities

MDB: multilateral development bank

MSA: mortgage servicing asset

NMSA: non-mortgage servicing asset

Non-DvP transaction: non-delivery-versus-payment transaction in which a bank has delivered securities or commodities to counterparty but has not received deliverables by end of the same business day.

Non-includable subsidiary: subsidiary of a savings association that is engaged in

Non-PvP transaction: non-payment-versus-payment transaction in which a bank has delivered cash or currencies to a counterparty but has not received currencies in return by the end of the same business day.

Non-significant investment: ownership of 10% or less of the issued and outstanding common shares of an institution.

Normal settlement period: shorter of market standard for particular instrument or five business days

Nth to default credit derivatives: all credit derivatives in a transaction, regardless relative loss position. "N" refers to each specific loss position, ranging from first loss to last loss.

OECD: Organization for Economic Cooperation and Development

OTC: over-the-counter. In the context of derivative transactions, the term refers to individually negotiated and traded derivatives, in contrast to derivatives traded over an exchange or through a clearinghouse.

PCCR: purchased credit card receivables

PFE: potential future exposure

Policy loan: loan to insurance policyholder under the provisions of an insurance contract that is secured by the cash surrender value or collateral assignment of the related policy or contract.

PSE: public sector entity, including state, provincial, and local governments

PvP Transaction: payment-versus-performance. A foreign exchange transaction in which each counterparty is obligated to make a final transfer of cash or one or more currencies only if the counterparty has made a final transfer of one or more currencies

Qualifying securities firm: not specifically defined in proposal, but current firms define term to include (i) registered broker-dealers incorporated in the United States and that are in compliance with SEC net capital rules and (ii) securities firms incorporated in other OECD member countries that are subject to supervisory and regulatory arrangements, including risk-based capital requirements, comparable to those imposed on banks in those countries.

Repo-style transaction: a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the [BANK] acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-market daily and subject to daily margin maintenance requirements;

(3) (i) The transaction is a “securities contract'' or “repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401-407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the [BANK] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default (including upon an event of receivership, insolvency, liquidation, or similar proceeding) of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs; or

(B) The transaction is:

(1) Either overnight or unconditionally cancelable at any time by the [BANK]; and

(2) Executed under an agreement that provides the [BANK] the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of counterparty default; and

(4) The [BANK] has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that the agreement meets the requirements of paragraph (3) of this definition and is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

SBIC: Small Business Investment Company

SEC: Securities and Exchange Commission

Securitization exposure: (1) on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization (including a resecuritization), or (2) an exposure that directly or indirectly references a securitization exposure described in clause (1). An investment fund is not a securitization exposure.

Separate account: legally segregated pool of assets owned and held by an insurance company and maintained separately from the company’s general account assets for the benefit of an individual contract holder, subject to four conditions (i) account is legally recognized under applicable law; (ii) assets in account are insulated from general liabilities of the insurance company under applicable law and protected form insurance company’s general creditors in the event of insolvency; (iii) Insurance company invests funds in the account as directed by contract holder in designated investment alternatives or in accordance with specific investmetn objectives or policies; and (iv) all investment performance, net of contract fees and assessments must be passed through to contract holder, provided that contract may specify conditions under which there may be a minimum guarantee but not a ceiling.

Servicer cash advance facility: a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures.

Significant investment: ownership of more than 10 percent of the issued and outstanding common shares of a company.

SLHC: savings and loan holding company

SPE: special purpose entity

Synthetic securitization: a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Traditional securitization: a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company described in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) The [AGENCY] may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) The [AGENCY] may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 208.34 (Board), 12 CFR 9.18 (OCC), and 12 CFR 344.3 (FDIC));

(iii) A pension fund regulated under the ERISA or a foreign equivalent thereof; or

(iv) Regulated under the Investment Company Act of 1940 (15 U.S.C. 80a-1) or a foreign equivalent thereof.

Value of business acquired: assets that reflect revenue streams from insurance policies purchased by an insurance company.

Volcker Rule: section 619 of the Dodd-Frank Act (12 USC 1851) and the proposed implementing regulations. Subject to certain exceptions, the Volcker Rule bars a bank from engaging in proprietary trading and from taking an ownership interest in or sponsoring an investment fund that takes advantage of the section 3(c)(1) or 3(c)(7) exemptions in the Investment Company Act of 1940.

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