

Federal Bank Regulators Clarify Capital Treatment of Tokenized Securities

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The OCC, Federal Reserve, and FDIC jointly issued an FAQ that establishes how tokenized securities are treated under the existing U.S. capital framework.

SCOPE OF GUIDANCE

- Applies to “**eligible tokenized securities**”—securities that confer **legal rights identical to those of their non-tokenized equivalents under applicable law**, including legal ownership rights. It is unclear how strictly the “identical” requirement will be construed.
- Covers two forms of tokenized securities:
 - Tokens representing interests in securities issued through traditional processes, such as through a central securities depository
 - Securities issued directly on distributed ledger technology*
- Tokenized securities that do not confer legally identical rights to their traditional equivalents are expressly outside the scope of the guidance—the threshold question is a legal one, not a technological one.

THE CAPITAL TREATMENT OF SECURITIES DOES NOT VARY BASED ON TECHNOLOGY (INCLUDING BLOCKCHAIN TYPE)

- The U.S. capital framework is expressly stated to be **technology neutral**; the method used to issue or transfer a security does not affect its capital treatment.
- An eligible tokenized security receives the same capital treatment as its non-tokenized equivalent.
- A derivative referencing an eligible tokenized security is treated for capital purposes as a derivative referencing the non-tokenized form of that security.
- This principle applies regardless of whether the token is issued on a permissioned or permissionless blockchain—the FAQ makes no distinction between the two.

- Sound risk management requirements and all applicable regulations continue to apply to banking organizations holding tokenized securities.

ELIGIBLE TOKENIZED SECURITIES CAN QUALIFY AS FINANCIAL COLLATERAL

- The form of a security does not affect its ability to satisfy the definition of “financial collateral” under the capital rule.
- An eligible tokenized security that qualifies as financial collateral may be recognized as a credit risk mitigant, subject to all applicable requirements.
- The banking organization must hold a perfected, first-priority security interest (or its legal equivalent outside the U.S.) in the tokenized security to qualify for this treatment.
- This requirement applies notwithstanding the prior security interest of any custodial agent, with limited exceptions for cash on deposit and priority security interests granted to a central counterparty in connection with posted collateral.
- Haircuts applied to eligible tokenized securities recognized as financial collateral are identical to those applicable to the non-tokenized form of the security.

IMPORTANT LIMITATIONS AND OPEN QUESTIONS

The guidance addresses capital treatment only, not whether a banking organization has authority to hold a tokenized security in the first place.

- Investment authority analysis remains a separate and independent inquiry. Tokenized securities purchased for a bank’s own account must satisfy applicable investment authority requirements, including the OCC’s Part 1 framework for national banks.
- The guidance does not resolve questions about tokenized securities that fail to provide “identical” rights as their traditional counterparts. Those include structures in which the token confers different, lesser, or uncertain rights relative to the traditional equivalent.
- The guidance does not address tokenized assets that are not securities. The capital and permissibility treatment of tokenized commodities and other non-security digital assets remains a question open to future agency guidance.

WHAT BANKING ORGANIZATIONS SHOULD CONSIDER

1. **Consider if the tokenized security provides identical rights:** confirm that any tokenized security under consideration confers legally identical rights to its traditional equivalent under applicable law, as this is the gateway determination on which all other analysis depends.
2. **Evaluate financial collateral structures carefully:** Institutions using or considering tokenized securities as collateral should confirm that the perfected first-priority security interest requirement can be satisfied under applicable law, with particular attention to how custodial arrangements affect that analysis. Banks should consider updating their practices for these asset types and monitor their home jurisdictions for passage of the 2022 Amendments to the UCC which may impact their practices used to perfect security interest in these types of assets.
3. **Review investment authority independently:** capital treatment and investment authority are separate analyses, and satisfaction of one does not establish the other.

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