Office of the Comptroller of the Currency

MEMORANDUM

To: Carl Kaminski, Assistant Director, Bank Activities

Thru: Doug Robertson, Director, Policy Analysis Division

From: Bianca Werner and Karen Furst, Policy Analysis Division

Date: August 8, 2023

Subject: Long-term debt requirements, Proposed Rule

The Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), and the Federal Deposit Insurance Corporation (FDIC), collectively the agencies, are issuing a notice of proposed rulemaking that would require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and insured depository institutions (IDIs), to issue and maintain outstanding a minimum amount of long-term debt (LTD). The proposed rule would require Category II, III, and IV banking organizations to issue a minimum amount of LTD securities.[1]

As you requested, we have assessed the impact of the proposed rule to determine if, pursuant to the Regulatory Flexibility Act (RFA), the rule will have a significant economic impact on a substantial number of small entities. In addition, consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), our review considers whether mandates imposed by the proposed rule may result in an expenditure of $100 million or more, adjusted for inflation (currently $182 million) by state, local, and tribal governments or by the private sector.[2]

Conclusion

We estimate that 16 affected OCC banks would have to raise approximately $141.3 billion in long-term debt. This translates into a total annual cost incurred by the banks to comply with the proposed rule ranging from approximately $3.8 billion in the fixed asset scenario to

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[1] A Category II covered entity is one that has (i) at least $700 billion or more in average total consolidated assets, or (ii) at least $100 billion in average total consolidated assets and $75 billion or more in average cross-jurisdictional activity. A Category III covered entity is one that has (i) at least $250 billion in average total consolidated assets, or (ii) (A) $100 billion in average total consolidated assets and (B) $75 billion or more in average total nonbank assets, average weighted short-term wholesale funding, or average off-balance sheet exposure. A Category IV covered entity is one that has at least $100 billion in average total consolidated assets.

[2] We estimate the UMRA inflation adjustment using the change in the annual U.S. GDP Implicit Price Deflator between 1995 and 2022, which are the most recent annual data available. The deflator was 71.300 in 1995 and 129.511 in 2022, resulting in an inflation adjustment factor of 1.82 (129.511/71.300 = 1.816, and $100 million x 1.82 = $182 million).

approximately $1.7 billion ($1.6 billion + $86.9 million in cost of capital) in the balance sheet growth scenario. We expect the true impact to banks is likely somewhere within this range. Furthermore, because the rule provides a three-year transition, we calculate the present value of the annual cost of the proposal. We estimate that the present value of the aggregate cost of the proposal once fully phased in would range from approximately $1.4 billion to $3.1 billion. Thus, we believe the proposed rule would result in an expenditure of $182 million or more annually by state, local, and tribal governments or by the private sector. Furthermore, we believe the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Background

In recent years, merger activity and organic growth have increased the size of large banking organizations (LBOs) that are not Global Systemically Important Banks (GSIBs), particularly for Category III firms. In addition, some LBOs have increased their reliance on large uninsured deposits to fund their operations over the past decade. These deposits may be less stable relative to insured deposits under conditions of firm-specific stress.

Additionally, some LBOs have heightened cross-jurisdictional activity or significant non-bank operations that could present challenges to orderly resolution due to the complexities of coordinating among resolution authorities. While size alone can limit options and increase the potential negative impacts in the resolution of an IDI, other complexities can create disruption risks and impediments to resolution, including significant international operations requiring cross-border cooperation, and material operations, assets, liabilities, and services outside the bank chain. These complicating features of bank resolution can raise challenges to the feasibility of creating and stabilizing a viable bridge depository institution or other appropriate resolution strategies for a failing IDI due to multiple competing insolvencies within the organization, discontinuity of operations, and the destruction of value, which could result in a disorderly and costly resolution.

Although post-2008 financial crisis reforms generally improved the resiliency of LBOs, an extra layer of loss-absorbing capacity could increase the FDIC's optionality in resolving IDIs of LBOs and limit the impact of their failures. Additional loss-absorbing resources could also limit contagion risk by reducing the likelihood of uninsured depositors suffering loss. By keeping various resolution options open across a range of scenarios, the FDIC would be in a better position to resolve a large IDI in a manner that is least costly to the deposit insurance fund (DIF) without necessarily increasing concentration among the largest banking organizations, which would occur if the resolution sale is to another LBO or GSIB.

Regional banking organizations suffered material stress in the form of depositor outflows after the recent failures of Signature Bank, New York, New York, Silicon Valley Bank, Santa Clara, California, and First Republic Bank. As demonstrated by the failures of these institutions and the stress experienced by other firms in the wake of these failures, the size of even Category IV firms heightens the potential impact of a possible costly and disruptive resolution.

As illustrated with the failures of Silicon Valley Bank and Signature Bank, there were limited options available to the FDIC for resolving them, including disruptive and costly liquidation strategies or the sale of large banks to even larger financial institutions.

Approaches to resolution and LBOs

GSIB and other LBO resolution strategies tend to follow one of two generally recognized resolution strategies.[3]

As described in the public sections of their resolution plans, the U.S. GSIBs have all adopted a single-point-of-entry (SPOE) resolution strategy, in which only the top-tier holding company would enter a resolution proceeding (bankruptcy) and in which losses would be passed up from subsidiaries to the parent company shareholders and LTD holders to recapitalize the subsidiaries. To facilitate this resolution strategy, the TLAC rule requires a GSIB to maintain a minimum level of eligible LTD at the holding company level. Proceeds from issuance of long-term debt may be down-streamed to subsidiaries, such as in the form of internal debt, or maintained at the holding company to allocate as resource needs arise at particular subsidiaries. Prior to resolution, the top-tier holding company would down-stream all remaining available resources. Upon exhaustion of the remaining holding company resources, the holding company would enter resolution while the subsidiaries, if viable, continue operating.

By allowing viable subsidiaries to continue operating after the resolution of the top-tier holding company, the SPOE resolution process limits the risk of competing resolution processes across multiple resolution authorities and jurisdictions that could greatly complicate the resolution of a failing firm and impede the continuity of critical operations. An SPOE resolution also avoids losses to subsidiaries' third-party creditors and may reduce the need for asset fire sales that could pose broader risks to financial stability. The TLAC, LTD, and clean holding company requirements that the Board has applied to the U.S. GSIBs were generally designed to support the predominant resolution strategy, SPOE. These GSIB requirements enable loss-absorbing resources issued at the holding company level to be down-streamed to subsidiaries in a pre-positioned fashion, as well as to be made available on a flexible incremental basis if called for under stress.

Some LBOs have significant international footprints or significant activities, assets, and services outside the bank chain, but they generally have fewer complex operations and fewer systemically important critical operations. As described in the public sections of the resolution plans filed by Category II, III and IV LBOs, a multiple-point-of-entry (MPOE) resolution strategy is generally contemplated by these firms, in which the parent holding company would enter bankruptcy and the IDI subsidiary would undergo FDIC-led resolution under the Federal Deposit Insurance (FDI) Act. In conducting the IDI-level resolution, the FDIC can, among other things, provide liquidity when necessary and take advantage of the statutory stays on derivatives and other qualified financial contracts, as well as its own historical experience in administering IDI-level resolutions.

Drawing on that experience, the FDIC has several options for carrying out the resolution of an IDI, including selling assets and transferring deposits to healthy acquirers; transferring assets and deposits to a bridge bank (which, among other things, could either sell off assets over time or conduct a sale or an IPO once the restructured business has stabilized); or executing an insured deposit payout. In deciding which option to pursue, the FDIC must

[3] See 82 FR 8266, 8270 n.29 (January 24, 2017).

show how it would meet the least-cost test set forth in the FDI Act in furtherance of its obligation to provide insured depositors with insurance coverage. While an MPOE resolution strategy may be appropriate for an LBO, without sufficient loss absorbing resources at the IDI, the options available to the FDIC for resolving the subsidiary IDI under the FDI Act may be limited and the timeline may be condensed. The size and funding profile of LBOs merits consideration of whether a larger set of options, supported by additional resources at the IDI, is needed to contain the impact of their failure on the larger financial system immediately and over time, and the potential costs of such an approach. Particularly for the largest and most complex LBOs, the availability of additional long-term loss-absorbing capacity may be helpful in a range of resolution scenarios, including a bail-in recapitalization or a bridge bank, that could afford the FDIC the ability to stabilize operations, preserve franchise value, and provide more time to consider the impact on future financial stability of marketing a failed institution in whole or in parts.

The proposed rule

The proposed rule would require certain IDIs to issue eligible LTD. First, the proposed rule would apply to any IDI that has an average of at least $100 billion in total consolidated assets over the four most recent calendar quarters and is not a consolidated subsidiary of (1) a Category II, III, or IV Bank Holding Company, Savings and Loan Holding Company, or Intermediate Holding Company (covered entity), (2) a U.S. GSIB, or (3) a foreign GSIB subject to the TLAC rule (externally issuing IDI). Second, the proposed rule would apply to an IDI that has at least $100 billion in total consolidated assets and that is a consolidated subsidiary of a covered entity or a foreign GSIB (internally issuing IDI).[4,5] Lastly, the proposed rule would apply to an IDI that is affiliated with IDIs in the first two categories (together with externally issuing IDIs and internally issuing IDIs, covered IDIs).

Under the proposed rule, a covered IDI would be required to issue LTD that is issued directly from the covered IDI, is unsecured, has a maturity greater than or equal to one year from the date of issuance, has "plain vanilla" features, including the elements described above, and is governed by U.S. law.[6] In addition, LTD with a maturity of at least one but less than two years would be subject to a 50 percent haircut. A covered IDI would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered IDI's total risk-weighted assets, 3.5 percent of its average total consolidated assets, or 2.5 percent of its total leverage exposure if the covered IDI is subject to the supplementary leverage ratio (SLR).

The proposed rule would also require eligible LTD issued by a covered IDI to be subordinated so that the claim represented by the LTD in the receivership of the IDI would be junior to depositors and general unsecured claims.

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[4] IDIs that are subsidiaries of U.S. GSIBs would not be subject to a LTD requirement.

[5] IDIs with $100 billion or more in total assets that are subsidiaries of Category II, III, and IV U.S. intermediate holding companies would be subject to the IDI-level requirement regardless of whether they ultimately are controlled by a global systemically important FBO.

[6] In the case of covered IDIs that are not standalone IDIs, eligible LTD would be required to be issued to a company domiciled in the United States that controls, directly or indirectly, the covered IDI.

In addition, the proposed rule would permit certain existing external LTD instruments issued by a covered IDI to qualify as eligible LTD even if they do not meet all of the requirements that apply to new LTD instruments.

Impact on OCC-supervised banks

The OCC currently supervises 1,067 institutions (commercial banks, trust companies, federal savings associations, and branches or agencies of foreign banks).[7] The proposed rule would impact 16 OCC-supervised banks.

To estimate the LTD these 16 banks would be required to maintain, we calculate for each bank the greater of 6.0 percent of their total risk-weighted assets, 3.5 percent of their average total consolidated assets, or 2.5 percent of their total leverage exposure if they are subject to the SLR. Using Q1 2023 call report data, we estimate that the maximum total amount of LTD that the 16 affected OCC banks would have to raise is approximately $141.3 billion. As explained further below, this results in an overall annual cost increase for affected OCC banks ranging from approximately $1.7 billion to $3.8 billion.

This upper bound estimate of required LTD does not account for the rule's grandfathering provisions that would allow certain current debt issuances to count as LTD, even if they do not meet all the requirements in the proposed rule. This is because once the existing debt is refinanced or otherwise reissued, the new debt instruments would be required to meet the new regulatory standard. Thus, we expect that accounting for grandfathered debt would potentially underestimate the true long-term impact of the rule, as banks would have to ultimately issue the incremental amount of LTD that was initially temporarily met with grandfathered instruments, all else equal.

To estimate the interest spread, we first consider the rate banks would pay on their issued LTD, which we assume to be the same regardless of whether they are required to sell to the parent holding company (i.e., internal LTD) or externally to the market. We also need to determine how banks would allocate the funds raised across their balance sheet and apply return rates to the corresponding instruments on a bank's balance sheet to estimate the net impact on a bank's revenues.[8]

For the market rate that 16 affected OCC banks would pay on their LTD, we assume an interest rate on bank debt of 4.25 percent.[9] This would result in an aggregate annual expenditure of approximately $6 billion.[10] Note that for purposes of this analysis we assume banks would have to pay a market rate of return on their LTD. However, in reality, banking organizations may have to pay a premium over the market rate in order to attract investors, depending on the economic environment in which they are required to issue external LTD.

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[7] Based on data accessed using FINDRS on May 3, 2023.

[8] For purposes of this analysis, we ignore other frictions, such as transaction costs from facilitating the sale of the LTD instruments, that may result in additional costs to affected banks. Though we expect these costs to be modest in light of the magnitude of the quantified impacts, their omission could potentially understate the true costs to affected banks.

[9] The interest rate of 4.25 percent is determined using quarterly bank call report data. For banks with assets greater than $100 billion (the size threshold of affected banks under the proposed rule), the average interest rate on subordinated debt issued between Q1 2018 and Q4 2022 was 4.25 percent.

[10] $141.3 billion × 0.0425 = $6 billion

As for how banks would adjust their balance sheets, banks could allocate the $141.3 billion in proceeds from issuing required LTD across their balance sheet in a number of different ways. While we do not try to predict precisely how a bank would respond, we consider a range of potential scenarios. In one extreme, a bank might keep its asset side of the balance sheet fixed and only alter the composition of its funding sources on the liability side of its balance sheet to adjust for the increased $141.3 billion in LTD. In the other extreme scenario, a bank could grow the asset side of the balance sheet to fully match the increased liabilities of $141.3 billion in LTD.[11]

In the fixed asset scenario, we assume that an affected bank would decrease other funding sources on the liability side of the balance sheet. Specifically, we assume that an affected bank would adjust downwards their aggregate holdings of short-term liabilities by $141.3 billion. While short-term liabilities would include both deposits and federal funds repurchase agreements (repos), the funding cost of each category of liability is relatively the same. This in turn makes the distribution of decreased funding across the short-term liabilities categories irrelevant for purposes of estimating an aggregate quantitative impact to affected banks. Furthermore, banks are unlikely to attempt reducing short-term liabilities through a reduction in deposits. Instead, we expect banks would more likely focus on downward adjusting other short-term liabilities such as their repo holdings. Using a five-year average repo daily rate of 1.54 percent[12] and multiplying it by the decreased short-term liability value of $141.3 billion results in an annual expenditure decrease to affected banks of approximately $2.2 billion.[13] The overall net impact to affected banks in this scenario is approximately $3.8 billion in increased annual expenditures.[14]

In the balance sheet growth scenario, we assume that an affected bank would adjust upwards the dollar value of each of three broad asset categories: cash, securities, and loans. For simplicity, we further assume that a bank will maintain their current business and operational strategies and thus maintain the same proportion of each category to total assets as they maintained prior to the implementation of the proposed rule (i.e., based on Q1 2023 proportion of asset category value to total assets). To estimate the increased dollar amount allocated to each asset category, we multiply a bank's Q1 2023 proportion by the total amount of required LTD they must raise. Then, for each asset category, we apply a rate of return to determine the bank's increased revenues associated with increased assets. For cash, we apply a daily rate of return based on the five-year average daily repo rate of 1.54 percent. For securities, we apply a five-year average rate on five-year U.S. Treasuries of 1.94

[11] In our analysis, we do not account for an increase in required LTD that would result from balance sheet growth.

[12] We use the general collateralized repo rate as a proxy for the daily repo rate in this analysis. While the most recent daily repo rate, as of July 20, 2023, is 5.03 percent, we use a five-year average daily repo rate of 1.54 percent, estimated from July 20, 2018, through July 20, 2023. Taking a long-run average may provide a more realistic economic environment at the time the rule is implemented than the most recent snapshot in time. Alternatively, using a long-run average may significantly overstate the upper bound estimate. For the underlying data, see https://www.newyorkfed.org/markets/reference-rates/bgcr.

[13] $141.3 billion × 0.0154 = $2.2 billion

[14] $6 billion - $2.2 billion = $3.8 billion

percent[15] to match a presumed maturity of the LTD instruments, as two years would be too short in maturity since LTD gets a 50 percent haircut once there is only one year to maturity, and ten years might be too long of a horizon given the current rate environment. In addition, by using a Treasury rate of return, our return on securities estimate is conservative and potentially understates the true return to a bank if they increase their securities holdings, as securities portfolios can include not only U.S. Treasury securities, but also agency securities, mortgage-backed securities (residential and/or commercial), or debt securities, all of which should command a higher return than Treasuries to compensate for their increased risk relative to Treasuries. Last, for loans, we apply an estimated bank specific loan portfolio rate of return, based on a given bank's five-year average loan portfolio return, which ranges from zero for banks that have no loan portfolio to 7.5 percent.[16] Applying these three rates to the corresponding increases in dollar holdings of cash, securities, and loan assets results in an aggregate annual revenue increase of $4.4 billion for the 16 affected OCC banks. The overall net impact to affected banks in this scenario is approximately $1.6 billion in increased annual expenditures.[17]

Capital impact

In the fixed asset scenario, there would be no capital implications for the affected banks for changing the composition of their funding structure. However, there would be capital implications in the balance sheet growth scenario. We consider increases in both risk-based capital and leverage capital requirements. Growth in the asset categories of cash and securities would have a zero percent risk weight treatment under the current capital framework.[18] For the risk weight assigned to loan portfolio growth, we use a bank-specific metric, calculated as a bank's total risk-weighted assets divided by total assets less cash and U.S. Treasury securities to net out assets that receive a zero percent risk weight.[19] We then apply the minimum required threshold of eight percent for the total risk-based capital ratio. To determine the increase in a bank's leverage requirement, we apply a four percent minimum required capital threshold for tier 1 leverage and three percent for the SLR threshold for banks currently subject to the SLR. Finally, we take the maximum of the new risk-based capital and leverage capital a bank would have to raise. Doing so results in

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[15] As of July 20, 2023, the five-year U.S. Treasury rate is 4.08 percent (see https://ycharts.com/indicators/5_year_treasury_rate). However, for purposes of this analysis, we use a longer-run five-year average Treasury rate of 1.94 percent, estimated from July 23, 2018, through July 21, 2023. For the underlying data, see https://www.nasdaq.com/market-activity/fixed-income/cmtn5y/historical.

[16] We estimate a five-year average loan portfolio return for each affected bank using the following equation for each year's loan portfolio return: 100 *(total interest income on loans – provision for loan and lease losses) / total loans. We estimate this equation for each of five years using Q4 2018 – Q4 2022 call report data and then calculate the average to get the five-year average loan portfolio return for each bank.

[17] $6 billion - $4.4 billion = $1.6 billion

[18] Securities would receive a zero risk-weight treatment because we assume securities would be entirely comprised of U.S. Treasuries. However, in reality, bank securities portfolios can include not only U.S. Treasury securities, but also agency securities, mortgage-backed securities (residential and/or commercial), or debt securities, all of which have a higher risk weight than U.S. Treasuries.

[19] We also calculate the risk-based capital implications under the assumption of a uniform 50 percent risk weight treatment for increased loan holdings across all affected banks. However, to be conservative, our main analysis uses the larger of the two impacts (i.e., the bank-specific risk weight approach).

required capital of approximately $7.6 billion that affected banks would have to raise under the balance sheet growth scenario.[20]

Cost of capital

To estimate the cost to OCC banks of a higher minimum required capital under the balance sheet growth scenario, we examine the effect of these requirements on capital structure and the overall cost of capital.[21] The cost of financing a bank or any firm is the weighted average cost of its various financing sources, such as debt and equity financing. Because interest payments on debt are tax deductible, a capital structure with more debt relative to equity decreases corporate taxes, thereby decreasing total funding costs, and the weighted average cost of financing tends to decrease as leverage increases. We estimate the increase in total funding costs due to a potential decrease in tax deductions. To be conservative, we use a statutory corporate tax rate of 26 percent, rather than the effective tax rate for each bank, which is affected not only by the statutory federal and state rates, but also by the probability of positive earnings and the offsetting effects of personal taxes on required bond yields.[22] We estimate that under the balance sheet growth scenario, the growth would cause affected banks to increase capital by approximately $7.6 billion. Using an estimated interest rate on debt of 4.4 percent,[23,24] we estimate that the annual after-tax cost of an increase in capital (assumed equal to the estimated decrease in debt) of $7.6 billion is approximately $86.9 million per year.[25]

Compliance costs

In addition to an increase in interest expense, there likely would be some additional administrative costs related to the actual issuance of the debt instruments as well as to

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[20] When comparing the risk-based capital and leverage capital requirements, the approach of using a 50 percent risk weight treatment for increased loan holdings instead of a bank-specific risk weight resulted in an aggregate increase in required capital of approximately $5.2 billion.

[21] See Merton H. Miller, (1995), "Do the M & M propositions apply to banks?" *Journal of Banking & Finance*, Vol. 19, pp. 483-489.

[22] We estimate a 26 percent rate for the marginal tax savings rate by taking the sum of U.S. and state corporate income tax rates. For the U.S. corporate income tax rate, we use the top marginal rate of 21 percent. For the state corporate income tax rate, we use an estimate of five percent for banks based on a Federation of Tax Administrators report (for tax year 2022), which shows that current state corporate income tax rates for "financial institutions" range from approximately zero percent to 11 percent (see https://taxadmin.memberclicks.net/assets/docs/Research/Rates/corp_inc.pdf).

[23] The interest rate of 4.4 percent is determined using quarterly bank call report data. For banks with assets greater than $10 billion, the average interest rate on subordinated debt issued between Q1 2013 and Q1 2023 was 4.37 percent. This finding is validated when the analysis is repeated for a restricted subsample that includes only publicly traded holding companies. When using this subsample, the average interest rate on subordinated debt issued between Q1 2013 and Q1 2023 was 4.40 percent.

[24] Throughout the rest of the analysis uses a five-year horizon for estimating returns, whether return on bank debt or return on daily repo holdings or U.S. Treasuries. However, we use a ten-year horizon for estimating the return on bank debt in the cost of capital calculation. Using a five-year horizon throughout the rest of the analysis more closely matches the phase-in period of the rule while the cost of capital calculation uses a ten-year horizon for a longer steady state. The bank debt rate estimate here is also based off of a different sample of banks. The earlier estimate for the rate on five-year bank debt (i.e., 4.25 percent) uses banking organizations with total assets exceeding $100 billion while the cost of capital debt rate uses a broader sample of banking organizations to include any with total assets greater than $10 billion.

[25] $7.6 billion × 0.044 (interest rate) × 0.26 (statutory tax savings) = $86.9 million

establish procedures to ensure the required amount of debt is issued to comply with the proposed rule. While these additional costs are not factored in quantitatively, we expect these costs to be modest relative to the estimated cost of the proposed rule.

Non-monetized benefits

There are several potential benefits associated with the proposed rule. In a gone-concern capacity, requiring banks to hold more long-term debt could facilitate an easier and more efficient resolution once a bank enters into receivership, as there will be more subordinated debt to support the failed bank. In a going-concern capacity, requiring banks to hold more long-term debt may decrease a bank's interest rate risk exposure as the maturity mismatch between the asset and liability side of the balance sheet could decrease, depending on how the bank chooses to adjust their balance sheet. It could also result in more stable funding for affected banks, as the composition of a bank's liabilities could shift from shorter- to longer-term liabilities.

Total cost

We estimate that 16 affected OCC banks would have to issue approximately $141.3 billion of LTD. This translates into a total annual cost incurred by the banks to comply with the proposed rule ranging from approximately $3.8 billion in the fixed asset scenario to approximately $1.7 billion ($1.6 billion + $86.9 million in cost of capital) in the balance sheet growth scenario, once fully phased in. We expect the true impact to banks is likely somewhere within this range.

Because the rule provides a three-year transition, we calculate the present value of the annual cost of the proposal.[26] The three-year transition period would be the same for all covered institutions, regardless of whether a covered institution is required to issue internally to a parent or externally. Banks would be required to meet 25 percent of the requirement at the end of year one, 50 percent of the requirement at the end of year two, and 100 percent of the requirement at the end of year three. We estimate that the present value of the aggregate cost of the proposal once fully phased in would range from approximately $1.4 billion to $3.1 billion.[27]

Comparison with alternatives

When an agency is proposing a rule that is expected to have a significant impact under UMRA, the agency should examine the impact of one or more reasonable alternatives.[28] Therefore, we consider two alternative scenarios to the proposed rulemaking. As an alternative approach to the proposal, we consider a scenario which modifies the rule's proposed LTD thresholds for determining how much LTD affected banks must raise. We also

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[26] Banks that cross the $100 billion threshold in total assets in the future would be subject to the same three-year phased transition.

[27] We use a discount factor of 5.3 percent which is based on the average inflation rate, measured as year-over-year percent changes in the Consumer Price Index, over the past three years (July 2020 through June 2023). Based on the transition schedule, the present value is calculated as: $1.7 billion (1/(1.053^4)) to $3.8 billion (1/(1.053^4)).

[28] Estimated expenditures are the focus of the UMRA and RFA analyses for the proposed rule. The analysis of the final rule considers broader impacts to satisfy Congressional Review Act requirements, which apply to final rules only, but are considered qualitatively below in this impact analysis.

consider a narrowing of the scope of the rule to only qualifying Category II and III banks (i.e., IDIs whose assets are greater than or equal to $100 billion plus their affiliate IDIs), while omitting Category IV banks.

Under the first alternative scenario, we consider lowering the LTD threshold applied to total risk-weighted assets. Specifically, we consider a 3 percent of risk-weighted assets threshold instead of the proposed 6 percent. We retain the other thresholds of 3.5 percent of average total consolidated assets, or 2.5 percent of total leverage exposure if the covered IDI is subject to the supplementary leverage ratio. In this alternative scenario, we estimate that the maximum total amount of LTD that 16 affected OCC banks would have to issue is approximately $104.3 billion. This would result in a potential reduction to OCC banks of approximately $37 billion in required LTD,[29] and savings of approximately $1 billion annually under the fixed asset scenario.

Under the second alternative scenario, we consider narrowing the scope of the proposal to only six qualifying Category II and III OCC banks plus their affiliates while retaining the rule's proposed LTD thresholds for determining how much LTD affected banks must issue. In other words, a covered IDI would be required to maintain outstanding eligible LTD in an amount that is the greater of 6.0 percent of the covered IDI's total risk-weighted assets, 3.5 percent of its average total consolidated assets, or 2.5 percent of its total leverage exposure if the covered IDI is subject to the supplementary leverage ratio. In this narrower scoped scenario, we estimate that the maximum total amount of LTD that affected OCC banks would have to issue is approximately $73.2 billion. This would result in a potential savings to Category IV banks and their IDI affiliates associated with a reduction of approximately $68.1 billion in required LTD,[30] and savings of approximately $1.8 billion annually under the fixed asset scenario.

Under both of the alternatives outlined above, if a covered bank (under the proposed rule) enters receivership, the receivership may be less efficient and/or more costly than it would be under the rule as proposed.

UMRA

Consistent with the UMRA, our review considers whether the mandates imposed by the proposed rule may result in an expenditure of $100 million or more by state, local, and tribal governments, or by the private sector, in any one year, adjusted annually for inflation (currently $182 million). We estimate that the annual aggregate cost of the proposal once fully phased in would range from approximately $1.7 billion to $3.8 billion. Therefore, we conclude that the proposed rule would result in an expenditure of $182 million or more annually by state, local, and tribal governments, or by the private sector.

RFA

As part of our analysis, we consider whether the proposed rule would have a significant economic impact on a substantial number of small entities, pursuant to the RFA. The OCC

[29] $141.3 billion - $104.3 billion = $37 billion
[30] $141.3 billion - $73.2 billion = $68.1 billion

currently supervises approximately 661 small entities.[31] The proposed rule would not impact any small entities. Therefore, we conclude the proposed rule would not have a significant economic impact on a substantial number of small entities.

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[31] We base our estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2022, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.