

respect to ABCP programs. The OCC has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, Section 202 of the Unfunded Mandates Act does not require the OCC to prepare a budgetary impact statement for this rule.

OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

Plain Language

Section 722 of the Gramm-Leach-Bliley (GLB) Act requires the Federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps the agencies could take to make the rule easier to understand.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies,

Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter 1

Authority and Issuance

■ For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In Appendix A to part 3:

■ a. In section 1, paragraphs (c)(3) through (c)(35) are redesignated as paragraphs (c)(4) through (c)(36); newly redesignated paragraphs (c)(30) through (c)(36) are redesignated (c)(31) through (c)(37); and two new paragraphs (c)(3) and (c)(30) are added;

■ b. In section 2, paragraph (a)(3) is revised; and

■ c. In section 4, two new paragraphs (j) and (k) are added.

Appendix A to Part 3—Risk-Based Capital Guidelines

Section 1. Purpose, Applicability of Guidelines, and Definitions.

* * * * *

(c) * * *

(3) *Asset-backed commercial paper program* means a program that issues commercial paper backed by assets or other exposures held in a bankruptcy-remote special purpose entity.

* * * * *

(30) *Sponsor* means a bank that:

(i) Establishes an asset-backed commercial paper program;

(ii) Approves the sellers permitted to participate in the asset-backed commercial paper program;

(iii) Approves the asset pools to be purchased by the asset-backed commercial paper program; or

(iv) Administers the asset-backed commercial paper program by monitoring the

assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

Section 2. Components of Capital.

* * * * *

(a) * * *

(3) Minority interests in the equity accounts of consolidated subsidiaries, except that the following are not included in Tier 1 capital or total capital:

(i) Minority interests in a small business investment company or investment fund that holds nonfinancial equity investments and minority interests in a subsidiary that is engaged in nonfinancial activities and is held under one of the legal authorities listed in section 1(c)(21) of this appendix A.

(ii) Minority interests in consolidated asset-backed commercial paper programs sponsored by a bank if the consolidated assets are excluded from risk-weighted assets pursuant to section 4(j)(1) of this appendix A. This section 2(a)(3)(ii) of this appendix A is effective from July 1, 2003 to April 1, 2004.

* * * * *

Section 4. Recourse, Direct Credit Substitutes and Positions in Securitizations

* * * * *

(j) *Asset-backed commercial paper programs subject to consolidation.* (1) A bank that qualifies as a primary beneficiary and must consolidate an asset-backed commercial paper program as a variable interest entity under generally accepted accounting principles may exclude the consolidated asset-backed commercial paper program assets from risk-weighted assets if the bank is the sponsor of the consolidated asset-backed commercial paper program.

(2) If a bank excludes such consolidated asset-backed commercial paper program assets from risk-weighted assets, the bank must assess the appropriate risk-based capital charge against any risk exposures of the bank arising in connection with such asset-backed commercial paper programs, including direct credit substitutes, recourse obligations, residual interests, liquidity facilities, and loans, in accordance with sections 3 and 4(b) of this appendix A.

(3) If a bank either elects not to exclude such consolidated asset-backed commercial paper program assets from its risk-weighted assets in accordance with section 4(j)(1) of this appendix A, or is not permitted to exclude consolidated asset-backed commercial paper program assets, the bank must assess risk-based capital charge based on the appropriate risk weight of the consolidated asset-backed commercial paper program assets in accordance with section 3(a) of this appendix A. In such case, direct credit substitutes and recourse obligations (including residual interests), and loans that sponsoring banks provide to such asset-backed commercial paper programs are not subject to any capital charge under section 4 of this appendix A.

(4) This section 4(j) of this appendix A is effective from July 1, 2003 until April 1, 2004.