Equifax, Experian, or TransUnion, some companies collect consumer data from third parties for dissemination to employers in background reports. Traditional background screening companies ''assemble'' or ''evaluate'' information about workers, often from public sources, such as criminal history records. Other firms might collect information from employers about workers' collective bargaining activity, or job performance, and then sell it to other employers to make hiring decisions.

In addition, an entity could ''assemble'' or ''evaluate'' consumer information within the meaning of the term ''consumer reporting agency'' if the entity collects consumer data in order to train an algorithm that produces scores or other assessments about workers for employers. For example, the developer of a phone app that monitors a transportation worker's driving activity and provides driving scores to companies for employment purposes could ''assemble'' or ''evaluate'' consumer information if the developer obtains or uses data from sources other than an employer receiving the report, including from other employer-customers or public data sources, to generate the scores.[23]

Not all third parties that assemble or evaluate data will qualify as ''consumer reporting agencies.'' For example, section 603(d)(2)(A)(i) of the FCRA excludes from the definition of ''consumer report'' any ''report containing information solely as to transactions or experiences between the consumer and the person making the report.'' But this exception applies only to reports containing information *solely* about transactions or experiences between the consumer and the report-maker. The exception by its own terms does not apply to a report containing information not about transactions or experiences between the report-maker and the consumer, such as when the report includes algorithmic scores, as described above.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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[23] That may be true even when the assessment is performed through a software program licensed to employers, because the software provider furnishes the reports. Federal Trade Commission (FTC) staff opined more than two decades ago that a seller of particular software that allowed users to compile and de-duplicate credit report information from the three major nationwide consumer reporting agencies was not itself a consumer reporting agency, reasoning that the software seller was not ''assembling or evaluating'' any information itself. FTC Advisory Opinion (Oct. 27, 1997), *https://www.ftc.gov/legal-library/browse/advisory-opinions/advisory-opinion-cast-10-27-97; see also* FTC, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations* at 12–13, 29 (July 2011). The FTC's guidance, however, focused on technology that was in existence at the time the guidance was drafted. Significant changes in the software and general technological landscape have taken place in the years since, rendering the FTC's prior guidance inapplicable to many of the kinds of technology used today. For example, software developers today often take a more active role in providing ongoing services to clients, such as by performing ongoing maintenance of the software, or by licensing services to clients instead of selling software as a point-in-time product. Accordingly, a third-party software provider could meet the definition of a consumer reporting agency where it assembles or evaluates consumer information to develop software that produces reports used to evaluate a worker ''for employment, promotion, reassignment or retention,'' or where the software itself assembles or evaluates information about a worker to produce reports used for those purposes. Judicial decisions declining to find software providers to be CRAs are likewise distinguishable. For instance, in *Zabriskie* v. *Fed. Nat'l Mortg. Ass'n,* 940 F.3d 1022, 1029 (9th Cir. 2019), the court determined that Fannie Mae did not act as a CRA by licensing a proprietary software that allowed lenders to determine whether their loans met requirements for Fannie Mae to purchase, but relied on reasoning inapplicable to third-party software developers that analyze worker data that companies use for employment purposes. *Id.* (reasoning that Congress intended to exclude Fannie Mae from the definition of a ''consumer reporting agency'' and that Fannie Mae did not have the purpose of furnishing consumer reports to a third party, but rather to determine the loans' eligibility for purchase).

FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–1844]

RIN 7100—AG 85

Federal Reserve Bank Capital Stock

AGENCIES: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that the Board annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis (BEA). Based on the change in the Gross Domestic Product Price Index as of September 26, 2024, the total consolidated asset threshold will be $12,841,000,000 through December 31, 2025.

DATES:

Effective date: December 12, 2024.

Applicability date: The adjusted threshold for total consolidated assets will apply beginning on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Senior Counsel (202/263–4877), Legal Division; or Kelsey Cassidy, Senior Financial Institutions Policy Analyst (202/465–6817), Reserve Bank Operations and Payments Systems Division. For users of TTY–TRS, please contact 711 from any telephone, anywhere in the United States or (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the

Reserve Banks. Under section 5 of the Federal Reserve Act [1] and Regulation I,[2] a member bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six percent of the member bank's capital and surplus. The member bank must pay for one-half of this subscription when the Reserve Bank issues the capital stock, while the remaining half of the subscription shall be subject to call by the Board.[3]

Section 7(a)(1) of the Federal Reserve Act [4] provides that Reserve Bank stockholders with $10 billion or less in total consolidated assets shall receive a six percent dividend on paid-in capital stock, while stockholders with more than $10 billion in total consolidated assets shall receive a dividend on paid-in capital stock equal to the *lesser* of six percent and ''the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend.'' Section 7(a)(1) requires that the Board adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index, published by the BEA.

Regulation I implements section 7(a)(1) of the Federal Reserve Act by (1) defining the term ''total consolidated assets,'' [5] (2) incorporating the statutory dividend rates for Reserve Bank stockholders [6] and (3) providing that the Board shall adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index.[7] The Board has explained that it ''expects to make this adjustment [to the threshold for total consolidated assets] using the final second quarter estimate of the Gross Domestic Product Price Index for each year, published by the Bureau of Economic Analysis.'' [8]

II. Adjustment

The Board annually adjusts the $10 billion total consolidated asset threshold based on the change in the Gross Domestic Product Price Index between the second quarter of 2015 (the baseline year) and the second quarter of the current year.[9] The second quarter 2024 Gross Domestic Product Price Index estimate published by the BEA in September 2024 (124.942) is 28.41 percent higher than the second quarter 2015 Gross Domestic Product Price Index estimate published by the BEA in September 2024 (97.302). Based on this change in the Gross Domestic Product Price Index, the threshold for total consolidated assets in Regulation I will be $12,841,000,000 as of January 1, 2025.

III. Administrative Law Matters

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments that are required by statute and Regulation I and are consistent with a method previously set forth by the Board.[10] Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[11] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[12] the Board has reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation I, 12 CFR part 209, as follows:

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

§ 209.2 [Amended]

■ 2. Amend § 209.2 by removing ''$12,517,000,000'' and adding in its place ''$12,841,000,000''.

§ 209.3 [Amended]

■ 3. Amend § 209.3 by removing ''$12,517,000,000'' and adding in its place ''$12,841,000,000''.

§ 209.4 [Amended]

■ 4. Amend § 209.4 by removing ''$12,517,000,000'' and adding in their place ''$12,841,000,000'', wherever they appear.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–26091 Filed 11–8–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0464; Project Identifier MCAI–2022–01556–T; Amendment 39–22875; AD 2024–22–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–09–03, which applied to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. AD 2021–09–03 required repetitive replacements of the emergency locator

[1] 12 U.S.C. 287.

[2] 12 CFR 209.4(a).

[3] 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

[4] 12 U.S.C. 289(a)(1).

[5] 12 CFR 209.1(d)(3).

[6] 12 CFR 209.4(e), (c)(1)(ii), and (d)(1)(ii); 209.2(a); and 209.3(d)(5).

[7] 12 CFR 209.4(f).

[8] 81 FR 84415, 84417 (Nov. 23, 2016).

[9] The BEA makes ongoing revisions to its estimates of the Gross Domestic Product Price Index for historical calendar quarters. The Board calculates annual adjustments from the baseline year (rather than from the prior-year total consolidated asset threshold) to ensure that the adjusted total consolidated asset threshold accurately reflects the cumulative change in the BEA's most recent estimates of the Gross Domestic Product Price Index.

[10] *See* 12 CFR 209.4(f) and n. 8 and accompanying text, *supra.*

[11] 5 U.S.C. 603 and 604.

[12] 44 U.S.C. 3506; 5 CFR 1320.