

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Ch. III

#### Semiannual Agenda of Regulations

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the spring 2011 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

**FOR FURTHER INFORMATION CONTACT:**

Persons identified under regulations listed in the agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

#### Proposed Rules

##### *Credit Risk Retention (AD74)*

The Federal Banking Agencies are requesting comment on a proposed rule to implement the requirements of section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act, or Dodd-Frank Act), which is codified as new section 15G of the Securities Exchange Act of 1934 (the Exchange Act). Section 15G of the Exchange Act, as added by section 941(b) of the Dodd-Frank Act, generally requires the Board, the FDIC, the OCC (collectively, referred to as the "Federal Banking Agencies"), the Commission, and, in the case of the securitization of any "residential mortgage asset," together with HUD and FHFA, to jointly prescribe regulations, that (i) require a securitizer to retain not less than five percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly

hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the Agencies' implementing rules.

##### *Guidelines for Furnishers of Information to Consumer Reporting Agencies (AD40)*

The OCC, Board, FDIC, OTS, NCUA, and FTC (collectively referred to as the "Agencies") request comment to gather information that would assist in the development of a possible proposed addition to the furnisher accuracy and integrity guidelines which, along with the accompanying regulations, implement the accuracy and integrity provisions in section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) that amended section 623 of the Fair Credit Reporting Act (FCRA). This advance notice of proposed rulemaking (ANPRM) seeks to obtain information that would assist the Agencies in determining whether it would be appropriate to propose an addition to one of the guidelines that would delineate the circumstances under which a furnisher would be expected to provide an account opening date to a consumer reporting agency to promote the integrity of the information. In addition, the Agencies request comment more broadly on whether furnishers should be expected to provide any other types of information to a consumer reporting agency in order to promote integrity.

##### *Defining Safe Harbor Protection for Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution (AD53)*

The Federal Deposit Insurance Corporation (FDIC) proposes to adopt amendments to the rules regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation after September 30, 2010. The proposed rule would continue the safe harbor for transferred financial assets in connection with securitizations in which the financial assets were transferred under the existing regulations. The proposed rule would clarify the conditions for a safe harbor for securitizations or participations issued after September 30, 2010. The proposed rule also sets forth safe harbor protections for securitizations that do not comply with the new accounting standards for off balance sheet treatment by providing for expedited access to the financial assets that are securitized if they meet the conditions defined in the proposed rule. The conditions

contained in the proposed rule would serve to protect the Deposit Insurance Fund (DIF) and the FDIC's interests as deposit insurer and receiver by aligning the conditions for the safe harbor with better and more sustainable securitization practices by insured depository institutions (IDIs).

##### *Incorporating Executive Compensation Criteria Into the Risk Assessment System (AD56)*

The FDIC's risk-based deposit insurance assessment system (risk-based assessment system) could be changed to account for the risks posed by certain employee compensation programs. Section 7 of the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. section 1817) sets forth the risk-based assessment authorities underlying the FDIC's deposit insurance system, and the parameters of the FDIC's rules are set forth at 12 CFR part 327.

##### *Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions (AD59)*

This proposed rule would require certain identified insured depository institutions (IDIs) that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion. The IDI's plan would include a gap analysis that would identify impediments to the orderly stand-alone resolution of the IDI, and identify reasonable steps that are or will be taken to eliminate or mitigate such impediments. The contingent resolution plan, gap analysis, and mitigation efforts are intended to enable the FDIC to develop a reasonable strategy, plan, or options for the orderly resolution of the institution. The proposal would apply only to IDIs with greater than \$10 billion in total assets that are owned or controlled by parent companies with more than \$100 billion in total assets.

##### *Alternative to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies (AD62)*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), enacted on July 21, 2010, requires Federal agencies to review their regulations that (1) require an assessment of the creditworthiness of a security or money market instrument, and (2) contain references to or requirements regarding credit ratings. In addition, the Agencies are required to

remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of creditworthiness. This proposed rule describes the areas in the agencies' risk-based capital standards and Basel changes that could affect those standards that make reference to credit ratings.

*Risk-Based Capital Guidelines Market Risk (AD70)*

The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) are proposing to revise their market risk capital rules to modify their scope to better capture positions for which the market risk capital rules are appropriate; reduce procyclicality in market risk capital requirements; enhance the rules' sensitivity to risks that are not adequately captured under the current regulatory measurement methodologies; and increase transparency through enhanced disclosures. The proposed rule does not include the methodologies adopted by the Basel Committee on Banking Supervision for calculating the specific risk capital requirements for debt and securitization positions due to their reliance on credit ratings, which is impermissible under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The proposed rule retains the current specific risk treatment for these positions until the Agencies develop alternative standards of creditworthiness as required by the Act.

*Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor (AD71)*

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are proposing to amend the advanced risk-based capital adequacy standards (advanced approaches rules) to be consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) and amend the general risk-based capital rules to provide limited flexibility consistent with Section 171(b) of the Act for recognizing the relative risk of certain assets generally not held by depository institutions.

## Final Rules

*Assessments, Assessment Base and Rates (AD66)*

The FDIC amended 12 CFR part 327 to: (1) Implement revisions to the Federal Deposit Insurance Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding the definition of an institution's deposit insurance assessment base; (2) alter the unsecured debt adjustment in light of the changes to the assessment base; (3) add an adjustment for long-term debt held by an insured depository institution where the debt is issued by another insured depository institution; (4) eliminate the secured liability adjustment; (5) change the brokered deposit adjustment to conform to the change in the assessment base and change the way the adjustment will apply to large institutions; and (6) revise deposit insurance assessment rate schedules, including base assessment rates, in light of the changes to the assessment base. Except as provided, the proposed rate schedule and other revisions to the assessment rules would take effect for the quarter beginning April 1, 2011, and would be reflected in the June 30, 2011, fund balance and the invoices for assessments due September 30, 2011.

## Completed Action

*Deposit Insurance Regulations (AD33)*

The FDIC adopted this final rule to simplify and modernize its deposit insurance rules for revocable trust accounts. The FDIC's main goal in implementing these revisions is to make the rules easier to understand and apply, without decreasing coverage currently available for revocable trust account owners. The FDIC believes that the rule will result in faster deposit insurance determinations after depository institution closings and will help improve public confidence in the banking system. The rule eliminates the concept of qualifying beneficiaries. Also, for account owners with revocable trust accounts totaling no more than \$500,000, coverage will be determined without regard to the beneficial interest of each beneficiary in the trust.

Under the new rules, a trust account owner with up to five different beneficiaries named in all his or her revocable trust accounts at one FDIC-insured institution will be insured up to \$100,000 per beneficiary. Revocable trust account owners with more than \$500,000 and more than five different beneficiaries named in the trust(s) will be insured for the greater of either: \$500,000 or the aggregate amount of all

the beneficiaries' interests in the trust(s), limited to \$100,000 per beneficiary.

*Community Reinvestment Act Regulations (AD45)*

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) (collectively, the Agencies) issued this final rule that would revise the rules implementing the Community Reinvestment Act (CRA). The rule would incorporate recently adopted statutory language that requires the Agencies, when assessing an institution's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers. The rule also would incorporate statutory language that allows the Agencies, when assessing an institution's record, to consider as a factor capital investment, loan participation, and other ventures undertaken by nonminority-owned and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions.

*Securities of Nonmember Insured Banks (AD64)*

The FDIC is revising its securities disclosure regulations applicable to state nonmember banks with securities required to be registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act). The final rule incorporates through cross reference changes in regulations adopted by the Securities and Exchange Commission (SEC) into the provisions of the FDIC's securities regulations. Incorporation by reference will assure that the FDIC's regulations remain substantially similar to the SEC's regulations, as required by law. The final rule provides general references to SEC regulations by title and part of the Code of Federal Regulations (CFR), rather than by specific references to sections and subparts of the CFR as are currently provided in part 335. This revision reflects changes to SEC regulations with respect to small business issuers and will provide general guidance to FDIC filers regarding the electronic filing of certain documents. The amendments to part 335 references to SEC regulations will greatly reduce the need for future revisions of part 335, and the FDIC's regulations will be consistent with the SEC regulations through the cross reference stated in 12 CFR 335.101.

*Deposit Insurance Regulations; Unlimited Coverage for Noninterest-bearing Transaction Accounts (AD65)*

The FDIC is adopting a final rule amending its deposit insurance regulations to implement section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), providing for unlimited deposit insurance for “noninterest-bearing transaction accounts” for two years starting December 31, 2010.

*Community Reinvestment Act Regulations (AD68)*

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define “small bank” or “small savings association” and “intermediate small bank” or “intermediate small savings

association.” As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

*Designated Reserve Ratio (AD69)*

To implement a comprehensive, long-range management plan for the Deposit Insurance Fund (DIF or fund), the FDIC is amending its regulations to set the Designated Reserve Ratio (DRR) at 2 percent.

*Deposit Insurance Regulations; Unlimited Coverage for Noninterest Bearing Transaction Accounts; Inclusion of Interest on Lawyers Trust Accounts (AD72)*

The FDIC is adopting a final rule amending its deposit insurance regulations to implement an amendment to section 11(a)(1)(B)(iii) of the Federal Deposit Insurance Act (FDI Act), as added by section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203), that includes interest on Lawyers Trust Accounts (IOLTAs) in the definition of

“noninterest-bearing transaction account” for purposes of providing unlimited deposit insurance for such accounts for two years starting December 31, 2010.

*Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (AD73)*

The FDIC is implementing certain provisions of its authority to resolve covered financial companies under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The FDIC’s purpose in issuing this Rule is to provide greater clarity and certainty about how key components of this authority will be implemented and to ensure that the liquidation process under title II reflects the Dodd-Frank Act’s mandate of transparency in the liquidation of failing systemic financial companies.

Federal Deposit Insurance Corporation.

**Valerie Best,**  
*Assistant Executive Secretary.*

FEDERAL DEPOSIT INSURANCE CORPORATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
444 .....	12 CFR 325 Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies.	3064–AD62

**FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)**

*Final Rule Stage*

**444. Alternatives to the Use of Credit Ratings in the Risk-Based Capital Guidelines of the Federal Banking Agencies**

*Legal Authority:* Not Yet Determined  
*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), enacted on July 21, 2010, requires Federal agencies to review their regulations that (1) require an assessment of the credit-worthiness of a security or money market instrument and (2) contain references to or

requirements regarding credit ratings. In addition, the agencies are required to remove such requirements that refer to or rely upon credit ratings, and to substitute in their place uniform standards of credit-worthiness. The ANPRM seeks comment on alternative standards of credit-worthiness that may be used for risk-based capital requirements.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	08/25/10	75 FR 52283
ANPRM Comment Period End.	10/25/10	
Final Rule .....	06/00/11	

*Regulatory Flexibility Analysis Required:* Yes.

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*RIN:* 3064–AD62

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