officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov).* This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule, which incorporates recently-enacted statutory provisions into DOE's regulations, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 2 CFR Part 910

Accounting, Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

Signed in Washington, DC, on March 26, 2019.

John R. Bashista,

Director, Office of Acquisition Management, Department of Energy.

S. Keith Hamilton,

Deputy Associate Administrator, Acquisition and Project Management, National Nuclear Security Administration.

For the reasons set forth in the preamble, DOE hereby amends chapter IX, subchapter B, of title 2 of the Code of Federal Regulations as set forth below:

PART 910—UNIFORM ADMINISTRATION REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 910 continues to read as follows:

Authority: 42 U.S.C. 7101, *et seq.;* 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.;* 2 CFR part 200.

■ 2. Section 910.130 is amended by:
■ a. Removing the word ''or'' at the end of paragraph (b)(1).
■ b. Removing the period at the end of paragraph (b)(2) and adding in its place ''; or''.
■ c. Adding paragraph (b)(3).
The addition reads as follows:

§ 910.130 Cost sharing (EPACT).

* * * * *

(b) * * *

(3) The research or development activity is to be performed by an institution of higher education or nonprofit institution (as defined in section 4 of the Stevenson–Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)) during the two-year period ending September 27, 2020.

* * * * *

[FR Doc. 2019–06263 Filed 3–29–19; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1589]

Federal Reserve Policy on Payment System Risk; U.S. Branches and Agencies of Foreign Banking Organizations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has approved changes to part II of the

Federal Reserve Policy on Payment System Risk (''PSR policy'') related to procedures for determining the net debit cap and maximum daylight overdraft capacity of a U.S. branch or agency of a foreign banking organization (''FBO''). The changes remove references to the Strength of Support Assessment (''SOSA'') ranking; remove references to FBOs' financial holding company (''FHC'') status; and adopt alternative methods for determining an FBO's eligibility for a positive net debit cap, the size of its net debit cap, and its eligibility to request a streamlined procedure to obtain maximum daylight overdraft capacity.

DATES: The changes are effective April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jeffrey Walker, Deputy Associate Director (202–721–4559); Jason Hinkle, Manager (202–912–7805); Alex So, Senior Financial Institution and Policy Analyst (202–452–2230); Brajan Kola, Senior Financial Institution and Policy Analyst (202–736–5683), Division of Reserve Bank Operations and Payment Systems; or Evan Winerman, Senior Counsel (202–872–7578), Legal Division, Board of Governors of the Federal Reserve System. For users of Telecommunications Device for the Deaf (TDD) only, please call 202–263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2017, the Board requested comment on potential changes to Part II of the PSR policy, which establishes the maximum levels of daylight overdrafts that depository institutions (''institutions'') may incur in their Federal Reserve accounts.[1] Under Part II of the PSR policy, an FBO's SOSA ranking—which assesses an FBO's ability to provide financial, liquidity, and management support to its U.S. operations—can affect an FBO's daylight overdraft capacity. Similarly, an FBO's status as an FHC can affect its daylight overdraft capacity. As described further below, the Board proposed to (1) remove references in the PSR policy to SOSA rankings and FHC status and (2) adopt alternative methods for determining an FBO's daylight overdraft capacity.

A. Current Use of SOSA Ranking and FHC Status in the PSR Policy

1. Net Debit Caps

An institution's net debit cap is the maximum value of uncollateralized daylight overdrafts that the institution can incur in its Federal Reserve account. The PSR policy generally requires that an institution be ''financially healthy'' to be eligible for a positive net debit cap.[2] To that end, the *Guide to the Federal Reserve's Payment System Risk Policy* (''Guide'')[3] clarifies that most FBOs with a SOSA ranking of 3 or a U.S. Operations Supervisory Composite Rating of marginal or unsatisfactory do not qualify for a positive net debit cap.[4]

Assuming that an institution qualifies for a positive net debit cap, the size of its net debit cap equals the institution's ''capital measure'' multiplied by its ''cap multiple.''[5] As described further below, an institution's capital measure is a number derived (under most circumstances) from the size of its capital base. An institution's cap multiple is determined by the institution's ''cap category,'' which generally reflects, among other things, the institution's financial condition. An institution with a higher capital measure or a higher cap category (and thus a higher cap multiple) will qualify for a higher net debit cap than an institution with a lower capital measure or lower cap category.

An FBO's SOSA ranking can affect both its cap category and its capital measure. An FBO's status as an FHC can affect its capital measure.[6]

(a) Cap Categories and Cap Multiples

Under Section II.D.2 of the PSR policy, an institution's ''cap category'' is one of six classifications—high, above average, average, de minimis, exempt-from-filing, and zero. In order to establish a cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures. Other cap categories do not require a self-assessment.[7] Each cap category corresponds to a ''cap multiple.''[8] As noted above, an institution's net debit cap generally equals its capital measure multiplied by its cap multiple.

An FBO's SOSA ranking can affect its cap category (and thus its cap multiple). As noted above, an institution that wishes to establish a net debit cap category of high, above average, or average must perform a self-assessment of, among other things, its own creditworthiness. Under Part II.D.2.a of the PSR policy, ''[t]he assessment of creditworthiness is based on the institution's supervisory rating and Prompt Corrective Action (PCA) designation.'' Part VII.A of the Guide includes a matrix for assessing *domestic* institutions' creditworthiness that incorporates an institution's supervisory rating and PCA designation. Because FBOs do not receive PCA designations, however, Part VII.A of the Guide includes a separate matrix for assessing FBO creditworthiness that incorporates an FBO's U.S. Operations Supervisory Composite Rating and—in lieu of a PCA designation—SOSA ranking.[9]

Similarly, while an FBO is not required to perform a self-assessment if it requests a cap category of de minimis or wishes to be assigned a cap category of exempt-from-filing by the Reserve Bank, the Reserve Banks rely on the minimum standards set by the creditworthiness matrix when they evaluate FBO requests for *any* cap category greater than zero. Accordingly, the Reserve Banks generally do not allow FBOs to qualify for a positive net debit cap, including the de minimis or exempt-from-filing cap category, if the FBO has a SOSA ranking of 3 or a U.S.

[1] 82 FR 58764 (Dec. 14, 2017).

[2] *See* Part II.D.1 of the PSR policy.

[3] The Guide to the Federal Reserve's Payment System Risk Policy (the Guide) contains detailed information on the steps necessary for institutions to comply with the Federal Reserve's intraday credit policies.

[4] Section VI.A.1 of the Guide states that most SOSA 3-ranked institutions do not qualify for a positive net debit cap, though it clarifies that ''[i]n limited circumstances, a Reserve Bank may grant a net debit cap or extend intraday credit to a financially healthy SOSA 3-ranked FBO.'' Separately, Table VII–2 of the Guide states that SOSA 3-ranked FBOs and FBOs that receive a U.S. Operations Supervisory Composite Rating of marginal or unsatisfactory have ''below standard'' creditworthiness, and Table VII–3 of the Guide states that institutions with below standard creditworthiness cannot incur daylight overdrafts.

[5] *See* Part II.D.1 of the PSR policy. All net debit caps are granted at the discretion of the institution's administrative Reserve Bank, which is the Reserve Bank that is responsible for managing an institution's account relationship with the Federal Reserve.

[6] In contrast, the FHC status of a domestic bank holding company does not affect its capital measure.

[7] An institution that meets reasonable safety and soundness standards can request a de minimis cap category, without performing a self-assessment, by submitting a board of directors resolution to its administrative Reserve Bank. An institution that only rarely incurs daylight overdrafts in its Federal Reserve account that exceed the lesser of $10 million or 20 percent of its capital measure can be assigned an ''exempt-from-filing'' cap category without performing a self-assessment or filing a board of directors resolution with its administrative Reserve Bank.

[8] Under Section II.D.1 of the PSR policy, the cap multiple for the ''high'' category is 2.25, for the ''above average'' category is 1.875, for the ''average'' category is 1.125, for the ''de minimis'' category is 0.4, for the ''exempt-from-filing'' category is 0.2 or $10 million, and for the ''zero'' category is 0. Note that the net debit cap for the exempt-from-filing category is equal to the *lesser* of $10 million or 0.2 multiplied by the capital measure.

[9] Under Section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, PCA designations apply only to insured depository institutions.

Operations Supervisory Composite Rating of marginal or unsatisfactory.

In certain situations, the Reserve Banks require institutions to perform a full assessment of their creditworthiness instead of using the relevant self-assessment matrix (*e.g.,* when an institution has experienced a significant development that may materially affect its financial condition). The Guide includes procedures for full assessments of creditworthiness.

(b) Capital Measures

Under Section II.D.3 of the PSR policy, an institution's ''capital measure'' is a number derived (under most circumstances) from the size of its capital base. The determination of the capital measure, however, differs between domestic institutions and FBOs. A domestic institution's capital measure equals 100 percent of the institution's risk-based capital. Conversely, an FBO's capital measure (also called ''U.S. capital equivalency'') [10] equals a percentage of (under most circumstances) the FBO's worldwide capital base [11] ranging from 5 percent to 35 percent, with the exact percentage depending on (1) the FBO's SOSA ranking and (2) whether the FBO is an FHC. Specifically, the capital measure of an FBO that is an FHC is 35 percent of its capital; an FBO that is not an FHC and has a SOSA ranking of 1 is 25 percent of its capital; and an FBO that is not an FHC and has a SOSA ranking of 2 is 10 percent of its capital. The capital measure of an FBO that is not an FHC and has a SOSA ranking of 3 equals 5 percent of its ''net due to related depository institutions'' (although, as noted above, FBOs with a SOSA ranking of 3 generally do not qualify for a positive net debit cap).[12]

2. Maximum Daylight Overdraft Capacity

Section II.E of the PSR policy allows certain institutions with self-assessed net debit caps to pledge collateral to their administrative Reserve Bank to secure daylight overdraft capacity in excess of their net debit caps. An institution's maximum daylight overdraft capacity (''max cap'') equals its net debit cap plus its additional collateralized capacity. Section II.E of the PSR policy states that max caps are ''intended to provide extra liquidity through the pledge of collateral by the few institutions that might otherwise be constrained from participating in risk-reducing payment system initiatives.''

Institutions that wish to obtain a max cap must generally provide (1) documentation of the business need for collateralized capacity and (2) an annual board of directors' resolution approving any collateralized capacity. Under Section II.E.2 of the PSR policy, however, an FBO that has a SOSA ranking of 1 or is an FHC may request a streamlined procedure for obtaining a max cap.[13] Such an FBO is not required to document its business need for collateralized capacity, nor is it required to obtain a board of directors' resolution approving collateralized capacity, as long as the FBO requests a max cap that is 100 percent or less of the FBO's worldwide capital multiplied by its self-assessed cap multiple.[14]

B. Proposed Changes

The Board proposed to remove references to the SOSA ranking in the PSR policy. The SOSA ranking was originally established for supervisory purposes, but Federal Reserve supervisory staff now have more timely access to information regarding FBO parent banks, home-country accounting practices and financial systems, and international supervisory and regulatory developments.[15] The Federal Reserve currently uses SOSA rankings only in setting guidelines related to FBO access to Reserve Bank intraday credit and the discount window.[16] The Board explained in the proposal that providing SOSA rankings for these purposes is an inefficient use of the Federal Reserve's supervisory resources. The Board proposed that the Federal Reserve would continue to provide SOSA rankings until the Board removes references to SOSA rankings in the PSR policy.

The Board also proposed to remove references to FBOs' FHC status in the PSR policy. The Board explained in the proposal that, when it incorporated FHC status into the PSR policy, it believed that an FBO's status as an FHC indicated that the FBO was financially and managerially strong. The Board further explained that it now recognizes the limitations of FHC status in measuring an FBO's health—in particular, FBOs can maintain nominal FHC status (though with reduced ability to use their FHC powers) even when they are out of compliance with the requirement that they remain well capitalized. Accordingly, the Board explained that it no longer believes an FBO's status as an FHC should increase the FBO's capital measure or allow the FBO to request a streamlined procedure to obtain a max cap.

The Board proposed alternative methods for determining an FBO's eligibility for a positive net debit cap, the size of its net debit cap, and its eligibility to request a streamlined procedure to obtain a max cap. The Board requested comment on all aspects of the proposal, including whether FBOs would require a transition period to adjust to the proposed changes.

1. Net Debit Cap Eligibility

The Board proposed that many undercapitalized FBOs, and all significantly or critically undercapitalized FBOs, would have ''below standard'' creditworthiness and on that basis would generally be ineligible for a positive net debit cap. To assess whether it is undercapitalized, significantly undercapitalized, or critically undercapitalized, an FBO would compare the Regulation H ratios for total risk-based capital, tier 1 risk-based capital, common equity tier 1 risk-based capital, and leverage to the equivalent ratios that the FBO has calculated under its home-country standards or on a pro forma basis. Currently, SOSA–3 ranked institutions have ''below standard'' creditworthiness

[10] The term ''U.S. capital equivalency'' is used in this context to refer to the particular capital measure used to calculate net debit caps and does not necessarily represent an appropriate capital measure for supervisory or other purposes.

[11] FBOs that wish to establish a non-zero net debit cap must report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225). The instructions for FR 2225 explain how FBOs should calculate their worldwide capital. *See https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDZ1kLYTc+ZpEQ==.*

[12] An FBO reports its ''net due to related depository institutions'' on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002).

[13] Even under the streamlined procedure, the administrative Reserve Bank retains the right to assess an FBO's financial and supervisory information, including the FBO's ability to manage intraday credit.

[14] As described above, for example, the capital measure of an FBO that is not an FHC and has a SOSA ranking of 1 is currently 25 percent of worldwide capital. The net debit cap of such an FBO equals its capital measure times the cap multiple that corresponds to its cap category. The streamlined max cap procedure therefore allows the FBO to request additional collateralized capacity of 75 percent of worldwide capital times its cap multiple. If the FBO requests a max cap in excess of 100 percent of worldwide capital times its cap multiple, the FBO would be ineligible for the streamlined max cap procedure.

[15] *See* SR 17–13 (Dec. 7, 2017) *https://www.federalreserve.gov/supervisionreg/srletters/sr1713.pdf* (explaining why the Board intends to eliminate the SOSA ranking).

[16] In addition to the PSR policy's use of SOSA rankings, the Reserve Banks use SOSA rankings to determine whether an FBO can receive discount window loans. *See https://www.frbdiscountwindow.org/en/Pages/General-Information/The-Discount-Window.aspx.* The Reserve Banks will adjust their standards for determining FBO access to primary credit before the SOSA ranking is discontinued on January 1, 2020.

and are generally ineligible for a positive net debit cap.[17]

2. Creditworthiness Self-Assessment

The Board proposed that an FBO's creditworthiness self-assessment would generally be based on the FBO's U.S. Operations Supervisory Composite Rating and (in lieu of the FBO's SOSA ranking) the PCA designation that would apply to the FBO if it were subject to the Board's Regulation H (an ''equivalent PCA designation'').[18] The Board noted that replacing the SOSA ranking with an equivalent PCA designation would align the creditworthiness self-assessment for FBOs with the existing creditworthiness self-assessment for domestic institutions, which is based on an institution's PCA designation and supervisory rating. The Board proposed to implement this change by incorporating FBO creditworthiness self-assessments into the Guide's existing matrix for assessing domestic institutions' creditworthiness.[19]

The Board proposed that an FBO that is not based in a country that has implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision [20] (a ''Basel jurisdiction'') would be required to perform a full assessment of its creditworthiness instead of using the matrix approach to assessing creditworthiness.[21]

3. Capital Measures

The Board proposed that the capital measure of an FBO would equal 10 percent of its worldwide capital, in lieu of the current tiered system in which an FBO's capital measure depends on its SOSA ranking and FHC status. The Board explained in the proposal that it believed it was unnecessary to replace the SOSA ranking with an alternative supervisory rating in the capital measure calculation, noting that (1) including a point-in-time supervisory rating such as SOSA is less important than in the past because the Reserve Banks now receive, on an ongoing basis, better supervisory information regarding FBOs and (2) other elements of the net debit cap calculation already consider an FBO's supervisory ratings and overall financial condition.

4. Max Caps

The Board proposed that an FBO that is well capitalized could request the streamlined procedure for obtaining a max cap. Currently, the PSR policy allows SOSA–1 ranked FBOs and FBOs that are FHCs to request the streamlined procedure. The Board explained in the proposal that it believed it would not be appropriate to substitute another supervisory rating for the SOSA–1 ranking in determining FBO eligibility for the streamlined max cap procedure, because non-SOSA supervisory ratings focus only on the U.S. operations of FBOs.

II. Discussion of Public Comments

The Board received one responsive comment, from an association of international banks. The commenter did not object to removing references to the SOSA rankings and FHC status from the PSR policy, nor did the commenter object to incorporating equivalent PCA designations into the PSR policy. The commenter believed, however, that the Board should not implement these changes in a manner that reduces FBOs' current net debit caps. The commenter also argued that, when an FBO determines its equivalent PCA designation, the FBO should be able to rely on home-country standards for the leverage measure component of that determination. Finally, the commenter requested that the Board delay the effective date of the proposed changes by at least 12 months from the date of publication in the **Federal Register**.

For the reasons set forth below, the Board has adopted the changes substantially as proposed. However, the Board has (1) replaced the term ''equivalent PCA designation'' with ''FBO PSR capital category'' and (2) clarified the manner in which an FBO will determine its FBO PSR capital category.

The changes will be effective on April 1, 2020.

A. Reductions in FBO Capital Measures/Net Debit Caps

The commenter raised a number of concerns regarding the Board's proposal to set the capital measure of all FBOs at 10 percent of an FBO's worldwide capital.

1. Effects on U.S.-Dollar Clearing Activities of FBOs

The commenter argued that the proposal to set the capital measures of all FBOs at 10 percent of an FBO's worldwide capital would reduce FBOs' net debit caps and would negatively affect FBOs' U.S.-dollar clearing activity. The commenter suggested that the Board may have underestimated the proposal's effects on FBOs by assuming that payment levels from 2003 to 2007 would be predictive of future payment levels and that reserve levels will revert to those from 2003 to 2007, stating that ''if events prove contrary to the [Board's] assumption the results could significantly alter the analysis and related policy conclusions.'' The commenter further suggested that lower net debit caps might cause an FBO to ''throttle'' payments during the day (*i.e.,* restrict and delay funds transfers until sufficient funds are available) to ensure that it stays within its net debit cap, which would diminish liquidity. Finally, the commenter argued that relying on collateral to cover intraday exposure to a Reserve Bank would be costly to an FBO and might result in (1) increased transaction costs to customers and (2) an increase in ''systemic operational risk'' in the event of constraints on the availability of ''sufficiently high-quality liquid assets.''

The Board has evaluated FBOs' intraday credit usage under a wide range of scenarios, including the current high reserves environment (2015–present), an extreme stress environment (2007–2009), and a low reserves environment (2003–2007). The Board's analysis indicates that most FBOs would retain sufficient daylight overdraft capacity even when reserves are low and liquidity pressures are high. For example, during the 2007–09 financial crisis, when the use of intraday credit spiked amid the market turmoil near the end of 2008, 51 of 58 FBOs with a positive net debit cap used overdraft capacity, the highest average cap utilization was 65 percent, and only 7 FBOs had an average cap utilization greater than 25 percent.[22] During the same period, 1 of 27 FBOs that currently maintain a cap category higher than

[17] *See* n. 4, *supra.* The PSR policy and the Guide would continue to provide that FBOs that have U.S. Operations Supervisory Composite Ratings of ''marginal'' or ''unsatisfactory'' have ''below standard'' creditworthiness and are generally ineligible for a positive net debit cap.

[18] *See* 12 CFR 208.43(b).

[19] See Table VII–1 of the Guide.

[20] The proposal referred in a number of places to jurisdictions that adhere to the Basel Capital Accords (BCA)'' or ''adhere to BCA-based standards, while the amendments adopted in this **Federal Register** notice instead refer to jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision. The Board does not intend for this change to have any substantive effect.

[21] The requirement to perform a full assessment of creditworthiness would apply to FBOs based in non-Basel jurisdictions that request any net debit cap greater than the exempt-from-filing category, including FBOs that request a de minimis cap category. Additionally, a Reserve Bank could request that an FBO based in a non-Basel jurisdiction perform a full assessment of creditworthiness before assigning the FBO an exempt-from-filing cap category.

[22] In this context, average cap utilization equals an institution's average daily peak daylight overdraft divided by the FBO's net debit cap.

exempt-from-filing [23] regularly incurred daylight overdrafts that would have exceeded its projected net debit cap under the single-rate capital measure calculation that the Board is adopting, 7 of 27 incurred daylight overdrafts that would have exceeded their projected net debit caps in limited instances, and 19 of 27 never incurred daylight overdrafts that would have exceeded their projected caps.[24] Accordingly, the Board believes that the projected net debit caps would have provided most FBOs with sufficient capacity during the financial crisis.

Similarly, between 2003 and 2007, when FBOs generally maintained lower reserves, 51 of 57 FBOs with a positive net debit cap used overdraft capacity, the highest average cap utilization was 44 percent, and only 7 FBOs had an average cap utilization greater than 25 percent. During the same period, 2 of 27 FBOs that currently maintain a cap category higher than exempt-from-filing regularly incurred daylight overdrafts that would have exceeded their projected net debit caps under the single-rate capital measure calculation that the Board is adopting, 5 of 27 incurred daylight overdrafts that would have exceeded their projected net debit caps in limited instances, and 20 of 27 never incurred daylight overdrafts that would have exceeded their projected caps.[25] Accordingly, the Board believes that the projected net debit caps would have provided most FBOs with sufficient capacity during the low reserves environment from 2003–2007.[26]

The Board recognizes that setting the capital measures of all FBOs at 10 percent of an FBO's worldwide capital may increase the instances in which FBOs need additional daylight overdraft capacity, but the Board believes that FBOs' projected net debit caps would be better tailored to their actual usage of intraday credit. Additionally, as the Board noted in the proposal, an FBO with a de minimis cap could also request a higher net debit cap by applying for a self-assessed cap.[27] Similarly, an FBO with a self-assessed cap could apply for a max cap in order to obtain additional collateralized capacity. While the Board recognizes that relying on collateralized overdrafts might be more operationally complex for FBOs than relying on uncollateralized overdrafts, the Board notes that the Reserve Banks allow accountholders to post a wide array of collateral of varying degrees of liquidity, including various types of loans.[28] Importantly, the Board also notes that relying on collateralized intraday credit would reduce the credit risk that the Reserve Banks incur when they provide intraday credit to FBOs.

2. National Treatment Considerations

The commenter further argued that the proposal to set the capital measures of all FBOs at 10 percent of an FBO's worldwide capital is inconsistent with the principle of national treatment. Under the principle of national treatment, FBOs operating in the United States should be, generally, treated no less favorably than similarly situated U.S. banking organizations.[29]

The commenter argued that because a U.S. branch is an office of a foreign bank, it can draw on the global resources of the foreign bank to support its liabilities, including intraday credit that it receives from a Reserve Bank. As described in the proposal, however, FBOs that incur daylight overdrafts present special legal risks to the Reserve Banks because of differences in insolvency laws in the various FBOs' home countries. In particular, the proposal quoted a 2001 **Federal Register** notice in which the Board explained that insolvent FBOs posed a heightened risk to the Reserve Banks because ''[t]he insolvent party's national law . . . may permit the liquidator to subordinate other parties' claims (such as by permitting the home country tax authorities to have first priority in bankruptcy), may reclassify or impose a stay on the right the nondefaulting party has to collateral pledged by the defaulting party in support of a particular transaction, or may require a separate proceeding to be initiated against the head office in addition to any proceeding against the branch.'' [30] The 2001 **Federal Register** notice further stated that ''[i]t is not practicable for the Federal Reserve to undertake and keep current extensive analysis of the legal risks presented by the insolvency law(s) applicable to each FBO with a Federal Reserve account in order to quantify precisely the legal risk that the Federal Reserve incurs by providing intraday credit to that institution. It is reasonable, however, for the Federal Reserve to recognize that FBOs generally present additional legal risks to the payments system and, accordingly, limit its exposure to these institutions.'' [31]

The Board continues to believe that FBOs may pose heightened risks to the Reserve Banks relative to domestic institutions, and that it is reasonable to calculate an FBO's capital measure as a fraction of its worldwide capital, notwithstanding that the capital measure of a domestic institution generally equals 100 percent of the institution's risk-based capital. The Board also notes that, although Federal Reserve supervisors have gained access to new internal and external resources since 2002 (when the Board adopted the current capital measure calculation) that allow the Federal Reserve to better monitor FBOs on an ongoing basis, the Board's authority over FBOs generally extends only to FBOs' U.S. operations. As a result, Federal Reserve supervisors have less insight into the financial health of FBOs compared to domestic bank holding companies, for which the Board serves as the global supervisory authority. Nevertheless, as discussed above, the Board believes that FBOs'

[23] Most FBOs with a cap category of exempt-from-filing receive the maximum net debit cap of $10 million and would not be affected by the changes to the FBO capital measure calculation that the Board is adopting in the notice.

[24] In this context, ''regularly incurred daylight overdrafts that would have exceeded its projected net debit cap'' means that an FBO's daylight overdrafts would have exceeded its projected net debit cap, on average, more than once per two-week reserve maintenance period (''RMP'') over the period; ''limited instances'' means that an FBO's daylight overdrafts would have exceeded its projected net debit cap, on average, less than once per every six two-week RMPs over the period. Data current as of Q4 2018.

[25] Data current as of Q4 2018.

[26] The projected net debit caps under the single-rate capital measure calculation that the Board is adopting would also provide FBOs with sufficient capacity in the current high-reserves environment. Since 2015, none of the 27 FBOs that currently maintain a cap category higher than exempt-from-filing have regularly incurred daylight overdrafts that would have exceeded their projected net debit caps, 1 of 27 incurred daylight overdrafts that would have exceeded its projected net debit caps in limited instances, and 26 of 27 never incurred daylight overdrafts that would have exceeded their projected caps.

[27] As noted above, most FBOs with a cap category of exempt-from-filing receive the maximum net debit cap of $10 million and would not be affected by the changes to the FBO capital measure calculation that the Board is adopting in this notice.

[28] *See* the Federal Reserve's *Discount Window Margins and Collateral Guidelines, https://www.frbdiscountwindow.org/en/Pages/Collateral/Discount%20Window%20Margins%20and%20Collateral%20Guidelines.aspx.* These margin and collateral guidelines apply to discount window loans and intraday credit under the PSR policy. Currently, more than half of the collateral posted at the Reserve Banks are loans, none of which would qualify as high-quality liquid assets for purposes of the Federal banking regulators' rules establishing a liquidity coverage ratio for banking organizations. *See, e.g.,* 12 CFR 249.20 (Board regulation establishing high-quality liquid asset criteria).

[29] *See, e.g.,* International Banking Act of 1978, Public Law 95–369, 12 U.S.C. 3101 *et seq*; S. Rep. No. 95–1073 (Aug. 8, 1978) (legislative history of the International Banking Act of 1978); Gramm-Leach-Bliley Act of 1999, Public Law 106–102, section 141, 12 U.S.C. 3106(c); Dodd-Frank Act, Public Law 111–203, section 165(b)(2), 12 U.S.C. 5365(b)(2).

[30] 82 FR at 58769 (*quoting* 66 FR 30205, 30206 (Aug. 6, 2001)).

[31] *Id.*

projected net debit caps would be well tailored to FBOs' actual usage of intraday credit and would not constrain most FBOs' U.S. operations under a wide range of scenarios.

The Board further notes that, as discussed in the proposal, FBO net debit caps are currently large when compared to the net debit caps of peer domestic institutions. For example, the average net debit cap of an FBO with between $1 billion and $10 billion in U.S.-based assets is $3.9 billion, while the average net debit cap of a domestic institution with between $1 billion and $10 billion in assets is $209 million; the average net debit cap of an FBO with between $10 billion and $50 billion in U.S.-based assets is $7.7 billion, while the average net debit cap of a domestic institution with between $10 billion and $50 billion in assets is $1.4 billion; and the average net debit cap of an FBO with between $50 billion and $150 billion in U.S.-based assets is $24.5 billion, while the average net debit cap of a domestic institution with between $50 billion and $150 billion in assets is $11.3 billion.[32] After the changes adopted in this **Federal Register** notice take effect, the average net debit cap of an FBO with between $1 billion and $10 billion would be $1.4 billion, the average net debit cap of an FBO with between $10 billion and $50 billion in U.S.-based assets would be $2.8 billion, and the average net debit cap of an FBO with between $50 billion and $150 billion in U.S.-based assets would be $7.7 billion.[33] As discussed above, the Board's analysis indicates that these projected net debit caps would provide most FBOs with sufficient daylight overdraft capacity even when reserves are low and liquidity pressures are high.[34]

3. Other Concerns About Reducing FBO Net Debit Caps

The commenter raised a number of other concerns regarding the proposal to set the capital measures of all FBOs at 10 percent of an FBO's worldwide capital. The commenter argued that the proposal would effectively penalize those FBOs that, under the current, tiered system for determining FBO capital measures, ''are considered to present the lesser risk to the Federal Reserve.'' The Board notes that, even after the changes to the capital measure calculation take effect, FBOs that are more creditworthy will continue to be eligible for more daylight overdraft capacity than FBOs that are less creditworthy—specifically, an FBO's cap category will continue to be based, in part, on the FBO's creditworthiness, which (as described above) will be determined based on the FBO's U.S. Operations Supervisory Composite Rating and its FBO PSR capital category. The Board also emphasizes that the intent of this policy change is not to penalize FBOs or constrain FBOs' U.S. operations. Rather, the Board believes that FBOs may pose heightened risks to the Reserve Banks relative to domestic institutions, and that it is prudent to manage these risks by limiting FBOs' net debit caps to levels that are better tailored to FBOs' actual usage of intraday credit.

The commenter also argued that the proposal does not consider the protections that the Reserve Banks receive under federal and state laws that ''ringfence'' FBO assets for the benefit of third-party creditors. Federal and state laws require that U.S. branches and agencies of foreign banks pledge assets in segregated accounts that are intended to benefit the creditors of such branches and agencies.[35] Publicly reported data show that U.S. branches and agencies of foreign banks generally pledge assets equal only to a small percentage of their liabilities in such segregated accounts.[36] For example, only 2 of 44 FBOs with a positive net debit cap have pledged sufficient assets to cover all of their liabilities to nonrelated parties, while 36 of these FBOs have pledged assets equal to less than 10 percent of their liabilities to nonrelated parties.[37] Similarly, only 1 of 27 FBOs that currently maintain a cap category higher than exempt-from-filing[38] has pledged sufficient assets to cover its net debit cap, 6 have pledged assets that would cover between 10 percent and 60 percent of their net debit caps, and 20 have pledged assets that would cover less than 10 percent of their net debit caps.[39] Accordingly, if an FBO becomes insolvent during a period in which a Reserve Bank has extended intraday credit to that FBO, the pledged assets of the FBO's U.S. branches and agencies would very likely be insufficient to repay the Reserve Banks and other unsecured creditors.

The Board recognizes that, in some jurisdictions, a U.S. supervisory authority (or a receiver appointed by a U.S. supervisory authority) that liquidates a U.S. branch or agency of an insolvent foreign bank may take possession of all assets of the foreign bank—including non-branch assets of the foreign bank—located in the jurisdiction of that supervisory authority.[40] These provisions may expand the pool of assets available to repay the creditors of a U.S. branch or agency if the foreign bank maintains other assets in the United States (if the branch is federally licensed) or in the state in which the branch is located (if the branch is state-licensed). The Board notes, however, that it is uncertain whether available assets will be sufficient to repay creditors when a supervisory authority or receiver takes possession of such U.S. branches and agencies.

Finally, the commenter argued that there is no compelling reason to reduce FBO net debit caps at this time. The commenter noted, in this regard, that the special legal risks that FBOs pose to the Reserve Banks have not changed since 2001, when the Board established the current method for calculating FBO capital measures. The commenter also noted that U.S. and foreign regulators have improved their supervision and regulation of foreign banks and their U.S. branches since 2001, suggesting that these efforts have enhanced foreign banks' resiliency and resolvability and should provide the Reserve Banks with more comfort that U.S. branches are creditworthy. The Board recognizes that

[32] The Board excluded institutions with a cap category of exempt-from-filing from these comparisons because these institutions are limited to a $10 million net debit cap. No FBO currently has U.S.-based assets above $150 billion. Data current as of Q4 2018.

[33] The Board recognizes that, based on certain FBOs' business models, the volume and value of payments flowing through an FBO with a particular level of U.S.-based assets may be higher than that of a domestic institution with a similar level of assets.

[34] As the Board further explained above, certain FBOs may request additional daylight overdraft capacity by applying for a self-assessed cap and/or a max cap.

[35] For example, an uninsured New York state-licensed branch is required to deposit an amount of high-quality assets in a segregated account that is pledged to the state to cover the cost of the branch's liquidation and to repay creditors. N.Y. Banking Law § 202–b(1); 3 NYCRR 51. The amount of the required deposit is the greater of (1) $2 million or (2) one percent of average total liabilities of the branch or agency for the previous month, subject to certain caps for well-rated foreign banking corporations. 3 NYCRR 322.1. The New York Superintendent of Financial Services may also require a New York state branch to maintain additional assets relative to some percentage of liabilities if the Superintendent deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the branch. N.Y. Banking Law § 202–b(1). *See also* 12 U.S.C. 3102(g); 12 CFR 28.15 and 28.20.

[36] *See* Reporting Form FFIEC 002, ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks,'' Schedule RAL, Items S.1 and S.2.

[37] Data current as of Q4 2018.

[38] The Board has excluded institutions with a cap category of exempt-from-filing from this analysis because such institutions' net debit caps are limited to a maximum of $10 million.

[39] Data current as of Q4 2018.

[40] *See, e.g.,* 12 U.S.C. 3102(j)(1); N.Y. Banking Law section 606(4)(a).

foreign banks (including U.S. branches of foreign banks) are—like U.S.-chartered institutions—subject to more robust oversight than they were in 2001.[41] The Board also appreciates that intraday credit helps to facilitate payments by Reserve Bank accountholders and can promote the smooth functioning of the payment system. Nevertheless, because intraday credit to FBOs (relative to domestic institutions) may pose heightened risks to the Reserve Banks, the Board believes that the Reserve Banks should tailor FBO net debit caps more closely to FBOs' actual usage of intraday credit and should not provide unnecessarily large net debit caps to FBOs. Setting the capital measures of all FBOs at 10 percent of an FBO's worldwide capital would better tailor FBO net debit caps to FBOs' actual usage of intraday credit.

B. Use of Home-Country Leverage Ratio

Under Regulation H, a bank's PCA designation is determined by four capital measures: Total risk-based capital, tier 1 risk-based capital, common equity tier 1 risk-based capital, and leverage.[42] The leverage measure utilizes two ratios: The leverage ratio (''U.S. leverage ratio'') and the supplementary leverage ratio (''SLR''). The key difference between the two ratios is that the U.S. leverage ratio calculation incorporates only on-balance-sheet activity, while the SLR calculation incorporates both on-balance-sheet assets and certain off-balance-sheet exposures.[43] Under Regulation H, banks must meet a minimum U.S. leverage ratio of 4 or 5 percent to qualify as, respectively, adequately capitalized or well capitalized.[44] Regulation H also requires that certain banks meet additional SLR standards to qualify as adequately or well capitalized.[45] Finally, Regulation H establishes leverage measures for the undercapitalized and significantly undercapitalized PCA categories.[46]

The commenter argued that ''in determining an FBO's equivalent PCA designation, reference should be made only to the [SLR] and not to the U.S. leverage ratio, and, consistent with that approach, the leverage measure under the PCA regime should be calibrated by reference to the home country leverage ratio.'' The commenter noted that under Regulation H, ''PCA categories apply various combinations of the U.S. leverage ratio and the U.S. supplementary ratio, whereas the corresponding measure for FBOs'' from Basel jurisdictions is the SLR. The commenter therefore argued that, for purposes of calculating an FBO's equivalent PCA designation, the leverage measure should be based solely on the FBO's leverage ratio as calculated under home-country standards (''home-country leverage ratio'')—*i.e.,* that the U.S. leverage ratio, as distinct from the SLR, should have ''no relevance to the determination.'' The commenter also suggested that an FBO should be able to qualify as well capitalized or adequately capitalized if it meets its home country's 3 percent leverage ratio expectation (assuming the FBO also meets the relevant risk-based capital ratios in Regulation H).

FBOs currently report their tier 1 capital and total consolidated assets to the Federal Reserve on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q). The Board recognizes, however, that it might be burdensome for an FBO to calculate a functional equivalent to the U.S. leverage ratio due to differences between home-country accounting standards and U.S. accounting standards. Additionally, the Board recognizes that, because of definitional ambiguities in Regulation H, it might be difficult for an FBO to determine the precise SLR standards to which it is subject.

Accordingly, the Board is clarifying the manner in which an FBO will determine its FBO PSR capital category.[47] The four PSR capital categories for FBOs will be ''highly capitalized,'' ''sufficiently capitalized,'' ''undercapitalized,'' and ''intraday credit ineligible.'' To assess whether it is highly capitalized or sufficiently capitalized, an FBO would compare its risk-based capital ratios to the corresponding ratios in Regulation H for, respectively, well-capitalized and adequately capitalized banks. Additionally, an FBO would need a home-country leverage ratio of 4 percent or 3 percent to qualify as, respectively, highly capitalized or sufficiently capitalized. Under Regulation H, a bank must meet a minimum U.S. leverage ratio of 5 percent to qualify as well capitalized, which is 100 basis points higher than the 4 percent U.S. leverage ratio required to qualify as adequately capitalized. Similarly, in order for an FBO to be considered highly capitalized for purposes of the PSR policy, it will need to meet a home-country leverage ratio (which, as noted above, corresponds to the SLR) of 4 percent, which is 100 basis points higher than the 3 percent home-country leverage ratio needed to be considered sufficiently capitalized. The Board believes that this approach will treat FBOs and U.S. institutions equivalently.

To determine whether its FBO PSR capital category is undercapitalized, an FBO would compare its risk-based capital ratios to the corresponding ratios in Regulation H. Additionally, an FBO would be deemed undercapitalized if its home-country leverage ratio is less than 3 percent. Some undercapitalized FBOs with supervisory composite ratings of ''strong'' or ''satisfactory'' may qualify for positive net debit caps.

Finally, to determine whether its FBO PSR capital category is ''intraday credit ineligible,'' an FBO would compare its risk-based capital ratios to the corresponding Regulation H ratios for significantly undercapitalized banks. Stated differently, an FBO with risk-based capital thresholds below the levels required to qualify as undercapitalized will be deemed ineligible for intraday credit. Additionally, an FBO will be deemed ineligible for intraday credit if its home-country leverage ratio is less than 2 percent.[48]

[41] *See, e.g.,* Dodd-Frank Act, Public Law 111–203, section 165, 12 U.S.C. 5365 (requiring enhanced supervision and prudential standards for certain bank holding companies, including certain FBOs).

[42] The Board's Regulation H applies to state member banks. The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have promulgated functionally identical PCA regulations applicable to OCC-regulated and FDIC-regulated institutions, respectively. *See* 12 CFR part 6 (OCC); 12 CFR part 324, subpart H (FDIC).

[43] *See* 12 CFR 208.41(h) and (j); 12 CFR 217.10(b)(4) and (c)(4).

[44] 12 CFR 208.43(b)(2)(iv)(A) and (b)(1)(iv)(A).

[45] Specifically, a bank that qualifies as an ''advanced approaches bank'' must meet a minimum SLR of 3 percent to qualify as adequately capitalized and a bank that is a subsidiary of a global systemically important bank holding company (GSIB) must maintain an SLR of at least 6 percent to qualify as well capitalized. *See* 12 CFR 208.41(a) and 217.100(b)(1) (definition of ''advanced approaches bank''); 12 CFR 208.41(g), 217.2, and 217.402 (definition of GSIB); 12 CFR 208.43(b)(1)(iv)(B) and 208.43(b)(2)(iv)(B) (Regulation H SLR standards). The Board has issued a proposal to change the 6 percent SLR requirement for banks that are subsidiaries of GSIBs to equal 3 percent plus 50 percent of the GSIB risk-based surcharge applicable to such a bank's top-tier holding company. 83 FR 17317 (April 19, 2018).

[46] Under Regulation H, a bank is deemed to be undercapitalized if its U.S. leverage ratio is less than 4 percent or, if applicable, its SLR is less than 3 percent. A bank is deemed to be significantly undercapitalized if its U.S. leverage ratio is less than 3 percent, *i.e.,* more than 100 basis points lower than the U.S. leverage ratio needed to qualify as adequately capitalized.

[47] As noted above, the Board is replacing the term ''equivalent PCA designation'' with ''FBO PSR capital category.'' An FBO not based in a Basel jurisdiction would be required to perform a full assessment of its creditworthiness instead of using the matrix approach to assessing creditworthiness.

[48] Under Regulation H, a bank is deemed to be significantly undercapitalized if its U.S. leverage ratio is less than 3 percent (*i.e.,* more than 100 basis

Continued

The following table illustrates the capital ratios that an FBO will use to determine its FBO PSR capital category.[49]

FBO PSR capital category	Total risk-based capital (%)	Tier 1 risk-based capital (%)	Common equity (%)	Home-country leverage ratio (%)
Highly capitalized	10	8	6.5	4
Sufficiently capitalized	8	6	4.5	3
Undercapitalized	<8	<6	<4.5	2
Intraday credit ineligible	<6	<4	<3	<2

As noted above, the Board proposed to incorporate FBO creditworthiness self-assessments into the Guide's existing matrix for assessing domestic institutions' creditworthiness. The revised creditworthiness self-assessment matrix will appear as follows:

Domestic capital category/ FBO PSR capital category	Supervisory composite rating [50]			
	Strong	Satisfactory	Fair	Marginal or unsatisfactory
Well capitalized/Highly capitalized	Excellent	Very good	Adequate	Below standard.
Adequately capitalized/Sufficiently capitalized	Very good	Very good	Adequate	Below standard.
Undercapitalized	** [51]	** [52]	Below standard	Below standard.
Significantly or critically undercapitalized/Intraday credit ineligible.	Below standard	Below standard	Below standard	Below standard.

Relatedly, as discussed above, the Board proposed that a well-capitalized FBO would be eligible to request the streamlined max cap procedure. The amendments adopted in this notice use the new nomenclature discussed above and instead provide that a *highly* capitalized FBO will be eligible to request the streamlined max cap procedure.

C. Delay in Effective Date

The commenter requested that the Board delay the effective date of any changes to the PSR policy by at least 12 months. The Board believes that a transition period would help FBOs adjust to these changes. Accordingly, the changes will be effective on April 1, 2020. The Federal Reserve will continue to provide SOSA rankings until that date.

III. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide a final regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. In this case, the relevant provisions of the PSR policy apply to all FBOs that maintain accounts at Federal Reserve Banks. While the Board does not believe that the changes adopted in this notice would have a significant impact on small entities, and regardless of whether the RFA applies to the PSR policy per se, the Board has nevertheless prepared the following Final Regulatory Flexibility analysis in accordance with 5 U.S.C. 604.

1. *Statement of the need for, and objectives of, the rule.* As discussed above, the Board is removing references to the SOSA ranking and FBOs' FHC status in the PSR policy. Discontinuing the SOSA ranking will streamline the Federal Reserve's FBO supervision program by eliminating the need for Federal Reserve supervisors to provide supervisory rankings that only serve a purpose for Reserve Bank credit decisions. Removing references to FHC status in the PSR policy will align the policy with the Board's view that an FBO's status as an FHC is not a suitable factor for determining the FBO's eligibility for intraday credit.

2. *Description of comments.* The Board did not receive any comments on the Initial Regulatory Flexibility analysis from members of the public or from the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

3. *Small entities affected by the proposed rule.* Pursuant to regulations issued by the SBA (13 CFR 121.201), a ''small entity'' includes an entity that engages in commercial banking and has assets of $550 million or less (NAICS code 522110). Forty-one FBOs that maintain Federal Reserve accounts are small entities. Six of those FBOs maintain positive net debit caps.[53]

4. *Projected reporting, recordkeeping, and other compliance requirements.* The changes to the PSR policy will alter the procedures by which FBOs obtain intraday credit from the Reserve Banks. The most important new requirement is that an FBO will need to determine an FBO PSR capital category, based on its worldwide capital ratios, to establish its

points lower than the 4 percent U.S. leverage ratio required to qualify as adequately capitalized). Under the PSR policy, a significantly undercapitalized institution is ineligible for intraday credit. The Board believes that deeming an FBO ineligible for intraday credit if its home-country leverage ratio is less than 2 percent—which would be more than 100 basis points lower than the 3 percent home-country leverage ratio needed to qualify as sufficiently capitalized—would treat FBOs and U.S. institutions equivalently.

[49] The risk-based capital ratios in the table are based on the ratios currently codified in Regulation H and will change correspondingly with any future revisions to Regulation H.

[50] Supervisory composite ratings, such as the Uniform Bank Rating System (CAMELS), are generally assigned on a scale from 1 to 5, with 1 being the strongest rating. Thus, for the purposes of the Creditworthiness Matrix, a supervisory rating of 1 is considered Strong; a rating of 2 is considered Satisfactory; a rating of 3 is considered Fair; and so on.

[51] Institutions that fall into this category should perform a full assessment of creditworthiness. A full assessment of creditworthiness includes an assessment of capital adequacy, key performance measures (including asset quality, earnings performance, and liquidity), and the condition of affiliated institutions.

[52] *Id.*

[53] Data current as of Q4 2018.

creditworthiness under the PSR policy. Additionally, an FBO will need to determine that it is highly capitalized, based on worldwide capital ratios, in order to qualify for a streamlined procedure for requesting collateralized intraday credit.

The Board does not believe that it will be burdensome for an FBO to calculate its FBO PSR capital category or determine whether it is highly capitalized, nor does it believe that FBO employees will need any specialized professional skills to prepare such calculations. The Board's FR Y–7Q report currently requires that FBOs with total consolidated assets of $50 billion or more report the numerators and denominators needed to calculate all of the risk-based capital ratios in the FBO PSR capital category determination. The FR Y–7Q report also requires that FBOs with total consolidated assets below $50 billion report the numerators and denominators needed to calculate all ratios in the FBO PSR capital category determination except the common equity tier 1 capital ratio. FBOs with total consolidated assets below $50 billion that are based in Basel jurisdictions already calculate their common equity tier 1 capital ratios under home-country standards. Additionally, as discussed above, the Board has clarified that the leverage measure component of the FBO PSR capital category will be based solely on the FBO's leverage ratio as calculated under home-country standards.

5. *Steps taken to minimize economic impact and discussion of significant alternatives.* The Board does not believe that alternatives to these changes would better accomplish the objectives of limiting credit risk to the Reserve Banks while minimizing any economic impact on small entities. The Board believes, as described above, that the revised procedures will allow FBOs to maintain net debit caps that are well tailored to FBOs' actual usage of intraday credit and will not constrain most FBOs' U.S. operations under a wide range of scenarios.

While one alternative would be to continue providing SOSA rankings to FBOs and leave the PSR policy in its present form, the Board believes that Federal Reserve supervisory resources should be allocated to other matters. Similarly, the Board could continue to allow FBOs that are FHCs to qualify for higher levels of intraday credit than FBOs that are not FHCs, but (as described above) the Board does not believe that an FBO's status as an FHC should determine the FBO's eligibility for intraday credit.

In two places—specifically, in the capital measure calculation process and in the eligibility criteria for a streamlined max cap procedure—the Board has deleted references to SOSA without replacing those references with an alternative supervisory rating. As described above, the Board believes that it is unnecessary to substitute another supervisory rating in either area.[54]

Finally, the Board has replaced SOSA rankings in the creditworthiness self-assessment matrix with the FBO PSR capital category. This change will require an FBO to calculate its FBO PSR capital category using worldwide capital ratios. Alternatively, the Board could have simply deleted the SOSA ranking and provided that an FBO's creditworthiness would depend solely on its U.S. operations supervisory composite rating. The Board believes, however, that using the FBO PSR capital category in conjunction with an FBO's supervisory ratings will better protect the Reserve Banks from credit risk, because the FBO PSR capital category will provide insight into an FBO's worldwide financial profile and its ability to support its U.S. branches and agencies. As discussed above, the Board has clarified that an FBO will calculate the leverage measure component of the FBO PSR capital category under home-country standards.

IV. Competitive Impact Analysis

The Board conducts a competitive impact analysis when it considers a rule or policy change that may have a substantial effect on payment system participants. Specifically, the Board determines whether there would be a direct or material adverse effect on the ability of other service providers to compete with the Federal Reserve due to differing legal powers or due to the Federal Reserve's dominant market position deriving from such legal differences.[55] The Board did not receive any comments regarding its competitive impact analysis in the proposal.

The Board believes that the modifications to the PSR policy will have no adverse effect on the ability of other service providers to compete with the Reserve Banks in providing similar services. While the Board expects that the modifications will reduce net debit caps for many FBOs, the Board does not believe this will have a significant effect on FBOs because (as explained above) the Board believes that most FBOs would retain access to sufficient amounts of Reserve Bank intraday credit. Accordingly, the Board not expect the modifications will have a significant effect on FBOs' use of Federal Reserve Bank services. Additionally, the proposed modifications will have no effect on intraday credit access for domestic institutions, which comprise the vast majority of Reserve Bank account holders.

V. Paperwork Reduction Act

Certain provisions of the PSR policy contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[56] In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The Board has reviewed the amendments to the PSR policy adopted in this notice under the authority delegated to the Board by OMB. The amendments require revisions to the Annual Report of Net Debit Cap (FR 2226; OMB No. 7100–0217). In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Annual Report of Net Debit Cap (FR 2226; OMB No. 7100–0217). The Board received no comments on the PRA analysis in the proposal. The Board has a continuing interest in the public's opinions of collections of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, # 10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Revision, With Extension for Three Years, of the Following Information Collection:

Title of Information Collection: Annual Report of Net Debit Cap.

Agency Form Number: FR 2226.

OMB Control Number: 7100–0217.

Frequency of Response: Annually.

Respondents: Depository institutions' board of directors.

[54] *See* sections I.B.3 and I.B.4, *supra.*

[55] Federal Reserve Regulatory Service, 9–1558.

[56] 44 U.S.C. 3501–3521.

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the PSR policy. The reporting panel includes all financially healthy depository institutions with access to the discount window. The Report of Net Debit Cap comprises three resolutions, which are filed by a depository institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap.[57] The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity.

Under the PSR policy, an FBO's SOSA ranking can affect its eligibility for a positive net debit cap, the size of its net debit cap, and its eligibility to request a streamlined procedure to obtain maximum daylight overdraft capacity. Additionally, an FBO's status as an FHC can affect the size of its net debit cap and its eligibility to request a streamlined procedure to obtain maximum daylight overdraft capacity. The amendments to the PSR policy adopted in this notice (1) remove references to the SOSA ranking, (2) remove references to FBOs' FHC status, and (3) adopt alternative methods for determining an FBO's eligibility for a positive net debit cap, the size of its net debit cap, and its eligibility to request a streamlined procedure to obtain maximum daylight overdraft capacity. The amendments will increase the estimated average hours per response for FR 2226 self-assessment and de minimis respondents that are FBOs by half an hour.

Estimated number of respondents: De Minimis Cap: Non-FBOs, 893 respondents and FBOs, 18 respondents; Self-Assessment Cap: Non-FBOs, 106 respondents and FBOs, 9 respondents; and Maximum Daylight Overdraft Capacity, 2 respondents.

Estimated average hours per response: De Minimis Cap—Non-FBOs, 1 hour and FBOs, 1.5 hour; Self-Assessment Cap—Non-FBOs, 1 hour and FBOs, 1.5 hours, and Maximum Daylight Overdraft Capacity, 1 hour.

Estimated annual burden hours: De Minimis Cap: Non-FBOs, 893 hours and FBOs, 27 hours; Self-Assessment Cap: Non-FBOs, 106 hours and FBOs, 13.5 hours; and Maximum Daylight Overdraft Capacity, 2 hours.

VI. Federal Reserve Policy on Payment System Risk

Revisions to Section II.D of the PSR Policy

Section II.D of the PSR policy is revised as follows:

D. Net debit caps

* * * * *

2. Cap Categories

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a. Self-Assessed

In order to establish a net debit cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.[61] For domestic institutions, the assessment of creditworthiness is based on the institution's supervisory rating and Prompt Corrective Action (PCA) designation.[62] For U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision, the assessment of creditworthiness is based on the institution's supervisory rating and its FBO PSR capital category.[63] An institution may perform a full assessment of its creditworthiness in certain limited circumstances—for example, if its condition has changed significantly since its last examination or if it possesses additional substantive information regarding its financial condition. Additionally, U.S. branches and agencies of FBOs based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are required to perform a full assessment of creditworthiness to determine their ratings for the creditworthiness component. An institution performing a self-assessment must also evaluate its intraday funds-management procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution must evaluate its operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The Guide includes a detailed explanation of the self-assessment process. * * *

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b. De Minimis

Many institutions incur relatively small overdrafts and thus pose little risk to the Federal Reserve. To ease the burden on these small overdrafters of engaging in the self-assessment process and to ease the burden on the Federal Reserve of administering caps, the Board allows institutions that meet reasonable safety and soundness standards to incur de minimis amounts of daylight overdrafts without performing a self-assessment.[67] An

[57] Institutions use these two resolutions to establish a capacity for daylight overdrafts above the lesser of $10 million or 20 percent of the institution's capital measure. Financially healthy U.S. chartered institutions that rarely incur daylight overdrafts in excess of the lesser of $10 million or 20 percent of the institution's capital measure do not need to file board of directors' resolutions or self-assessments with their Reserve Bank.

[61] This assessment should be done on an individual-institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, and so on. An exception is made in the case of U.S. branches and agencies of FBOs. Because these entities have no existence separate from the FBO, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

[62] An insured depository institution is (1) ''well capitalized'' if it significantly exceeds the required minimum level for each relevant capital measure, (2) ''adequately capitalized'' if it meets the required minimum level for each relevant capital measure, (3) ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure, (4) ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure, or (5) ''critically undercapitalized'' if it fails to meet any leverage limit (the ratio of tangible equity to total assets) specified by the appropriate federal banking agency, in consultation with the FDIC, or any other relevant capital measure established by the agency to determine when an institution is critically undercapitalized (12 U.S.C. 1831o).

[63] The four FBO PSR capital categories for FBOs are ''highly capitalized,'' ''sufficiently capitalized,'' ''undercapitalized,'' and ''intraday credit ineligible.'' To determine whether it is highly capitalized or sufficiently capitalized, an FBO should compare its risk-based capital ratios to the corresponding ratios in Regulation H for well-capitalized and adequately capitalized banks. 12 CFR 208.43(b). Additionally, an FBO must have a leverage ratio of 4 percent or 3 percent (calculated under home-country standards) to qualify as, respectively, highly capitalized or sufficiently capitalized. To determine whether it is undercapitalized, an FBO would compare its risk-based capital ratios to the corresponding ratios in Regulation H. Additionally, an FBO would be deemed undercapitalized if its home-country leverage ratio is less than 3 percent. Finally, to determine whether it is intraday credit ineligible, an FBO should compare its risk-based capital ratios to the corresponding ratios in Regulation H for significantly undercapitalized banks. Additionally, an FBO would be deemed intraday credit ineligible if its home-country leverage ratio is less than 2 percent.

[67] U.S. branches and agencies of FBOs that are based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are required to perform a full assessment of creditworthiness to determine whether they meet reasonable safety and soundness

institution may incur daylight overdrafts of up to 40 percent of its capital measure if the institution submits a board of directors resolution. * * *

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c. Exempt-From-Filing

Institutions that only rarely incur daylight overdrafts in their Federal Reserve accounts that exceed the lesser of $10 million or 20 percent of their capital measure are excused from performing self-assessments and filing board of directors resolutions with their Reserve Banks.[68] This dual test of dollar amount and percent of capital measure is designed to limit the filing exemption to institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital measure. * * *

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3. Capital Measure

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b. U.S. Branches and Agencies for Foreign Banks

For U.S. branches and agencies of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to the FBO's U.S. capital equivalency measure.[69] U.S. capital equivalency is equal to 10 percent of worldwide capital for FBOs.[70]

An FBO that is highly capitalized[71] may be eligible for a streamlined procedure (see section II.E.) for obtaining additional collateralized intraday credit under the maximum daylight overdraft capacity provision.

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Revisions to Section II.E of the PSR Policy

The Board will revise Section II.E of the PSR policy as follows:

E. Maximum Daylight Overdraft Capacity

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1. General Procedure

An institution with a self-assessed net debit cap that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. The Reserve Bank will work with an institution that requests additional daylight overdraft capacity to determine the appropriate maximum daylight overdraft capacity level. In considering the institution's request, the Reserve Bank will evaluate the institution's rationale for requesting additional daylight overdraft capacity as well as its financial and supervisory information. The financial and supervisory information considered may include, but is not limited to, capital and liquidity ratios, the composition of balance sheet assets, and CAMELS or other supervisory ratings and assessments. An institution approved for a maximum daylight overdraft capacity level must submit at least once in each twelve-month period a board of directors resolution indicating its board's approval of that level. * * *

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2. Streamlined Procedure for Certain FBOs

An FBO that is highly capitalized[75] and has a self-assessed net debit cap may request from its Reserve Bank a streamlined procedure to obtain a maximum daylight overdraft capacity. These FBOs are not required to provide documentation of the business need or obtain the board of directors' resolution for collateralized capacity in an amount that exceeds its current net debit cap (which is based on 10 percent worldwide capital times its cap multiple), as long as the requested total capacity is 100 percent or less of worldwide capital times a self-assessed cap multiple.[76] In order to ensure that intraday liquidity risk is managed appropriately and that the FBO will be able to repay daylight overdrafts, eligible FBOs under the streamlined procedure will be subject to initial and periodic reviews of liquidity plans that are analogous to the liquidity reviews undergone by U.S. institutions.[77] If an eligible FBO requests capacity in excess of 100 percent of worldwide capital times the self-assessed cap multiple, it would be subject to the general procedure.

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By order of the Board of Governors of the Federal Reserve System, March 26, 2019.

Ann E. Misback,

Secretary of the Board.

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standards. These FBOs must submit an assessment of creditworthiness with their board of directors resolution requesting a de minimis cap category. U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision are not required to complete an assessment of creditworthiness, but Reserve Banks will assess such an FBO's creditworthiness based on the FBO's supervisory rating and its FBO PSR capital category.

[68] The Reserve Bank may require U.S. branches and agencies of FBOs that are based in jurisdictions that have not implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision to perform a full assessment of creditworthiness to determine whether the FBO meets reasonable safety and soundness standards. U.S. branches and agencies of FBOs that are based in jurisdictions that have implemented capital standards substantially consistent with those established by the Basel Committee on Banking Supervision will not be required to complete an assessment of creditworthiness, but Reserve Banks will assess such an FBO's creditworthiness based on the FBO's supervisory rating and the FBO PSR capital category.

[69] The term ''U.S. capital equivalency'' is used in this context to refer the particular measure calculate net debit caps and does not necessarily represent an appropriate for supervisory or other purposes.

[70] FBOs that wish to establish a non-zero net debit cap must report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225). The instructions for FR explain how FBOs should calculate their worldwide capital. *See https://www.federalreserve.gov/apps/reportforms/reportdetail.aspx?sOoYJ+5BzDZ1kLYTc+ZpEQ==.*

[71] *See* n. 63, *supra.*

[75] *See* n. 63, *supra.*

[76] For example, an FBO that is well capitalized is eligible for uncollateralized capacity of 10 percent of worldwide capital times the cap multiple. The streamlined max cap procedure would provide such an institution with additional collateralized capacity of 90 percent of worldwide capital times the cap multiple. As noted above, FBOs report their worldwide capital on the Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).

[77] The liquidity reviews will be conducted by the administrative Reserve Bank, in consultation with each FBO's home country supervisor.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 142, and 146

RIN 3245–AH03

Civil Monetary Penalties Inflation Adjustments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties. The rule also makes a technical amendment to ensure that a reference to the penalty amount imposed on SBA Supervised Lenders for failure to file reports is consistent with current and future adjustments.

DATES: *Effective Date:* This rule is effective April 1, 2019.