

Update: Federal Reserve's Revised Control Framework Now Effective and New FAQs Issued

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New Rule Effective as of September 30 – The Federal Reserve's revised control framework under the Bank Holding Company Act (BHCA) and Home Owners' Loan Act (HOLA) issued on January 30, 2020 became effective on September 30 after the Federal Reserve [delayed](#) the original effective date. For additional information on the [Final Rule](#), see our [previous client alert](#) from February 11, 2020. This rule concerns both investments in financial institutions and other companies considering receiving investments from financial institutions.

FAQs – In addition, on September 30, the Federal Reserve also issued four [Frequently Asked Questions](#) about the Final Rule. The [FAQs](#) cover the following topics:

- How to calculate total equity for the relevant thresholds and how to address preferred equity.
- What to do about investments that predate the effective date of the Final Rule.
- How to consider contractual provisions that limit a company's activities to the activities restrictions in the BHCA or HOLA under the Final Rule for determining if a "limiting contractual right" exists.
- How to consider loan covenants between the parties under the Final Rule for determining if a "limiting contractual right" exists.

Reminder About Other Regulations – While the Federal Reserve's revised control framework provides helpful clarity about import topics under the BHCA and HOLA, it does not change the regulatory framework for determining "control" under the Change in Bank Control Act (CIBCA), Regulation O, or Regulation W. The Federal Reserve specifically acknowledged this distinction in the Final Rule's preamble, and noted it may later consider conforming revisions to other elements of its regulatory framework. Given the differences in the regulations' current frameworks, it is possible for an investment in a financial institution to be presumed under the [Final Rule](#) to not create a "control" relationship for BHCA purposes, but at the same time be considered a change in "control" under the CIBCA. Like many things in the bank regulatory world, there are often complicated overlapping frameworks to consider.

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