

the changes in pricing and market strategies.

The economic impact that would be created by these possibly unforeseen competitive effects is difficult to estimate, and the Agencies encourage comment. In particular, the Agencies are interested in comments on the competitive impact that a change in the regulatory capital regime applied to large institutions would have relative to the competitive position of smaller institutions that remain subject to the general risk-based capital rules. Conversely, if the regulatory burden of the more prescriptive A-IRB approach applied to core institutions were so large as to offset the potential for a lower measured capital requirement for certain exposures, then the competitive position of large institutions, with respect to both their domestic and international competitors, might be worsened. The Agencies are also interested in comments that address the competitive position of regulated institutions in the United States with respect to financial service providers, both domestic and foreign, that are not subject to the same degree of regulatory oversight.

None of the Agencies has yet made the threshold determinations required by executive order or statute with respect to this ANPR. Because the proposed approaches to assessing capital adequacy described in this ANPR are new, the Agencies currently lack information that is sufficiently specific or complete to permit those determinations to be made or to prepare any economic analysis that may ultimately be required. Therefore, this section of the ANPR describes the relevant executive order and statutes, and asks for comment and information that will assist in the determination of whether such analyses would be necessary before the Agencies published proposed or final rules.

Quantitative information would be the most useful to the Agencies. However, commenters may also provide estimates of costs, benefits, or other effects, or any other information they believe would be useful to the Agencies in making the determinations. In addition, commenters are asked to identify or estimate start-up, or non-recurring, costs separately from costs or effects they believe would be ongoing.

#### A. Executive Order 12866

Executive Order 12866 requires preparation of an economic analysis for agency actions that are "significant regulatory actions." "Significant regulatory actions" include, among other things, regulations that "have an

annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. \* \* \*"<sup>57</sup> Regulatory actions that satisfy one or more of these criteria are called "economically significant regulatory actions." E.O. 12866 applies to the OCC and the OTS, but not the Board or the FDIC. If the OCC or the OTS determines that the rules implementing the New Accord comprise an "economically significant regulatory action," then the agency making that determination would be required to prepare and submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) an economic analysis that includes:

- A description of the need for the rules and an explanation of how they will meet the need;
- An assessment of the benefits anticipated from the rules (for example, the promotion of the efficient functioning of the economy and private markets) together with, to the extent feasible, a quantification of those benefits;
- An assessment of the costs anticipated from the rules (for example, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness)), together with, to the extent feasible, a quantification of those costs; and
- An assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.<sup>58</sup>

<sup>57</sup> Executive Order 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (referred to hereafter as E.O. 12866). For the complete text of the definition of "significant regulatory action," see E.O. 12866 at § 3(f). A "regulatory action" is "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." E.O. 12866 at § (e).

<sup>58</sup> The components of the economic analysis are set forth in E.O. 12866 § 6(a)(3)(C)(i)-(iii). For a description of the methodology that OMB recommends for preparing an economic analysis, see Office of Management and Budget, "Economic Analysis of Federal Regulations Under Executive

For purposes of determining whether this rulemaking would constitute an "economically significant regulatory action," as defined by E.O. 12866, and to assist any economic analysis that E.O. 12866 may require, the OCC and the OTS encourage commenters to provide information about:

- The direct and indirect costs, for core banks and those banks who intend to qualify as opt-in banks, of compliance with the approach described in this ANPR and the related supervisory guidance;
- The costs, for general banks, of adopting the approach;
- The effects on regulatory capital requirements for core, opt-in, and general banks;
- The effects on competitiveness, in both domestic and international markets, for core, opt-in, and general banks. This would include the possible effects on the customers served by these U.S. institutions through changes in the mix of product offerings and prices;
- The economic benefits of the approach for core, opt-in, or general banks, as measured by lower regulatory capital ratios, and a potentially more efficient allocation of capital. This might also include estimates of savings associated with regulatory capital arbitrage transactions that are currently undertaken in order to optimize return on capital under the current capital regime. That is, what estimates might exist to quantify the improvements in market efficiency from no longer pursuing regulatory capital arbitrage transactions?
- The features of the A-IRB approach that provide an incentive for a bank to seek to qualify to use it, that is, to become an opt-in bank.

The OCC and the OTS also encourage comment on any alternatives to the regulatory approaches described in the ANPR that the Agencies should consider.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires agencies to prepare a "regulatory flexibility analysis" unless the head of the agency certifies that a regulation will not "have a significant economic impact on a substantial number of small entities."<sup>59</sup> The RFA applies to all of the Agencies.

The Agencies understand that the RFA has been construed to require

Order 12866" (January 11, 1996). This publication is available on OMB's Web site at <http://www.whitehouse.gov/omb/inforeg/riaguide.html>. OMB recently published revisions to this publication for comment. See 68 FR 5492 (February 3, 2003).

<sup>59</sup> The RFA is codified at 5 U.S.C. 601 *et seq.*