that section sets forth for banks.[3] This would maintain consistency between banks and bank holding companies with regard to the risk-based capital treatment of transfers of small business loans and leases of personal property with recourse. In general, the Board's proposal could significantly reduce the amount of capital that some banking organizations are required to hold against recourse transactions involving small business obligations.

Under the Board's proposal, for the general purpose of calculating risk-based and leverage capital ratios, qualifying institutions that transfer small business obligations with recourse would be required to maintain capital only against the amount of recourse retained, provided two conditions are met. First, the transaction must be treated as a sale under GAAP and, second, the transferring institutions must establish a non-capital reserve sufficient to meet the reasonably estimated liability under their recourse arrangements.

The Board's proposal would extend the preferential capital treatment for transfers of small business obligations with recourse only to qualifying institutions. A state member bank would be considered qualifying if, pursuant to the Board's prompt corrective action regulation (12 CFR 208.30), it is well capitalized or, by order of the Board, adequately capitalized.[4] Although bank holding companies are not subject to the prompt corrective action regulation, they would be considered qualifying under the Board's proposal if they meet the criteria for well capitalized or, by order of the Board, for adequately capitalized as those criteria are set forth for banks in that regulation. A qualifying institution must be determined to be well capitalized or adequately capitalized without taking into consideration the preferential capital treatment the proposal provides for transfers of small business obligations with recourse.

The Board is also proposing that the total outstanding amount of recourse retained by qualifying banking organizations on transfers of small business obligations receiving the preferential capital treatment cannot exceed 15 percent of the institution's total risk-based capital. By order, the Board may approve a higher limit. If a banking organization is no longer qualifying, *i.e.,* becomes less than well capitalized, or has met the established limit, it could not apply the preferential capital treatment to any new transfers of small business loans and leases of personal property with recourse. Such types of transfers completed while the institution was qualifying or before it met the established limit, however, would continue to receive the preferential capital treatment.

In accordance with section 208 of the Riegle Act, the Board is proposing, that for purposes of determining a state member bank's capital category under the Board's prompt corrective action regulation, its risk-based and leverage capital ratios shall be calculated without taking into consideration the preferential capital treatment the proposal provides for transfers of small business obligations with recourse.

The Board expects that this preferential capital treatment also would not be applied for purposes of determining limitations on an institution's ability to borrow from the discount window, which is tied to its prompt corrective action status. In addition, the Board will consider whether the preferential capital treatment should be disregarded for purposes of determining an institution's ability to accept interbank liabilities. The relevant regulation sets limits on institutions that are not adequately capitalized, a term the regulation states is similar to, but not identical to, the definition of that term under the prompt corrective action regulation. A decision on whether the preferential capital treatment would be taken into account for purposes of determining an institution's ability to accept brokered deposits and the amount of its risk-based insurance premiums is to be made by the FDIC. The regulations governing these matters employ the prompt corrective action categories.

The Board is seeking comments on all aspects of this proposal.

Regulatory Flexibility Act

The purpose of this proposal is to reduce the regulatory capital requirement on transfers with recourse of small business loans and leases of personal property. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, the Board hereby certifies that this rule, as proposed, would not have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations). Accordingly, a regulatory flexibility analysis is not required. The risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million; thus, the proposed rule would not affect such companies.

Paperwork Reduction Act and Regulatory Burden

The Board has determined that this proposed rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulations that impose additional requirements on insured depository institutions.

List of Subjects

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.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR parts 208 and 225 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

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[3] The Board is not proposing to amend the leverage capital guidelines for bank holding companies since all transfers with recourse that are treated as sales under GAAP are already removed from a transferring bank holding company's balance sheet and, thus, are not included in the calculation of its leverage ratio.

[4] Under 12 CFR 208.30, a state member bank is deemed to be well capitalized if it: (1) Has a total risk-based capital ratio of 10.0 percent or greater; (2) has a Tier 1 risk-based capital ratio of 6.0 percent or greater; (3) has a leverage ratio of 5.0 percent or greater; and (4) is not subject to any written agreement, order, capital directive or prompt corrective action directive issued by the Board pursuant to section 8 of the FDI Act, the International Lending Supervision Act of 1983, or section 38 of the FDI Act or any regulation thereunder, to meet and maintain a specific capital level for any capital measure.

A state member bank is deemed to be adequately capitalized if it: (1) Has a total risk-based capital ratio of 8.0 or greater; (2) has a Tier 1 risk-based capital ratio of 4.0 percent or greater; (3) has a leverage ratio of 4.0 percent or greater or a leverage ratio of 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system in its most recent examination and is not experiencing or anticipating significant growth; and (4) does not meet the definition of a well capitalized bank.