

## SEC Finalizes Guide 3 Replacement

September 22, 2020

The SEC has finalized **rules** that will replace Guide 3, the industry guide for banking organizations. The final rules eliminate a number of the requirements under Guide 3, which now appear in the financial statements, and streamline many of those that remain. The three “new” credit quality ratios in the final rules are, in practice, already included in most registrants’ disclosures, and thus are not significant new requirements. The final rules are substantially similar to those proposed in September 2019.

As a reminder, the disclosures required by Guide 3 and the new rules are not required to be presented in the notes to the financial statements, and therefore are not required to be audited or submitted in XBRL format.

The rules will be effective 30 days after publication in the Federal Register and will apply to fiscal years ending on or after December 15, 2021. Registrants filing initial registration statements will not be required to apply the final rules until an initial registration statement is first filed containing financial statements for a period on or after December 15, 2021. Voluntary compliance with the new rules will be accepted in advance of the mandatory compliance date, and given the streamlining that this first major update of Guide 3 since 1986 represents, many registrants may choose to comply early. Guide 3 will be rescinded effective January 1, 2023.

### Existing Requirements vs. Revised Rules

The table on the following pages compares the disclosures under Guide 3 with the requirements in its replacement, new subpart 1400 of Regulation S-K, and provides additional commentary on the changes. We have also included template tables showing examples of how existing tables can be updated for the new requirements. These can be found as links in the table below and at the end of the memorandum.

Existing Requirement	Revised Rules	Commentary
<b>Scope and Reporting Periods</b>		
<p><b>General Applicability</b></p> <p>By its terms, Guide 3 applies to bank holding companies (<b>BHCs</b>).</p> <p>In practice, other registrants with material lending and deposit activities also comply with Guide 3, including (1) banks, (2) savings and loan holding companies (<b>SLHCs</b>), (3) savings and loan associations and (4) certain other financial services registrants.</p>	<p>Item 1401 expressly applies these disclosure requirements to only (1) BHCs, (2) banks, (3) SLHCs and (4) savings and loan associations.</p>	<p>The revised scope is consistent with current practice, and only excludes a handful of registrants that currently comply with Guide 3 disclosures.</p> <p>The scope has <u>not</u> been expanded to cover insurance companies, online marketplace lenders or other fintech companies.</p>
<p><b>Reporting Periods</b></p> <p>Five years of loan portfolio and summary of loan loss experience data and three years of all other information.</p> <p>Two years for all information if the registrant has &lt;\$200M of assets or &lt;\$10M of net worth.</p> <p>Any additional interim period information must be disclosed if necessary to keep the information from being misleading or if a material change in the information or the trend evidenced thereby has occurred.</p>	<p>Reporting periods will be tied to the annual reporting periods of the relevant financial statement requirements, which are generally:</p> <ul style="list-style-type: none"> <li>• Two years for balance sheets; and</li> <li>• Three years for income statements, or two years for emerging growth companies in IPOs.<sup>1</sup></li> </ul> <p>Any additional interim period information must be disclosed if a material change in the information or the trend evidenced thereby has occurred.</p>	<p>The new rules will streamline filings by tying required statistical disclosures to the financial statement period.</p>
<p><b>Daily Averages</b></p> <p>Unless otherwise indicated, reported averages are daily averages.</p> <p>Weekly or month-end averages may be used if data on daily averages would involve undue burden or expense, provided that such averages are representative of the registrant's operations.</p>	<p><i>Codified with no substantive changes</i></p>	

<sup>1</sup> Smaller reporting companies may also present only two years of income statements.

Existing Requirement	Revised Rules	Commentary
<b><i>Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential</i></b>		
<p><b>Average Balance Sheets</b></p> <p>Average balance sheets, showing interest income and expense and average rates and yield on all major categories of assets and liabilities.</p> <p>Major categories of assets and liabilities should include:</p> <ul style="list-style-type: none"> <li>• Loans, taxable investment securities, non-taxable investment securities, interest bearing deposits other banks;</li> <li>• Federal funds sold and securities purchased with agreements to resell and other short-term investments;</li> <li>• Savings deposits, other time deposits, short-term debt, long-term debt; and</li> <li>• Any other significant assets or liabilities.</li> </ul> <p>Must be separated by domestic and foreign categories for registrants required to make separate disclosures of foreign activities under Item 9-05 of Regulation S-X.</p>	<p>Item 1402 codifies these existing average asset and liability disclosures, but must include, <i>if material</i>, the following new, disaggregated categories:</p> <ul style="list-style-type: none"> <li>• Federal funds sold;</li> <li>• Securities purchased with agreements to resell;</li> <li>• Federal funds purchased;</li> <li>• Securities sold with agreements to repurchase; and</li> <li>• Commercial paper.</li> </ul>	<p>Item 1402 is largely consistent with Item 1.A. of Guide 3 but requires, where material, more granular disclosure of average federal funds bought and sold, securities repurchase and resale agreements and commercial paper.</p> <p>See <a href="#">Average Balance Sheet</a> in the Appendix for an updated template table</p>
<p><b>Volume and Rate Analysis</b></p> <p>Changes in net interest income, showing volume and rate analysis.</p> <p>Must be separated by domestic and foreign categories for registrants required to make separate disclosures of foreign activities under item 9-05 Regulation S-X.</p>	<p><i>Codified with no substantive changes</i></p>	<p>While generally unchanged, the reduced reporting period for income statement items (three years) and the additional mandatory average balance sheet items will result in slight changes to the presentation of volume and rate analysis.</p>
<p><b>Margin and Average Spread</b></p> <p>Average interest-earning assets, net interest income, gross margin, net interest margin and average spread.</p>	<p><i>Codified with no substantive changes</i></p>	

Existing Requirement	Revised Rules	Commentary
<b>Investment Portfolio</b>		
<p><b>Investment Portfolio – Value</b></p> <p>For each of the last three years, disclose the book value of investments in most securities.</p>	<p><i>Eliminated</i></p>	<p>This requirement is eliminated because it overlaps with U.S. GAAP and IFRS disclosure requirements.</p>
<p><b>Investment Portfolio – Yields</b></p> <p>For each of the last three years, show the book value of securities that are due in one year or less, after one year to five years, after five years to ten years and state the weighted average yield for each range of maturities.</p>	<p>Item 1403 does <u>not</u> require disclosure of the book value of securities for each range of maturities.</p> <p>Item 1403 codifies the requirement to disclose weighted average yield for each range of maturities, but applies <u>only</u> to debt securities that are not held at fair value.</p>	<p>See <i>Investment Portfolio – Yields in the Appendix for an updated template table</i></p>
<p><b>Issuer Concentration</b></p> <p>If the aggregate book value of securities from a single issuer exceeds 10% of the registrant's stockholders' equity at the end of the most recent reported period, disclose the name of such issuer and the aggregate book and market value of the securities.</p>	<p><i>Eliminated</i></p>	<p>This requirement is eliminated because it overlaps with U.S. GAAP and IFRS disclosure requirements.</p>
<b>Loan Portfolio</b>		
<p><b>Loans by Type</b></p> <p>Disclose loans by types of customer.</p> <p>The specified categories for domestic loans are: (1) commercial, financial and agricultural, (2) real estate – construction, (3) real estate – mortgage, (4) installment loans to individuals, and (5) lease financing, and for foreign loans are: (6) governments and official institutions, (7) banks and other financial institutions, (8) commercial and industrial, and (9) other.</p>	<p><i>Eliminated</i></p>	<p>This requirement is eliminated because it overlaps with U.S. GAAP and IFRS disclosure requirements.</p>

Existing Requirement	Revised Rules	Commentary
<p><b>Loans by Maturity and Interest Rate Sensitivity</b></p> <p>Disclose loans due (1) in one year or less, (2) between one and five years, (3) between five and ten years, and (4) after ten years.</p> <p>Include a separate presentation of all loans due after one year with fixed interest rates versus those with floating or adjustable interest rates.</p>	<p>Item 1404 codifies currently required maturity and interest rate sensitivity disclosure, but expands disclosure to each category of loans required to be disclosed under U.S. GAAP or IFRS financial statements. Item 1404(a) also requires disclosure of additional maturity categories, including: (1) after five years through 15 years and; (2) after 15 years.</p> <p>To the extent non-contractual rollovers or extensions are included for purposes of measuring the allowance for credit losses under U.S. GAAP or IFRS, such non-contractual rollovers or extensions should be considered for purposes of the maturities classification and the policy should be briefly disclosed.</p>	<p>Interest rate sensitivity has, since 1997, been covered by the SEC’s market risk disclosure rule.</p> <p>See <i>Loans by Maturity and Interest Rate Sensitivity in the Appendix for an updated template table</i></p>
<p><b>Loan Portfolio Risk Elements</b></p> <p>Disclose: non-accruing loans by type; potential problem loans, the aggregate amount of cross-border outstandings to borrowers in each foreign country where they exceed 1% of total assets, and any concentration of loans exceeding 10% of total loans not otherwise disclosed.</p>	<p><i>Eliminated</i></p>	<p>While there are certain differences between disclosure required under Guide 3 and U.S. GAAP, the loan portfolio risk elements disclosure is eliminated because reasonably similar disclosures are required by SEC rules, U.S. GAAP or IFRS.</p>
<p><b>Interest Bearing Assets</b></p> <p>Disclose the nature and amounts of any other interest-bearing assets that would be disclosed if those assets were loans.</p>	<p><i>Eliminated</i></p>	<p>Interest bearing asset disclosure is eliminated because IFRS requires similar disclosure and U.S. GAAP requires disclosure of nonaccrual and past due financing receivables.</p>

Existing Requirement	Revised Rules	Commentary
<b><i>Allowance for Credit Losses</i></b>		
<p><b>Loan Losses</b></p>	<p><i>Loan loss exposure eliminated</i></p> <p>Item 1405 requires the disclosure of <b>credit ratios</b> for each reporting period, along with each component of the ratio's calculation. The disclosure is based on loan categories required to be disclosed under U.S. GAAP or IFRS.</p>	<p>This requirement is eliminated because it overlaps with U.S. GAAP and IFRS disclosure requirements.</p>
<p><b>Credit Ratios</b></p>	<p>Item 1405 requires the disclosure of the following credit ratios, along with each of the components used in their calculation: (1) allowance for credit losses to total loans; (2) nonaccrual loans to total loans; (3) allowance for credit losses to nonaccrual loans; and (4) net charge-offs to average loans.</p> <p>The first three ratios should be disclosed on a consolidated basis, while the fourth (ratio of net charge-offs to average loans) should be disclosed by loan category presented in the financial statements.</p> <p>A discussion of the factors that drove material changes in the ratios, or related components, is required.</p>	<p>Although not required under the existing requirements, many bank and savings and loan registrants already include the new required credit ratio disclosures in their SEC filings as the components are required under regulatory reports. Particularly relevant to new registrants considering an IPO, registrants will be able to omit the information that is unknown and not reasonably available.</p> <p>The required discussion of factors driving changes in reported ratios will overlap with the analysis included in MD&amp;A, which could be shortened by referring back to the Item 1405 disclosures.</p> <p><i>See <b>Credit Ratios</b> in the Appendix for an updated template table</i></p>

Existing Requirement	Revised Rules	Commentary
<b>Deposits</b>		
<p><b>Interest-Earning Deposits</b></p> <p>Disclose the average amounts of and the average rates paid for specified deposit categories that exceed 10% of average total deposits, the amount outstanding of certain time deposits of \$100,000 or more and the aggregate amount of deposits by foreign depositors in U.S. offices, if material.</p>	<p>Item 1406 generally codifies current disclosure requirements.</p> <p>Changes include requiring disclosure of: (1) the amount of U.S. time deposits that exceed the FDIC insurance limit (or similar state deposit insurance regimes) and time deposits that are otherwise uninsured, segregated by maturity (instead of the amount of certain time deposits of \$100,000 or more); and (2) separate presentation of the total amount of uninsured deposits. Determinations of uninsured deposits should be based on the same methodologies and assumptions used for regulatory reporting requirements, to the extent applicable.</p> <p>To the extent it is not reasonably practicable to provide a precise measure of uninsured deposits, estimated amounts of uninsured deposits may be disclosed. Such estimates must be based on the same methodologies and assumptions used for the applicable bank or savings and loan registrant's regulatory reporting requirements.</p> <p>Foreign banking organizations will be required to look to the definition of uninsured deposits in their home country.</p>	<p>See <i>Interest-Earning Deposits in the Appendix for an updated template table</i></p>
<b>Return on Equity and Assets</b>		
<p><b>Return on Equity and Assets</b></p> <p>Disclose the return on assets, return on equity, dividend payout ratio, and equity to assets ratio.</p>	<p><i>Eliminated</i></p>	<p>Return on equity and assets and related ratios are no longer be required since key performance indicators, such as ROE and ROA, are required in the Management's Discussion and Analysis section.</p>

Existing Requirement	Revised Rules	Commentary
<b>Short-Term Borrowings</b>		
<p><b>Short-Term Borrowings</b></p> <p>Disclose the average short-term amounts outstanding and weighted average interest at end of period, maximum outstanding during period, and average outstanding and weighted average interest rates during the period.</p>	<p>The revised rules require this disclosure as part of the average balance sheet and related average rate paid for each major category of interest-bearing liability currently required to be disclosed, and disaggregation of major categories of interest-bearing liabilities.</p>	
<b>Foreign Registrants</b>		
<p><b>Foreign Registrants</b></p> <p>Applies to foreign registrants, who may request that the SEC staff permit omission of information that is unavailable or cannot be compiled without undue burden or expense.</p>	<p>The revised rules apply to all covered registrants, but generally take account of differences between IFRS and U.S. GAAP with respect to categories and classes of financial instruments with respect to which disclosure is required.</p> <p>For example, foreign private issuers that apply IFRS will be exempt from certain disclosures with respect to nonaccrual loans and troubled debt restructurings because those classifications of assets are not presented in IFRS. IFRS filers will also be exempt from disclosure of the allowance for loan losses by category of loan because that information is already required by IFRS in footnote disclosure.</p>	<p>The revised rules do not codify Guide 3’s undue burden or expense limitation for foreign registrants, but all registrants, including foreign registrants, are generally relieved from providing information that is “unknown or not reasonably available to the registrant” under Securities Act Rule 409.</p> <p>There should be no change in practice under the new rules because Securities Act Rule 409 permits omission of information that could not be obtained without unreasonable effort or expense.</p>

**Additional Commentary**

Finally, the SEC took the opportunity to remind registrants that its guidance<sup>2</sup> on MD&A disclosure requires registrants to identify and discuss key performance indicators when they are used to manage the business and would be material to investors. As such, the SEC expects registrants to continue to make disclosures otherwise eliminated from the specific prescriptions of the proposed new rule when such disclosures are necessary to an understanding of the bank or savings and loan registrant’s financial condition and results of operations.

<sup>2</sup> See Commission Guidance on Management’s Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33-10751 (Jan. 30, 2020).

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The following examples show how certain tables required by Guide 3 could be updated to reflect the final rules. Items in blue are new additions required by the final rule and items in red are not required by Regulation S-K, as amended. As a reminder, filers may voluntarily include disclosures that are no longer required, and such disclosures may be required by other requirements, such as the SEC’s market risk disclosure rule or U.S. GAAP or IFRS requirements, which are beyond the scope of this memo. These tables are for illustrative purposes only and should not be relied on as legal advice.

Average Balance Sheet

(dollars in millions)	Year Ended December 31,									Change 2020 vs. 2019	
	2020			2019			2018			Average Balances	Yields/ Rates (bps)
	Average Balances	Income/ Expense	Yields/ Rates	Average Balances	Income/ Expense	Yields/ Rates	Average Balances	Income/ Expense	Yields/ Rates		
<b>Assets [1]</b>											
Interest-bearing cash and due from banks and deposits in banks	\$	\$	%	\$	\$	%	\$	\$	%	\$	bps
Taxable investment securities											
Non-taxable investment securities											
Federal funds sold											
Securities purchased with agreements to resell											
Total investment securities											
Commercial											
Commercial real estate											
Leases											
Total commercial loans and leases											
Residential mortgages											
Home equity loans											
Home equity lines of credit											
Automobile											
Education											
Credit cards											
Other retail											
Total retail loans											
Total loans and leases											
Loans held for sale, at fair value											
Other loans held for sale											
Interest-earning assets											
Allowance for loan and lease losses											
Goodwill											
Other noninterest-earning assets											
Total assets	\$			\$			\$			\$	
<b>Liabilities and Stockholders' Equity [1]</b>											
Checking with interest	\$	\$	%	\$	\$	%	\$	\$	%	\$	bps
Money market accounts											
Regular savings											
Term deposits											
Total interest-bearing deposits											

<u>Federal funds purchased</u>									
<u>Securities sold under</u>									
<u>agreements to repurchase</u>									
<u>Commercial Paper</u>									
Other short-term borrowed funds									
Long-term borrowed funds									
Total borrowed funds									
Total interest-bearing liabilities									
Demand deposits									
Other liabilities									
Total liabilities									
Stockholders' equity									
Total liabilities and stockholders' equity									
	\$		\$		\$		\$		\$
Interest rate spread		%		%		%			
Net interest income and net interest margin	\$	%	\$	%	\$	%	\$	%	
Net interest income and net interest margin	\$	%	\$	\$	%	\$	%	\$	bps
Memo: Total deposits (interest-bearing and demand)	\$	\$	%	\$	\$	%	\$	%	\$
									bps

[1] Categories of major assets and liabilities specified by the rule are required to be disclosed only if they are material.

Investment Portfolio – Yields

As of December 31, 2020

Distribution of Maturities

(dollars in millions)	Due in 1 Year or Less	Due After 1 Through 5 Years	Due After 5 Through 10 Years	Due After 10 Years	Total
<b>Amortized cost:</b>	-	-	-	-	-
U.S. Treasury and other	\$	\$	\$	\$	\$
State and political subdivisions					
Mortgage-backed securities:					
Federal agencies and U.S. government sponsored entities					
Other/non-agency					
<b>Total debt securities available for sale</b>					
<b>Weighted-average yield [1]</b>					
U.S. Treasury and other	%	%	%	%	%
State and political subdivisions					
Mortgage-backed securities:					
Federal agencies and U.S. government sponsored entities					
Other/non-agency					
<b>Total Weighted-average yield</b>	%	%	%	%	%

[1] Filers must also disclose how weighted-average yield is calculated. Categories of investments in debt securities are not specified in Item 1403. Instead, the weighted-average yield must be presented for each category of debt securities not carried at fair value for which disclosure is required in the financial statements.

Loans by Maturity and Interest Rate Sensitivity

	December 31, 2020				
[1] (in millions)	Due in 1 Year or Less	Due After 1 Year Through 5 Years	Due After 5 Years Through 15 Years	Due After 15 Years	Total Loans and Leases
Commercial	\$	\$	\$	\$	\$
Commercial real estate					
Leases					
Total commercial loans and leases					
Residential mortgages					
Home equity loans					
Home equity lines of credit					
Home equity loans serviced by others					
Home equity lines of credit serviced by others					
Automobile					
Education					
Credit cards					
Other retail					
Total retail loans					
Total loans and leases	\$	\$	\$	\$	\$

Amount due after one year at fixed interest rates:

<u>Commercial</u>	\$
<u>Commercial real estate</u>	
<u>Leases</u>	
<u>Total commercial loans and leases</u>	
<u>Residential mortgages</u>	
<u>Home equity loans</u>	
<u>Home equity lines of credit</u>	
<u>Home equity loans serviced by others</u>	
<u>Home equity lines of credit serviced by others</u>	
<u>Automobile</u>	
<u>Education</u>	
<u>Credit cards</u>	
<u>Other retail</u>	
<u>Total retail loans</u>	
<u>Total loans and leases</u>	\$

Amount due after one year at variable interest rates:

<u>Commercial</u>	\$
<u>Commercial real estate</u>	
<u>Leases</u>	
<u>Total commercial loans and leases</u>	
<u>Residential mortgages</u>	
<u>Home equity loans</u>	
<u>Home equity lines of credit</u>	
<u>Home equity loans serviced by others</u>	
<u>Home equity lines of credit serviced by others</u>	
<u>Automobile</u>	

<u>Education</u>	
<u>Credit cards</u>	
<u>Other retail</u>	
<u>Total retail loans</u>	
<u>Total loans and leases</u>	\$

[1] The disclosures in this table are required for each category of loans required to be disclosed under U.S. GAAP or IFRS financial statements.

Credit Ratios

	<u>As of and for the Year Ended</u> <u>December 31,</u>		
	<u>2020</u>	<u>2019</u>	<u>2018</u>
<u>Allowance for credit losses to total loans outstanding</u>	<u>%</u>	<u>%</u>	<u>%</u>
<u>Allowance for credit losses</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>Total loans outstanding</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>Nonaccrual loans to total loans outstanding</u>			
<u>Nonaccrual loans</u>			
<u>Total loans outstanding</u>			
<u>Allowance for credit losses to nonaccrual loans</u>			
<u>Allowance for credit losses</u>			
<u>Nonaccrual loans</u>			
<u>Net charge-offs during the period to average loans outstanding:</u>			
<u>Commercial</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Commercial real estate</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Leases</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Total commercial loans and leases</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Residential mortgages</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Home equity loans</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Home equity lines of credit</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Automobile</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Education</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Credit cards</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Other retail</u>			
<u>Net charge-off during the period</u>			
<u>Average amount outstanding</u>			
<u>Total retail loans</u>			

Net charge-off during the period

Average amount outstanding

Total loans

Net charge-off during the period

Average amount outstanding

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Interest-Earning Deposits

(dollars in millions)	For the Year Ended December 31,					
	2020		2019		2018	
	Average Balances	Yields/ Rates	Average Balances	Yields/ Rates	Average Balances	Yields/ Rates
Noninterest-bearing demand deposits [1]	\$	—	\$	—	\$	—
Checking with interest	\$	%	\$	%	\$	%
Money market accounts						
Regular savings						
Term deposits						
Total interest-bearing deposits	\$	%	\$	%	\$	%
	<u>Amount</u>		<u>Amount</u>		<u>Amount</u>	
<u>Uninsured deposits</u>	<u>\$</u>		<u>\$</u>		<u>\$</u>	

	<u>December 31, 2020</u>
<u>(in millions)</u>	
<u>Portion of U.S. time deposits in excess of insurance limit</u>	<u>\$</u>
<u>Time deposits otherwise uninsured with a maturity of:</u>	
<u>3 months or less</u>	
<u>Over 3 months through 6 months</u>	
<u>Over 6 months through 12 months</u>	
<u>Over 12 months</u>	

[1] If material, domestic and foreign deposits for all categories should be presented separately.