

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Ch. III**

#### **Semiannual Agenda of Regulations**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the Fall 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

**FOR FURTHER INFORMATION CONTACT:** James P. Sheesley, Assistant Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

#### **Prerule Stage:**

No prerule rulemakings.

#### **Proposed Rule Stage:**

*Quality Control Standards for Automated Valuation Models (3064-AE68)*

The FRB, OCC, FDIC, NCUA, FHFA, and CFPB are developing a rule to implement section 1473 of the Dodd-Frank Act concerning quality control standards for automated valuation models.

*Uniform Rules of Practice and Procedure (3064-AF10)*

The OCC, FRB, FDIC, and NCUA will seek comment on amendments to the Uniform Rules of Practice and Procedure applicable to adjudicatory proceedings before the Office of Financial Institution Adjudication. The existing regulations have not been updated in nearly 25 years. The goal of the rulemaking is to update the regulations to conform with current practice and technology. The FDIC also seeks comments on revisions and additions to its General Rules of Procedure, which will update and modernize administrative proceedings rules related to discovery practices and disclosure of expert witness testimony.

*FDIC Official Sign and Advertising Statement Requirements (3064-AF26)*

The FDIC is issuing proposed amendments to its regulation on Advertisement of Membership to align its policies and keep pace with how today's banks offer products/accept deposits and how consumers connect with banks, including through evolving channels.

*Regulatory Capital Rule: Amendments to the Capital Rule for Large Banking Organizations (3064-AF29)*

The FDIC, OCC, and FRB (Agencies) are inviting public comment on a notice of proposed rulemaking (proposal) that would substantially revise the risk-based requirements applicable to the largest and most complex U.S. banking organizations (those subject to the Category I" and Category II" prudential standards established by the Agencies), as well as banking organizations with significant trading activity.

*Procedures for Monitoring Bank Secrecy Act Compliance (3064-AF34)*

The Agencies and FinCEN plan to seek comment on a Notice of Proposed Rulemaking to define an effective Bank Secrecy Act compliance program in the Procedures for Monitoring Bank Secrecy Act Compliance regulations.

*Activities of Insured State Banks and Insured Savings Associations (RIN 3064-AF58)*

The FDIC is seeking comment from interested parties regarding the FDIC's rules and regulations for activities of insured state banks and insured savings associations.

*\* Community Reinvestment Act (3064-AF78)*

The Agencies will seek comment on a joint proposed rule to revise the Advance Notice of Proposed Rulemaking issued by the FRB in the **Federal Register** on October 19, 2020, and to implement the Community Reinvestment Act (CRA). The CRA generally requires that each Agency issue regulations.

**Final Rule Stage:**

*Simplification of Deposit Insurance Rules (3064-AF27)*

The FDIC is issuing a final rule on amendments to its regulations governing deposit insurance. These changes are intended to assist bankers and depositors in understanding the deposit insurance rules.

*Removal of OTS Regulations Regarding Definitions for Regulations Affecting All State Savings Associations (3064-AF30)*

The FDIC is issuing a final rule to rescind and remove 12 CFR part 390, subpart Q, entitled Definitions for Regulations Affecting All State Savings Associations. This subpart was included in the regulations that were transferred to the FDIC from the OTS on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Act. Upon removal of 12 CFR part 390, subpart Q, the definitions for regulations affecting all state savings associations for which the FDIC has been designated the appropriate federal banking agency will be found at 12 CFR part 362, subpart C, entitled Activities of Insured State Savings Associations. The final rule will not change 12 CFR part 336, subpart C.

*Removal of OTS Regulations Regarding Securities Offerings and Revision of Statement of Policy on Use of Offering Circulars (3064-AF33)*

The FDIC is issuing a final rule to remove the OTS Regulations at part 390, subpart W, regarding securities offerings and the use of offering circulars

*Exemptions to Suspicious Activity Report Requirements (3064-AF56)*

The FDIC is issuing a final rule to modify the requirements for FDIC-supervised institutions to file Suspicious Activity Reports. The final rule amends the FDIC's Suspicious Activity Report regulations to allow the FDIC to issue exemptions from the requirements of those regulations. The final rule makes it possible for the FDIC to grant relief to FDIC-supervised institutions that develop innovative solutions to meet Bank Secrecy Act requirements more efficiently and effectively.

*Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers (3064-AF59)*

The Agencies are issuing a final rule that requires a banking organization to report significant computer-security incidents to its primary regulator on a timely basis.

*Tax Allocation Agreements (3064-AF62)*

The Agencies are issuing a final rule to amend their safety and soundness rules that would add an appendix to require the preservation of an insured depository institution (IDI)'s ownership in and timely receipt of tax refunds, and the equitable allocation of tax liability within a holding company structure. This appendix would incorporate the Agencies' outstanding statements of policy covering requirements under tax allocation agreements between an IDI and its holding company.

*Temporary Asset Thresholds (3064-AF67)*

To mitigate temporary transition costs on banking organizations related to the coronavirus disease 2019 (COVID-19), the Agencies issued an interim final rule that permits regulated banks, bank holding companies, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations with under \$10 billion in total assets as of December 31, 2019, (community banking organizations) to use asset data as of December 31, 2019, in order to determine the applicability of

various regulatory asset thresholds during calendar years 2020 and 2021. The Agencies intend to adopt as final the interim final rule.

*False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo (3064-AF71)*

The FDIC is issuing a final rule codifying a portion of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)(4)), which prohibits any person from misrepresenting the extent and manner of FDIC deposit insurance with respect to particular entities or to the industry generally. This subpart would apply to any person who: falsely represents or implies that any deposit liability, obligation, certificate, or share is insured or guaranteed by the FDIC by use of the words making up the acronym FDIC or use of the FDIC logo or symbol; or who knowingly misrepresents that any deposit is insured by the FDIC or the extent to which, or the manner in which, any deposit is insured.

*Real Estate Lending Policies (3064-AF72)*

The FDIC is issuing a final rule to amend the Code of Federal Regulations 12 CFR part 365, Appendix A to Subpart A, entitled Real Estate Lending Standards (RE Standards) in order to provide a consistent approach for calculating the ratio of loans in excess of the supervisory loan-to-value limits (LTV Ratios) at all FDIC-supervised depository institutions. The methodology in the final rule approximates the historical methodology the FDIC has followed for calculating these ratios without creating any regulatory burden. The final rule also avoids any regulatory burden that could arise if an FDIC-supervised depository institution subsequently decided to switch between different capital rules. In addition, the final rule would make conforming changes to the Community Bank Leverage Ratio rule.

*\* Technical Correction: Brokered Deposits (3064-AF76)*

The FDIC is publishing technical non-substantive amendments to the brokered deposits rule.

*\* Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021; Correction (3064-AF77)*

This amendment includes a correction to the authority citation and instructions the FDIC published in the interim final rule (IFR) regarding the applicability of annual independent audits and reporting requirements for fiscal years ending in 2021, which was published in the **Federal Register** on October 23, 2020.

#### **Completed Actions:**

##### *True Lender Doctrine (3064-AF60)*

The FDIC withdrew this action to seek comment on a proposed rule defining when a state bank is the true lender in the context of a lending partnership between a bank and a non-bank entity.

##### *\* Securitization Safe Harbor Rule; Correction (3064-AF75)*

The final regulation that is the subject of this correction revised the FDIC's Securitization Safe Harbor Rule, which relates to the treatment of financial assets transferred in connection with a securitization transaction, in order to eliminate a requirement that the securitization documents require compliance with Regulation AB of the SEC in circumstances where Regulation AB by its terms would not apply to the issuance of obligations backed by such financial assets. As previously published, the final regulation contained an error in the **Federal Register** instruction to amend the list of authorities cited for 12 CFR part 360 for which this correcting amendment fixes by providing the proper list of authorities cited.

#### **Long-Term Actions:**

##### *Incentive-Based Compensation Arrangements (3064-AD86)*

The OCC, FRB, FDIC, FHFA, NCUA, and SEC (AD86 Agencies) previously sought comment on a joint proposed rule to revise the proposed rule the Agencies published in the **Federal Register** on April 14, 2011, and June 10, 2016, and to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 956 generally requires that the Agencies jointly issue regulations or guidelines: (1) Prohibiting incentive-based payment arrangements that the AD86 Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that

could lead to material financial loss; and (2) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.

*Source of Strength (3064-AE61)*

The Agencies are developing a joint Notice of Proposed Rulemaking which will be published in the **Federal Register**. The rule, when finalized, will implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). That section of the Dodd-Frank Act requires the Agencies to jointly issue final rules that ensure that parent companies of subsidiary insured depository institutions serve as a source of financial strength for such institutions.

*Appraisal Independence (3064-AE95)*

The FDIC plans to develop a joint notice of proposed rulemaking with the OCC, FRB, FHFA, CFPB, and NCUA to implement section 129E of the Truth in Lending Act, which was enacted as section 1472 of the Dodd-Frank Act. Section 129E establishes that real estate appraisals used to support creditors' underwriting decisions should be based on the appraiser's independent professional judgment. The rule also seeks to ensure that appraisers receive customary and reasonable payments for their services.

*Resolution Plans Required for Certain Insured Depository Institutions (3064-AF05)*

The FDIC is issuing a notice of proposed rulemaking to solicit comment on whether and, if so, how to further tailor or improve its rule requiring certain insured depository institutions to submit resolution plans.

*Annual Independent Audits and Reporting Requirements Threshold Adjustment (3064-AF39)*

The FDIC is seeking comment on a proposed rule to revise 12 CFR part 363 which implements section 36 of the Federal Deposit Insurance Act. Part 363 requires annual independent audits and reporting requirements for insured depository institutions with total consolidated assets of \$500 million or more.

*Margin and Capital Requirements for Covered Swap Entities (3064-AF55)*

The OCC, FRB, FDIC, FCA, and FHFA (AF55 Agencies) adopted and invited comment on an interim final rule amending the AF55 Agencies' regulations that require swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants under the AF55 Agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (non-cleared swaps) (Swap Margin Rule). Under the Swap Margin Rule, as amended, initial margin requirements will take effect under a phased compliance schedule spanning from 2016 through 2020, and in a **Federal Register** notice published, the AF55 Agencies have extended the phase-in period to 2021. Due to the COVID-19 pandemic, the AF55 Agencies are extending by one year the Phases 5 and 6 implementation deadlines for initial margin requirements from September 1, 2020, to September 1, 2021 (for phase 5) and from September 1, 2021, to September 1, 2022 (for phase 6). The AF55 Agencies' objective is to give covered swap entities additional time to meet their initial margin requirements under the rule so as not to hamper any efforts underway to address exigent circumstances caused by COVID-19. The AF55 Agencies intend to adopt as final the interim final rule. Additionally, the Swap Margin Rule takes effect under a phased compliance schedule stretching from 2016 through 2020, and the dealers covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Those swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. There are currently financial services firms located within the United Kingdom (U.K.) that conduct swap dealing activities subject to the Swap Margin Rule. The U.K. has provided formal notice of its intention to withdraw from the European Union (E.U.) on March 29, 2019. If this transpires without a negotiated agreement between the U.K. and E.U., these entities located in the U.K. may not be authorized to provide full-scope financial services to swap counterparties located in the E.U. The AF55 Agencies' policy objective in developing the interim final rule was to address one aspect of the scenario likely to ensue, whereby entities located in the U.K. might transfer their existing swap portfolios that face counterparties located in the E.U. over to an affiliate or other related establishment located within the E.U. or the United States (U.S.). The AF55 Agencies seek to address industry concerns about the status of grandfathered swaps in this scenario, so the industry can focus on making preparations for swap transfers. These transfers, if carried out in accordance with the conditions of the interim final rule, will not trigger the application of the Swap Margin Rule to grandfathered swaps



that were entered into before the compliance dates of the Swap Margin Rule. The AF55 Agencies intend to adopt as final the interim final rule.

*Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (3064-AF57)*

The Agencies are issuing this notice of proposed rulemaking to make corrections to certain provisions of the capital rule related to the standardized approach for counterparty credit risk, which is used for calculating the exposure amount of derivative contracts under the regulatory capital rule and was adopted in a final rule published on January 24, 2020.

*Regulatory Capital Rule: Emergency Capital Investment Program (3064-AF73)*

The Agencies issued an interim final rule that provides that preferred stock issued to Treasury under Emergency Capital Investment Program (ECIP) qualifies as additional tier 1 capital and that subordinated debt issued to Treasury under ECIP qualifies as tier 2 capital under the Agencies' capital rule in order to support and facilitate the timely implementation and acceptance of ECIP and promote its purpose. Section 104A of the Community Development Banking and Financial Institutions Act of 1994, which was added by the Consolidated Appropriations Act, 2021, authorizes the Secretary of the Treasury to establish the ECIP through which the Department of the Treasury (Treasury) can make capital investments in low- and moderate-income community financial institutions. The purpose of ECIP is to support the efforts of such financial institutions to, among other things, provide financial intermediary services for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities that have disproportionately suffered from the impacts of the COVID-19 pandemic. The Agencies intend to adopt as final the interim final rule.

*Limits on Extensions of Credit to Executive Officer, Directors, and Principal Shareholders of Insured Nonmember Banks (3064-AF74)*

In response to a proposed comprehensive revision of 12 CFR part 215, Loans to Executive Officers, Directors, And Principal Shareholders of Member Banks (Regulation O) by the FRB, the FDIC is issuing a

counterpart notice of proposed rulemaking to amend 12 CFR 337.3 of FDIC Regulations, which implements insider lending restrictions with respect to state nonmember banks.

Federal Deposit Insurance Corporation.

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