a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) Revisions

(1) In general

The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) Transition period

No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) Report

The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

(Pub. L. 111–203, title I, §170, July 21, 2010, 124 Stat. 1435.)

§5371. Leverage and risk-based capital requirements

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Generally applicable leverage capital requirements

The term ''generally applicable leverage capital requirements'' means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) Generally applicable risk-based capital requirements

The term ''generally applicable risk-based capital requirements'' means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) Definition of depository institution holding company

The term ''depository institution holding company'' means a bank holding company or a savings and loan holding company (as those terms are defined in section 1813 of this title) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(4) Business of insurance

The term ''business of insurance'' has the same meaning as in section 5481(3) of this title.

(5) Person regulated by a State insurance regulator

The term ''person regulated by a State insurance regulator'' has the same meaning as in section 5481(22) of this title.

(6) Regulated foreign subsidiary and regulated foreign affiliate

The terms ''regulated foreign subsidiary'' and ''regulated foreign affiliate'' mean a person engaged in the business of insurance in a foreign country that is regulated by a foreign insurance regulatory authority that is a member of the International Association of Insurance Supervisors or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, where the person, or its principal United States insurance affiliate, has its principal place of business or is domiciled, but only to the extent that—

(A) such person acts in its capacity as a regulated insurance entity; and

(B) the Board of Governors does not determine that the capital requirements in a specific foreign jurisdiction are inadequate.

(7) Capacity as a regulated insurance entity

The term ''capacity as a regulated insurance entity''—

(A) includes any action or activity undertaken by a person regulated by a State insurance regulator or a regulated foreign subsidiary or regulated foreign affiliate of such person, as those actions relate to the provision of insurance, or other activities necessary to engage in the business of insurance; and

(B) does not include any action or activity, including any financial activity, that is not regulated by a State insurance regulator or a foreign agency or authority and subject to State insurance capital requirements or, in the case of a regulated foreign subsidiary or regulated foreign affiliate, capital requirements imposed by a foreign insurance regulatory authority.

(b) Minimum capital requirements

(1) Minimum leverage capital requirements

The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(2) Minimum risk-based capital requirements

The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(3) Investments in financial subsidiaries

For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 24a of this title or section 1831w(a)(2) of this title need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) Effective dates and phase-in periods

(A) Debt or equity instruments on or after May 19, 2010

For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) Debt or equity instruments issued before May 19, 2010

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) Debt or equity instruments of smaller institutions

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, or March 31, 2010, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) Depository institution holding companies not previously supervised by the Board of Governors

For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after July 21, 2010[1]

(E) Certain bank holding company subsidiaries of foreign banking organizations

For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after July 21, 2010.

(5) Exceptions

This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.], and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any bank holding company or savings and loan holding company that is subject to the application of appendix C to part 225 of title 12, Code of Federal Regulations (commonly known as the ''Small Bank Holding Company and Savings and Loan Holding Company Policy Statement'').

(6) Study and report on small institution access to capital

(A) Study required

The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

[1] So in original. Probably should be followed by a period.

(B) Scope

For purposes of this study required by subparagraph (A), the term ''smaller insured depository institution'' means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) Report to Congress

Not later than 18 months after July 21, 2010, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) Capital requirements to address activities that pose risks to the financial system

(A) In general

Subject to the recommendations of the Council, in accordance with section 5330 of this title, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) Content

Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

(c) Clarification

(1) In general

In establishing the minimum leverage capital requirements and minimum risk-based capital requirements on a consolidated basis for a depository institution holding company or a nonbank financial company supervised by the Board of Governors as required under paragraphs (1) and (2) of subsection (b), the appropriate Federal banking agencies shall not be required to include, for any purpose of this section (including in any determination of consolidation), a person regulated by a State insurance regulator or a regulated foreign subsidiary or a regulated foreign affiliate of such person engaged in the business of insurance, to the extent that such person acts in its capacity as a regulated insurance entity.

(2) Rule of construction on Board's authority

This subsection shall not be construed to prohibit, modify, limit, or otherwise supersede any other provision of Federal law that provides the Board of Governors authority to issue regulations and orders relating to capital requirements for depository institution holding companies or nonbank financial companies supervised by the Board of Governors.

(3) Rule of construction on accounting principles

(A) In general

A depository institution holding company or nonbank financial company supervised by the Board of Governors of the Federal Reserve that is also a person regulated by a State insurance regulator that is engaged in the business of insurance that files financial statements with a State insurance regulator or the National Association of Insurance Commissioners utilizing only Statutory Accounting Principles in accordance with State law, shall not be required by the Board under the authority of this section or the authority of the Home Owners' Loan Act [12 U.S.C. 1461 et seq.] to prepare such financial statements in accordance with Generally Accepted Accounting Principles.

(B) Preservation of authority

Nothing in subparagraph (A) shall limit the authority of the Board under any other applicable provision of law to conduct any regulatory or supervisory activity of a depository institution holding company or non-bank financial company supervised by the Board of Governors, including the collection or reporting of any information on an entity or group-wide basis. Nothing in this paragraph shall excuse the Board from its obligations to comply with section 5361(a) of this title and section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2)), as appropriate.

(Pub. L. 111–203, title I, §171, July 21, 2010, 124 Stat. 1435; Pub. L. 113–250, §2(a), Dec. 18, 2014, 128 Stat. 2886; Pub. L. 113–279, §2, Dec. 18, 2014, 128 Stat. 3017; Pub. L. 114–94, div. G, title LXXXVII, §87001, Dec. 4, 2015, 129 Stat. 1798; Pub. L. 115–174, title II, §207(d), May 24, 2018, 132 Stat. 1312.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (b)(5)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Home Owners' Loan Act, referred to in subsec. (c)(3)(A), is act June 13, 1933, ch. 64, 48 Stat. 128, which

is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Subsec. (b)(5)(C). Pub. L. 115–174 added subpar. (C) and struck out former subpar. (C) which read as follows: ''any bank holding company or savings and loan holding company having less than $1,000,000,000 in total consolidated assets that complies with the requirements of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 CFR part 225 appendix C), as the requirements of such Policy Statement are amended pursuant to section 1 of an Act entitled 'To enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes'.''

2015—Subsec. (b)(4)(C). Pub. L. 114–94 inserted ''or March 31, 2010,'' after ''December 31, 2009,''.

2014—Subsec. (a)(4) to (7). Pub. L. 113–279, § 2(1), added pars. (4) to (7).

Subsec. (b)(5)(C). Pub. L. 113–250 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.''

Subsec. (c). Pub. L. 113–279, § 2(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKS

Pub. L. 115–174, title II, § 201, May 24, 2018, 132 Stat. 1306, provided that:

''(a) DEFINITIONS.—In this section:

''(1) COMMUNITY BANK LEVERAGE RATIO.—The term 'Community Bank Leverage Ratio' means the ratio of the tangible equity capital of a qualifying community bank, as reported on the qualifying community bank's applicable regulatory filing with the qualifying community bank's appropriate Federal banking agency, to the average total consolidated assets of the qualifying community bank, as reported on the qualifying community bank's applicable regulatory filing with the qualifying community bank's appropriate Federal banking agency.

''(2) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS; GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The terms 'generally applicable leverage capital requirements' and 'generally applicable risk-based capital requirements' have the meanings given those terms in section 171(a) of the Financial Stability Act of 2010 (12 U.S.C. 5371(a)).

''(3) QUALIFYING COMMUNITY BANK.—

''(A) ASSET THRESHOLD.—The term 'qualifying community bank' means a depository institution or depository institution holding company with total consolidated assets of less than $10,000,000,000.

''(B) RISK PROFILE.—The appropriate Federal banking agencies may determine that a depository institution or depository institution holding company (or a class of depository institutions or depository institution holding companies) described in subparagraph (A) is not a qualifying community bank based on the depository institution's or depository institution holding company's risk profile, which shall be based on consideration of—

''(i) off-balance sheet exposures;

''(ii) trading assets and liabilities;

''(iii) total notional derivatives exposures; and

''(iv) such other factors as the appropriate Federal banking agencies determine appropriate.

''(b) COMMUNITY BANK LEVERAGE RATIO.—The appropriate Federal banking agencies shall, through notice and comment rule making under section 553 of title 5, United States Code—

''(1) develop a Community Bank Leverage Ratio of not less than 8 percent and not more than 10 percent for qualifying community banks; and

''(2) establish procedures for treatment of a qualifying community bank that has a Community Bank Leverage Ratio that falls below the percentage developed under paragraph (1) after exceeding the percentage developed under paragraph (1).

''(c) CAPITAL COMPLIANCE.—

''(1) IN GENERAL.—Any qualifying community bank that exceeds the Community Bank Leverage Ratio developed under subsection (b)(1) shall be considered to have met—

''(A) the generally applicable leverage capital requirements and the generally applicable risk-based capital requirements;

''(B) in the case of a qualifying community bank that is a depository institution, the capital ratio requirements that are required in order to be considered well capitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831*o*) and any regulation implementing that section; and

''(C) any other capital or leverage requirements to which the qualifying community bank is subject.

''(2) EXISTING AUTHORITIES.—Nothing in paragraph (1) shall limit the authority of the appropriate Federal banking agencies as in effect on the date of enactment of this Act [May 24, 2018].

''(d) CONSULTATION.—The appropriate Federal banking agencies shall—

''(1) consult with the applicable State bank supervisors in carrying out this section; and

''(2) notify the applicable State bank supervisor of any qualifying community bank that it supervises that exceeds, or does not exceed after previously exceeding, the Community Bank Leverage ratio developed under subsection (b)(1).''

[For definitions of ''appropriate Federal banking agency'', ''depository institution'', and ''depository institution holding company'', as used in section 201 of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a note under section 5365 of this title.]

SMALL BANK HOLDING COMPANY POLICY STATEMENT

Pub. L. 115–174, title II, § 207(a)–(c), May 24, 2018, 132 Stat. 1312, provided that:

''(a) DEFINITIONS.—In this section [enacting this note and amending this section]:

''(1) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(2) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given the term in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

''(b) CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.—Not later than 180 days after the date of enactment of this Act [May 24, 2018], the Board shall revise appendix C to part 225 of title 12, Code of Federal Regulations (commonly known as the 'Small Bank Holding Company and Savings and Loan Holding Company Policy Statement'), to raise the consolidated asset threshold under that appendix from $1,000,000,000 to $3,000,000,000 for any bank holding company or savings and loan holding company that—

''(1) is not engaged in significant nonbanking activities either directly or through a nonbank subsidiary;

''(2) does not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and

''(3) does not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

''(c) EXCLUSIONS.—The Board may exclude any bank holding company or savings and loan holding company, regardless of asset size, from the revision under subsection (b) if the Board determines that such action is warranted for supervisory purposes.''

[For definition of ''bank holding company'' as used in section 207(a)–(c) of Pub. L. 115–174, set out above, see

section 2 of Pub. L. 115–174, set out as a note under section 5365 of this title.]

CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS

Pub. L. 113–250, Dec. 18, 2014, 128 Stat. 2886, provided that:

''SECTION 1. CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.

''(a) IN GENERAL.—Before the end of the 6-month period beginning on the date of the enactment of this Act [Dec. 18, 2014], the Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the 'Board') shall publish in the Federal Register proposed revisions to the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 CFR part 225 appendix C) that provide that the policy shall apply to bank holding companies and savings and loan holding companies which have pro forma consolidated assets of less than $1,000,000,000 and that—

''(1) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary;

''(2) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and

''(3) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

''(b) EXCLUSIONS.—The Board may exclude any bank holding company or savings and loan holding company, regardless of asset size, from the policy statement under subsection (a) if the Board determines that such action is warranted for supervisory purposes.

''SEC. 2. CONFORMING AMENDMENT.

''(a) IN GENERAL.—[Amended this section.]

''(b) TRANSITION PERIOD.—Any small bank holding company that was excepted from the provisions of section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5371] pursuant to subparagraph (C) of section 171(b)(5) (as such subparagraph was in effect on the day before the date of enactment of this Act [Dec. 18, 2014]), and any small savings and loan holding company that would have been excepted from the provisions of section 171 pursuant to subparagraph (C) [of section 171(b)(5)] (as such subparagraph was in effect on the day before the date of enactment of this Act) if it had been a small bank holding company, shall be excepted from the provisions of section 171 until the effective date of the Small Bank Holding Company Policy Statement issued by the Board as required by section 1 of this Act.

''SEC. 3. DEFINITIONS.

''For the purposes of this Act:

''(a) BANK HOLDING COMPANY.—The term 'bank holding company' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

''(b) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).''

§ 5372. Rule of construction

Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

(Pub. L. 111–203, title I, § 172(c), July 21, 2010, 124 Stat. 1439.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5373. International policy coordination

(a) By the President

The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

(b) By the Council

The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) By the Board of Governors and the Secretary

The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

(Pub. L. 111–203, title I, § 175, July 21, 2010, 124 Stat. 1442.)

§ 5374. Rule of construction

No regulation or standard imposed under this subchapter may be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This subchapter, and the rules and regulations or orders prescribed pursuant to this subchapter, do not divest any such agency of any authority derived from any other applicable law.

(Pub. L. 111–203, title I, § 176, July 21, 2010, 124 Stat. 1442.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''this title'', meaning title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.