

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 246

[Regulation TT; Docket No. R-1457]

RIN 7100-AD-95

#### Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of \$50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is inviting comments on a proposed rule to implement section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directs the Board to collect assessments, fees, or other charges equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board for bank holding companies and savings and loan holding companies with total consolidated assets of \$50 billion or more and nonbank financial companies designated for Board supervision by the Financial Stability Oversight Council (Council).

**DATES:** Comments should be received by June 15, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. 1457 and RIN 7100-AD-95, by any of the following methods:

- **Agency Web site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include docket and RIN numbers in the subject line of the message.

- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Mark Greiner (202-452-5290), Nancy Perkins (202-973-5006), or William Spaniel (202-452-3469), Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel (202-452-2272) or Michelle Moss Kidd, Attorney (202-736-5554), Legal Division; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Users of Telecommunication Device for the Deaf (TTD) only, contact (202) 263-4869.

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#### I. Overview of Proposed Rule

Section 318 of the Dodd-Frank Act directs the Board to collect assessments,

fees, or other charges (assessments) from bank holding companies and savings and loan holding companies with \$50 billion or more in total consolidated assets, and nonbank financial companies designated by the Council pursuant to section 113 of the Dodd-Frank Act for supervision by the Board<sup>1</sup> (collectively, assessed companies) equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies. This proposed rule outlines the Board's assessment program, including how the Board would: (a) Determine which companies would be subject to an assessment for each calendar-year assessment period, (b) estimate the total expenses that are necessary or appropriate to carry out the supervisory and regulatory responsibilities to be covered by the assessment, (c) determine the assessment for each of these companies, and (d) bill for and collect the assessment from these companies.

Under the proposal, each calendar year would be an assessment period. Companies would be covered by this rule if the total consolidated assets for the company meets or exceeds \$50 billion or the company has been designated for Board supervision by the Council during the assessment period. The Board proposes to notify those companies of the amount of their assessment no later than July 15 of the year following each assessment period. After an opportunity for appeal, assessed companies would be required to pay their assessments by September 30 of the year following the assessment period. The Board is proposing to collect assessments beginning with the 2012 assessment period. The Board believes that initiating the assessment program with the 2012 assessment period is appropriate as the Board has completed the development of a framework for the estimation of appropriate expenses and the collection of assessments. Additionally, the 2012 assessment period would be the first full calendar-year assessment period subsequent to the effective date of section 318 of Dodd-Frank.

The Board is inviting comments on all aspects of this proposed rulemaking.

<sup>1</sup> To date, the Council has not designated any nonbank financial company for Board supervision under section 113 of the Dodd-Frank Act.

## II. Description of the Proposal

### A. Key Definitions

#### 1. Assessed Companies

The Board would make the determination for each calendar-year period (the assessment period) that a company is a bank holding company or savings and loan holding company with total consolidated assets equal to or exceeding \$50 billion, or a nonbank financial company designated for Board supervision by the Council, based on information reported by the company on regulatory or other reports as determined by the Board.<sup>2</sup> In general, for each assessment period, the proposal would identify assessed companies as:

- A company that, on December 31 of the assessment period, is a top-tier bank holding company, other than a foreign bank holding company, as defined in section 2 of the Bank Holding Company Act,<sup>3</sup> that has total consolidated assets of \$50 billion or more as determined based on the average of the bank holding company's total consolidated assets reported for the assessment period on its Schedule HC—Consolidated Balance Sheet of the bank holding company's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) forms;

- A company that, on December 31 of the assessment period, is a top-tier savings and loan holding company, other than a foreign savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act,<sup>4</sup> that has total consolidated assets of \$50 billion or more as determined based on the average of the savings and loan holding company's total consolidated assets reported for the assessment period on the savings and loan holding company's FR Y-9C forms, or in column B (consolidated) of the savings and loan holding company's Quarterly Savings and Loan Holding Company Report (FR 2320) forms, as applicable;<sup>5</sup>

<sup>2</sup> All organizational structure and financial information that the Board would use for the purpose of determining whether a company is an assessed company, including information with respect to whether a company has control over a U.S. bank or savings association, must have been received by the Board on or before June 30 following that assessment period and must reflect events that were effective on or before December 31 of the assessment period.

<sup>3</sup> 12 U.S.C. 1841(a).

<sup>4</sup> 12 U.S.C. 1467.

<sup>5</sup> Generally, for multi-tiered bank holding companies and multi-tiered savings and loan holding companies in which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company would be the top-tier, regulated holding company. If a U.S.-domiciled company does not report total consolidated assets in its public reports or uses a financial reporting methodology other than U.S. GAAP, the Board may use, at its discretion, any comparable financial information that the Board may require from the company for this determination. In situations where two or more unaffiliated companies control the same U.S. bank or savings association and each company has average total consolidated assets of \$50 billion or

- A foreign company that, on December 31 of the assessment period, is a top-tier bank holding company that has total consolidated assets of \$50 billion or more as determined based on the average of the foreign banking organization's total consolidated assets reported for the assessment period on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q) submissions;<sup>6</sup>

- A foreign company that, on December 31 of the assessment period, is a savings and loan holding company that has total consolidated assets of \$50 billion or more as determined based on the average of the foreign savings and loan holding company's total consolidated assets reported for the assessment period on regulatory reporting forms required for the foreign savings and loan holding company;<sup>7</sup> and

- A company that is a nonbank financial company designated for supervision by the Board under section 113 of the Dodd-Frank Act on December 31 of the assessment period.

Relying on the average assets reported in the financial reports submitted over the entire yearly assessment period, where available, would reduce volatility in an assessed company's assets over the year and avoid overreliance on any particular quarter.<sup>8</sup>

*Question 1: What alternative decision criteria or procedures should the Board consider for determining whether a company is an assessed company, such as considering a greater or lesser number of regulatory reports, and why?*

more, each of the unaffiliated companies would be designated an assessed company. Generally, a company has control over a bank, savings association, or company if the company has (a) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank, savings association, or company, directly or indirectly or acting through one or more other persons; (b) control in any manner over the election of a majority of the directors or trustees of the bank, savings association, or company; or (c) the Board determines the company exercises, directly or indirectly, a controlling influence over the management or policies of the bank, savings association, or company. See 12 U.S.C. 1841(a)(2) (bank holding companies) and 12 U.S.C. 1467a(a)(2) (savings and loan holding companies).

<sup>6</sup> For annual filers of the FR Y-7Q, the total consolidated assets would be determined from the foreign banking organization's FR Y-7Q annual submission for the calendar year of the assessment period.

<sup>7</sup> At present, there are no foreign savings and loan holding companies.

<sup>8</sup> A four-quarter average of a company's total consolidated assets also has been proposed for the definition of a covered company in the notice of proposed rulemaking for "Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies" published in the **Federal Register** 77 FR 594 (January 5, 2012). If an assessed company has not reported its total consolidated assets to the Board pursuant to one of the reporting forms named above, the Board may also use, at its discretion, other financial or annual reports filed by the company to determine a company's total consolidated assets. For example, the Board may use the Savings Association Holding Company Report (FR H-(b)11), or any filing filed with the Securities and Exchange Commission (SEC).

#### 2. Total Assessable Assets

The term "total assessable assets" means the amount of assets that will be used to calculate an assessed company's assessment. In order to collect assessments that reflect the Board's role as the consolidated supervisor of assessed companies, further described in Section A.4, total assessable assets would include total assets for all activities subject to the Board's supervisory authority as the consolidated supervisor. For a U.S.-domiciled assessed company, total assessable assets would be the company's total consolidated assets of its entire worldwide operations, determined by using an average of the total consolidated asset amounts reported in applicable regulatory reports for the assessment period.<sup>9</sup> For a nonbank financial company supervised by the Board, total assessable assets would be the average of the nonbank financial company's total consolidated assets as reported during the assessment period on such regulatory or other reports as determined by the Board.<sup>10</sup> Similarly, at such time as any foreign savings and loan holding company becomes an assessed company, total assessable assets would be the average of the foreign savings and loan holding company's total combined assets of U.S. operations as reported during the assessment period on such regulatory reports as are applicable to the foreign savings and loan holding company.<sup>11</sup>

For a foreign bank holding company, total assessable assets would be equal to the company's total combined assets of U.S. operations,<sup>12</sup> including U.S. branches and agencies, as the Board has supervisory and regulatory responsibilities for the company's U.S. activities. Foreign bank holding companies do not currently submit a

<sup>9</sup> For assessed companies that are grandfathered unitary savings and loan holding companies, the Board would only include assets associated with its savings association subsidiary and its other financial activities.

<sup>10</sup> If the nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act is a foreign company, its assessable assets would be the average of the foreign nonbank financial company's U.S. assets as reported during the assessment period. As the Council begins to designate nonbank financial companies under section 113, the Board's methodology for determining the assessments for these companies would be reviewed and, as needed, revised.

<sup>11</sup> If any foreign savings and loan holding company becomes an assessed company, the Board's methodology for determining the assessments for these companies would be reviewed and, as needed, revised.

<sup>12</sup> A foreign bank holding company's total assessable assets would not include the assets of section 2(h)(2) companies as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

single regulatory reporting form that reports the total combined assets of their U.S. operations for which the Board has supervisory and regulatory authority.<sup>13</sup> In order to determine a foreign bank holding company's total assessable assets for the 2012 and 2013 assessment periods, a foreign bank holding company's total assessable assets would be the average of the total combined assets of U.S. operations, net of U.S. intercompany balances and transactions (as allowed<sup>14</sup>), from the stand alone regulatory reporting form for, specifically:<sup>15</sup>

- A top-tier, U.S.-domiciled bank holding company or U.S.-domiciled savings and loan holding company;<sup>16</sup>
- U.S. branches and agencies;<sup>17</sup>
- U.S.-domiciled nonbank subsidiaries;<sup>18</sup>

<sup>13</sup> Currently, foreign bank holding companies, as foreign banking organizations, report total consolidated assets of worldwide operations on the FR Y-7Q, which the proposal would use for determining whether a foreign bank holding company is an assessed company.

<sup>14</sup> Net intercompany balances and transactions between a U.S. entity and a foreign affiliate would not be eliminated, as such balances and transactions would not result in double counting of assets on a U.S.-combined basis. If any standalone regulatory reporting form does not itemize intercompany balances and transactions between U.S.-domiciled affiliates, branches or agencies, this proposal would not eliminate intercompany balances and transactions reported on that form from the calculation of total assessable assets. For regulatory reporting forms that do not distinguish between (i) balances and transactions between U.S. affiliates, and (ii) balances and transactions between a U.S. affiliate and a foreign affiliate, the Board would not eliminate any such balances or transactions between affiliates reported on the form because it would be impossible to distinguish between assets that would result in double counting and assets that would not result in double counting.

<sup>15</sup> The proposed approach would exclude from the sum the assets of entities for which a stand-alone regulatory report has been filed, but whose assets are reflected in the consolidated balance sheet of a U.S.-domiciled higher-tier regulatory reporting form filer.

<sup>16</sup> Total assets for each U.S.-domiciled, top-tier bank holding company or savings and loan holding company would be the company's total assets as reported on line item 12, Schedule HC of the FR Y-9C, or as reported on line item 1, column B, of the FR 2320, as applicable.

<sup>17</sup> Total assets for each branch or agency would be calculated as total claims of nonrelated parties (line item 1.i from column A on Schedule RAL) plus due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, part 1 on Schedule M), as reported on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). Note that due from head office of parent bank (line item 2.a, column A, part 1 on Schedule M) would be included net of due to head office of parent bank (line item 2.a, column B, part 1 on Schedule M) when there is a net due from position reported for line item 2.a. A net due to position for line item 2.a would result in no addition to total assets with respect to line item 2.a, part 1 on Schedule M.

<sup>18</sup> For quarterly Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-N) filers, total assets for each nonbank subsidiary would be calculated as total assets (line item 10, Schedule BS), minus balances

• Edge Act and Agreement Corporations;<sup>19</sup> U.S. banks and U.S. savings associations;<sup>20</sup> and broker-dealers that are not reflected in the assets of a U.S. domiciled parent's regulatory reporting form submission.<sup>21</sup>

For assessment periods after 2013, the Board proposes to modify the FR Y-7Q by adding a line item for reporting the total combined assets of a foreign banking organization's U.S. operations, consistent with the Board's supervisory and regulatory authority over foreign banking organizations' U.S. operations.

*Question 2: What, if any, challenges does the proposed approach present for determining the total assessable assets of an assessed company, foreign or domestic?*

*Question 3: What, if any, specific concerns arise for assessed companies that are primarily non-depository firms, and what method of determining total assessable assets should be considered for those companies and why?*

### 3. Assessment Periods

Under the proposed rule, each calendar year would be an assessment period. For each assessment period, the Board would make a determination as to whether an entity is an assessed company for that assessment period. The Board anticipates that the population of assessed companies will be relatively stable, and it is likely that an entity that is an assessed company during one assessment period will be an assessed company for following

due from related institutions located in the United States, gross (line item 4.a of Schedule BS-M) of the FR Y-7N. For annual Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-NS) filers, total assets for each nonbank subsidiary would be as reported on line item 2 of the FR Y-7NS. Until foreign assessed companies report on the revised form FR Y-7Q described in this proposal, the Board would only include the assets of affiliates for which the foreign assessed company is the majority owner, as the Board would not have sufficient information to accurately account for non-majority-owned affiliates.

<sup>19</sup> Total assets for each Edge Act or agreement corporation would be the sum of claims on nonrelated organizations (line item 9, "consolidated total" column on Schedule RC of the Consolidated Report of Condition and Income for Edge Act and agreement corporations (FR 2886b)), and claims on related organizations domiciled outside the United States (line items 2.a and 2.b, column A on Schedule RC-M), as reported on FR 2886b.

<sup>20</sup> Total assets for each bank or savings association that is not a subsidiary of a U.S.-domiciled bank holding company or savings and loan holding company would be the bank's or savings association's total assets as reported on line item 12, Schedule RC of the Balance Sheet of the Consolidated Reports of Condition and Income (FFIEC 031 or FFIEC 041, as applicable).

<sup>21</sup> Total assets for each broker-dealer would be the broker-dealer's total assets as reported on the statement of financial condition of the SEC's FOCUS Report, Part II (Form X-17A-5), FOCUS Report, Part IIa (Form X-17A-5), or FOCUS Report, Part II CSE (Form X-17A-5).

assessment periods. Nevertheless, some entities with average total consolidated assets near the \$50 billion threshold might be included in one assessment period and not in another.

The Board would determine which companies, as of December 31 of the prior calendar year, (i) were of the types of entities enumerated in the rule (i.e., a bank holding company, savings and loan holding company, or designated nonbank financial company subject to Board supervision) and (ii) had average total consolidated assets equal to or exceeding the \$50 billion threshold, as reported on the relevant reporting form(s) or based on other information as the Board may consider. The Board would notify each company that it is an assessed company by July 15 of each calendar year following the assessment period.

*Question 4: What, if any, burdens are created for assessed companies by the Board's use of December 31 as the "as of" date for determining assessed companies and notifying assessed companies on July 15 of the following year? What alternative dates or methodologies should the Board consider and why?*

*Question 5: For companies near \$50 billion in total consolidated assets, what, if any, concerns are associated with not being certain whether the company would be an assessed company from one assessment period to another and what alternatives might mitigate those concerns?*

### 4. Assessment Basis

The assessment basis means the applicable estimated expenses<sup>22</sup> of the Board and the Reserve Banks (to which the Board has delegated supervisory responsibility) as consolidated supervisor of assessed companies. The assessment basis would include necessary or appropriate expenses associated with consolidated regulation and supervision of all assessed companies. In order to determine the assessment basis, the Board would estimate its aggregate expenses for activities related to the supervision and regulation of the entire population of assessed companies. These expenses include, but are not limited to: conducting onsite and offsite examinations, inspections, visitations and reviews; providing ongoing supervision; meeting and corresponding regarding supervision matters; conducting stress tests; assessing resolution plans; developing, administering, interpreting and

<sup>22</sup> Expenses include all direct operating expenses, including support, overhead, and pension expenses.

explaining regulations, laws, and supervisory guidance adopted by the Board; engaging in enforcement actions; processing and analyzing applications and notices, including conducting competitive analyses and financial stability analyses of proposed bank and bank holding company mergers, acquisitions, and other similar transactions; processing consumer complaints; and implementing a macro-prudential supervisory approach.<sup>23</sup> In addition, the estimated expenses for the assessment basis would include a share of expenses associated with activities that are integral to carry out the supervisory and regulatory responsibilities of the Board, even when those expenses are not directly attributable to specific companies.<sup>24</sup> For those activities, the Board would calculate the relative proportion of expenses that are attributable to assessed companies divided by expenses for those activities that are attributable to all companies and entities supervised by the Board, and apply that proportion to the shared expenses.

For each assessment period, the Board's assessment basis would be the Board's estimate of the total expenses necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to the population of assessed companies, based on an average of estimated expenses over the current and prior two assessment periods. For the 2012 assessment period, the Board estimates that the assessment basis would be approximately \$440 million. Thereafter, to mitigate volatility in assessments and provide a more stable basis from year to year, the Board would calculate a three-year average of its estimated expenses, and would determine assessments for each year based on that three-year average. Thus,

as an example, the assessment basis for 2015 would be the average of the Board's estimated expenses relating to assessed companies from calendar years 2013, 2014, and 2015. For the assessment bases for calendar years 2012, 2013, and 2014, the Board would use the estimate of its expenses for 2012, the first year for which it will collect assessments.<sup>25</sup> The Board expects to evaluate the volatility in assessment fees resulting from its methodology for determining the assessment basis on an ongoing basis and may refine its methodology as appropriate through the rulemaking process.

#### *B. Apportioning the Assessment Basis to Assessed Companies*

##### *1. Apportionment Based On Size*

In general, total expenses relating to the supervision of a company are a function of the size and associated complexity of the company. For example, for companies with assets of \$50 billion or more, supervision typically consists of onsite teams with a continuous presence at the firm, offsite surveillance and monitoring, and a series of targeted onsite examinations conducted throughout the year that focus on individual areas of operations and risk. Larger companies are often more complex companies, with associated risks that play a large role in determining the supervisory resources needed for that company. The largest companies, because of their increased complexity, risk and geographic footprints, usually receive more supervisory attention. For example, a number of regulations in development to implement provisions of the Dodd-Frank Act are directed at financial institutions with total consolidated assets of \$50 billion or more and nonbank companies designated for supervision by the Board, and some of

these regulations are tailored further based on the size of a company.<sup>26</sup>

Apportioning the assessment basis based on the total consolidated asset size of the assessed companies is generally reflective of the amount of supervisory and regulatory expenses associated with a particular company, and generally is information that is well understood, objective, transparent, readily available, and comparable among all types of assessed companies. As a result, the Board proposes to determine assessments based on the assessed companies' total assessable assets for the assessment period.

*Question 6: What, if any, alternatives to a total consolidated assets measure should the Board consider for apportioning the assessment basis among assessed companies and why?*

##### *2. Assessment Formula*

The proposal would apportion the assessment basis among assessed companies by means of an assessment formula that uses the total assessable asset size of each assessed company. For each assessment period, the assessment formula applied to the assessed companies is proposed to be:

$$\text{Assessment} = \$50,000 + (\text{Assessed Company's Total Assessable Assets} \times \text{Assessment Rate}).$$

Each company's assessment would be computed using a base amount of \$50,000 for each assessed company. The Board believes that including this base amount in each assessment is appropriate to ensure that the nominal expenses related to the Board's supervision and regulation of such companies, particularly for those companies that are near the \$50 billion threshold, are covered. The "assessment rate" would be determined each assessment period according to this formula:

$$\text{Assessment rate} = \frac{\text{Assessment Basis} - (\text{Number of Assessed Companies} \times \$50,000)}{\text{Total Assessable Assets of All Assessed Companies}}$$

<sup>23</sup> The Board's costs with respect to supervising state member banks and branches and agencies of foreign banking organizations are excluded from the assessment basis because such costs are not attributable to the Board's role as consolidated supervisor of the parent company. However, as such assets and the assets of the company's other depository institutions, nonbank subsidiaries, and other similar entities contribute to the costs incurred by the Board as the consolidated supervisor, such assets are therefore included in total assessable assets.

<sup>24</sup> These activities include (i) the Shared National Credit (SNC) Program, which the Board and the other federal banking agencies established in 1977 to promote the efficient and consistent review and classification of shared national credits; (ii) the training of staff in the supervision function; (iii) research, analysis, and development of supervisory and regulatory policies, procedures, and products of the Board; and (iv) collecting, receiving, and processing regulatory reports received from institutions supervised and regulated by the Board.

<sup>25</sup> As explained further in section B.2, the Board would also use the 2012 assessment rate to calculate each assessed company's assessment in 2013 and 2014.

<sup>26</sup> See, e.g., "Capital Plans," final rule published in the *Federal Register* 76 FR 231 (Dec. 1, 2011), "Credit Risk Retention," proposal published in the *Federal Register* 76 FR 83 (April 29, 2011), and "Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies," proposal published in the *Federal Register* 77 FR 594 (January 5, 2012).

The assessment rate would be determined by dividing the assessment basis (minus the base amount that covers nominal expenses times the number of assessed companies) by the total assessable assets of all assessed companies to determine a ratio of Board expenses to total assets for each assessment period, and then multiplies an assessed company's total assessable assets by the resulting assessment rate. Thus, a company with higher total assessable assets would be charged a higher assessment than a company with lower total assessable assets, which generally reflects the greater supervisory and regulatory attention and associated workloads and expenses associated with larger companies. The assessment represents a cost to the assessed companies. This cost, however, as mandated by section 318 of the Dodd-Frank Act, is for the purpose of collecting the estimated expenses of supervising and regulating assessed companies.

Over the first three years of the program, the assessment rate would be fixed. After the Board determines the assessment rate for 2012, it would use that assessment rate for calculating the assessment for the following two assessment periods, ending with the assessments for 2014. Thereafter, for each assessment period, the Board would calculate an assessment rate by averaging the Board's relevant expenses for the past three years. Keeping the same assessment rate for the first three years and the subsequent three-year average would reduce year-to-year fluctuations in assessments.

#### Assessment Calculation Example

For purposes of illustration, using the methodologies set forth in this proposal and based on information as of the date of this notice of proposed rulemaking, the Board estimates that for 2012 there would be approximately 70 assessed companies with aggregate total assessable assets of about \$20 trillion and that the assessment basis would be about \$440 million. Using these figures, a company with total assessable assets of \$50 billion<sup>27</sup> would be required to pay an assessment of approximately \$1 million and a company with total assessable assets of \$1 trillion would be required to pay an assessment of approximately \$22 million.

*Question 7: What alternatives should the Board consider for differentiating assessments among assessed companies*

<sup>27</sup> Total assessable assets could be less than \$50 billion for foreign companies with total consolidated worldwide assets of \$50 billion or more, but total combined U.S. assets of less than \$50 billion.

*(for example, a tiered fee structure), and why?*

*Question 8: What alternative approaches to the three-year average should the Board consider for reducing volatility in assessments for assessed companies, and why?*

*Question 9: Does the Board's proposal to use the same assessment rate for the first three years permit adequate preparation for assessed companies, and if not, what should the Board consider in initiating its assessments system?*

#### C. Collection Procedures

##### 1. Notice of Assessment and Appeal Procedure

Under the proposal, the Board would send a notice of assessment to each assessed company no later than July 15 of the year following the assessment period stating that the Board had determined the company to be an assessed company for the prior calendar year, stating the amount of the company's total assessable assets and the amount the assessed company must pay by September 30. The Board would also, no later than July 15, publish on its Web site the assessment formula for that assessment period. For the 2012 assessment period, the notice of assessment and the date on which the assessment is due may be adjusted depending on the date of the issuance of the final regulation.

Companies identified as assessed companies would have 30 calendar days from July 15 to appeal the Board's determination of the company as an assessed company or the Board's determination of the company's total assessable assets. Under the proposal, companies choosing to appeal must submit a request for redetermination in writing and include all the pertinent facts the company believes would be relevant for the Board to consider. Grounds for appeal would be limited to (i) whether the assessed company was not properly considered an assessed company (i.e., it is not a bank holding company, savings and loan holding company, or nonbank financial company designated by the Council as of December 31 of the assessment period), or (ii) review of the Board's determination of the assessed company's total assessable assets. The Board would consider the company's request and respond within 15 calendar days from the end of the appeal period with the results of its review of any properly filed appeal. A successful appeal would not change the assessment for any other company.

##### 2. Collection of Assessments

Under the proposal, each assessed company would pay its assessments using the Fedwire Funds Service (Fedwire) to the Federal Reserve Bank of Richmond. The assessments will then be transferred to the U.S. Treasury's General Account. Assessments must be credited to the Board by September 30 of the year following the assessment period.<sup>28</sup> In the event that the Board does not receive the full amount of an assessed company's assessment by the payment date for any reason that is not attributable to an action of the Board, the assessment would be considered delinquent and the Board would charge interest on the delinquent assessment until the assessment and interest, calculated daily from the collection date and based on the U.S. Treasury Department's current value of funds rate percentage, is paid.

*Question 10: What alternative approaches or additional factors should the Board consider for the billing and collection of assessments and why?*

#### Revisions to the FR Y-7Q

The FR Y-7Q requires each top-tier foreign banking organization to file asset and capital information. Currently, Part 1 of the report requires the filing of capital and asset information for the top-tier foreign banking organization,<sup>29</sup> while Part 2 requires capital and asset information for lower-tier foreign banking organizations operating a branch or an agency, or owning an Edge Act or Agreement Corporation, a commercial lending company, or a commercial bank domiciled in the United States.<sup>30</sup> As explained in the reporting instructions for the FR Y-7Q, both Part 1 and Part 2 of the reporting form collect capital and asset information with respect to the foreign banking organization's worldwide operations. However, neither Part 1 or Part 2 collects capital and asset information with respect to only the

<sup>28</sup> As stated above, this date may be adjusted for the 2012 assessment period to accommodate the final rulemaking.

<sup>29</sup> This form is reported annually by each top-tier foreign banking organization if it or any foreign banking organization in its tiered structure has not elected to be a financial holding company, and is reported quarterly by each top-tier foreign banking organization if it or any foreign banking organization in its tiered structure has elected to be a financial holding company.

<sup>30</sup> Reported quarterly by each lower-tier foreign banking organization (where applicable) operating a branch or an agency, or owning an Edge Act or Agreement corporation, a commercial lending company, or a commercial bank domiciled in the United States, if it or any foreign banking organization in its tiered structure has financial holding company status.

foreign banking organization's U.S. operations.

For the purpose of determining a foreign assessed company's total assessable assets, the Board believes that combining the assets of the foreign assessed company's U.S. branches and agencies with the total assets of all U.S. domiciled affiliates reported on other regulatory reports on a standalone basis would likely not yield a result that is comparable to the consolidated approach required of U.S.-domiciled assessed companies, which report total consolidated assets on Schedule HC of FR Y-9C according to standard rules of consolidation. That is, not all standalone reports itemize separately the intercompany balances and transactions between only U.S. affiliates that would be netted out on a U.S. consolidated basis. Therefore, in order to improve parity among all assessed companies with respect to the determination of total assessable assets, the Board is proposing to revise Part 1 of the FR Y-7Q to collect the top-tier foreign banking organization's total combined assets of U.S. operations,<sup>31</sup> net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies.<sup>32</sup> The instructions for the amended FR Y-7Q will closely parallel, to all practicable extents, the instructions for the FR Y-9C for consolidating assets of U.S. operations, including for accounting for less-than-majority-owned affiliates.

In addition, the Board is proposing to revise Part 1 of the FR Y-7Q to collect information about certain foreign banking organizations more frequently. As mentioned above, only top-tier foreign banking organizations with financial holding company status file Part 1 of the FR Y-7Q quarterly, while a top-tier foreign banking organization would report annually if the foreign banking organization, or any foreign banking organization in its tiered structure, has not effectively elected to be a financial holding company. Accordingly, for purposes of determining whether a foreign banking organization is an assessed company and the amount of a foreign assessed company's total assessable assets more frequent than annually, the Board is proposing to revise the FR Y-7Q

quarterly reporting requirements for Part 1 to include all top-tier foreign banking organizations, regardless of financial holding company designation, with total consolidated worldwide assets of \$50 billion or more as reported on Part 1 of the FR Y-7Q. Once a foreign banking organization has total consolidated assets of \$50 billion or more and begins to report quarterly, the foreign banking organization must continue to report Part 1 quarterly unless and until the foreign banking organization has reported total consolidated assets of less than \$50 billion for each of all four quarters in a full calendar year. Thereafter, the foreign banking organization may revert to annual reporting, in accordance with the FR Y-7Q reporting form's instructions for annual reporting of Part 1. If at any time, after reverting to annual reporting, a foreign banking organization has total consolidated assets of \$50 billion or more, the FBO must return to quarterly reporting of Part 1. Regardless of size, all top-tier foreign banking organizations that have elected to be financial holding companies at the foreign banking organization's top tier or tiered structure would continue to report quarterly.

*Question 11: What changes, if any, should be made to the proposal to ensure consistency and accuracy of determining foreign bank holding company assets in a manner that is most comparable to U.S.-domiciled bank holding companies?*

*Question 12: The Board requests comment on all aspects of the proposed rule. Specifically, what aspects of the proposed rule present implementation challenges and why? What, if any, alternative approaches should the Board consider? Responses should be detailed as to the nature and impact of these challenges and should address whether the Board should consider implementing additional transitional arrangements in the rule to address these challenges.*

### III. Administrative Law Matters

#### A. Solicitation of Comments and Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the proposed rule easier to understand. For example:

- Is the material organized to suit your needs? If not, how could the Board present the rule more clearly?

- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?

- Is this section format adequate? If not, which of the sections should be changed and how?

- What other changes can the agencies incorporate to make the regulation easier to understand?

#### B. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by Office of Management and Budget (OMB). The Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The proposed rule contains requirements subject to the PRA. The reporting requirements are found in sections 246.3(e)(3) and 246.5(b).

#### 1. Reporting Requirements in 246.3(e)(3)

Section 318 of the Dodd-Frank Act directs the Board to collect assessments, fees, or other charges, from assessed companies equal to the expenses the Board estimates would be necessary and appropriate to carry out its supervision and regulation of those companies. Section 318 describes these companies as (1) a bank holding company (BHC) (other than a foreign bank holding company) with total consolidated assets of \$50 billion or more determined based on the average of the BHC's total consolidated assets reported during the assessment period on its Schedule HC—Consolidated Balance Sheet of the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) (OMB No. 7100-0128) forms; (2) a savings and loan holding company (SLHC) (other than a foreign savings and loan holding company) with total consolidated assets of \$50 billion or more, (3) a foreign company that is a BHC or SLHC with \$50 billion or more in total consolidated assets determined based on the average of the foreign company's total consolidated assets reported during the assessment period on the Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q; OMB No. 7100-0125) and (4) a nonbank financial company designated for supervision by the Board under section 113 of the Dodd-Frank Act. In

<sup>31</sup> For purposes of the amended FR Y-7Q, total combined assets would not include the assets of section 2(h)(2) companies as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)).

<sup>32</sup> For purposes of FR Y-7Q reporting, U.S.-domiciled affiliates would be defined as subsidiaries, associated companies, and entities treated as associated companies (e.g., corporate joint ventures) as defined in the FR Y-9C.

order to improve parity among all assessed companies with respect to the determination of total assessable assets, the Board proposes to revise Part 1 of the FR Y-7Q to collect a new data item from top-tier FBO's—Total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies. In addition, the Board proposes to revise the reporting panel for Part 1 of the FR Y-7Q to collect information about certain FBOs more frequently (from annual reporting to quarterly reporting) for purposes of determining whether a FBO is an assessed company. All top-tier FBOs, regardless of financial holding company designation, with total consolidated worldwide assets of \$50 billion or more as reported on Part 1 of the FR Y-7Q would be required to submit data quarterly. The Board estimates that 71 FBOs would initially be required to change from annual reporting to quarterly reporting.<sup>33</sup> The Board estimates that, upon implementation of the new data item, 109 FBOs would initially submit the FR Y-7Q on a quarterly basis. In addition, the Board estimates that 43 FBOs would initially submit the FR Y-7Q on an annual basis upon implementation of the new data item. The Board estimates that it would take, on average, 15 minutes per submission to report the new data item. The total annual reporting burden associated with the revisions to the FR Y-7Q is estimated to be 393 hours.

#### 2. Reporting Requirements in 246.5(b)

Under section 246.5(b) upon the Federal Reserve issuing the notice of assessment to each assessed company, the company would have 30 calendar days to submit a written statement to appeal the Board's determination of the company as (i) a BHC, SLHC, foreign bank holding company, or nonbank financial company supervised by the Board; (ii) the Board's determination of the company's total consolidated assets, or (iii) the Board's determination of the company's total assessable assets, as set forth in 246.4(e) of this rule. This new collection would be titled the Dodd-Frank Act Assessment Fees Request for Redetermination (FR 4030; OMB No. 7100—to be assigned).

The Board estimates that 7 assessed companies would submit a written request for appeal annually. The Board

estimates that these assessed companies would take, on average, 40 hours (one business week) to write and submit the written request. The total annual PRA burden for the new FR 4030 information collection is estimated to be 280 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95-A, Board of Governors of the Federal Reserve System, Washington, DC 20551. Copies of such comments may also be submitted to the Office of Management and Budget, 725 17th St. NW., #10235 (Docket FRB Docket No. R-1457), Washington, DC 20503, Attn: Federal Reserve Desk Officer.

#### C. Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("RFA"), the Board is publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period if the Board determines that the rule will have a significant economic impact on a substantial number of small entities.

1. *Statement of the objectives of the proposal.* As required by section 318 of the Dodd-Frank Act, the Board is proposing a rule to assess bank holding companies and savings and loan holding companies with assets of equal to or greater than \$50 billion and nonbank financial companies supervised by the Board for the total expenses the Board estimates are

necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

2. *Small entities affected by the proposal.* Under regulations issued by the Small Business Administration, a banking entity is considered "small" if it has \$175 million or less in assets for banks and other depository institutions; and \$7 million or less in revenues for nonbank mortgage lenders.<sup>34</sup> The proposed rule, by definition, will affect bank holding companies and savings and loan holding companies with assets of equal to or greater than \$50 billion. The proposed rule also will affect nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Act but it is unlikely that such an institution would be considered "small" by the Small Business Administration. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The Board's proposed rule is unlikely to impose any new recordkeeping, reporting, or compliance requirements. As stated above, a small banking entity is unlikely to be affected by the proposed rule. The Board seeks information and comment on any changes in recordkeeping, reporting, and compliance requirements arising from the application of the proposed rule to small entities.

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions of the proposed rule.

5. *Significant alternatives to the proposed revisions.* The Board believes that no alternatives to the proposed rule are available for consideration. The Board nevertheless welcomes comments on any significant alternatives, consistent with the requirements of the Dodd-Frank Act that would minimize the impact of the proposed rule on small entities.

#### List of Subjects in 12 CFR Part 246

Administrative practice and procedure, Assessments, Banks, Banking, Holding companies, Nonbank financial companies, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR chapter II as follows:

■ 1. Add new Part 246 to read as follows:

<sup>34</sup> 13 CFR 121.201.

<sup>33</sup> Once an FBO reports total consolidated assets of \$50 billion or more and begins to report quarterly, the FBO must continue to report Part 1 quarterly unless and until the FBO has reported total consolidated assets of less than \$50 billion for each of all four quarters in a full calendar year. Thereafter, the FBO may revert to annual reporting.



## PART 246—SUPERVISION AND REGULATION ASSESSMENTS OF FEES (REGULATION TT)

Sec.

- 246.1 Authority, purpose and scope.
- 246.2 Definitions.
- 246.3 Assessed Companies.
- 246.4 Assessments.
- 246.5 Notice of Assessment and Appeal.
- 246.6 Collection of Assessments; Payment of Interest.

**Authority:** Pub. L. 111–203, 124 Stat. 1376, 1526, and section 11(s) of the Federal Reserve Act (12 U.S.C. 248(s)).

### Part A—In General

#### § 246.1 Authority, purpose and scope.

(a) *Authority.* This part (Regulation TT) is issued by the Board of Governors of the Federal Reserve System (Board) under section 318 of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376, 1423–32, 12 U.S.C. 5365 and 5366) and section 11(s) of the Federal Reserve Act (12 U.S.C. 248(s)).

(b) *Scope.* This part applies to:

(1) Any bank holding company having total consolidated assets of \$50 billion or more, as defined below;

(2) Any savings and loan holding company having total consolidated assets of \$50 billion or more, as defined below; and

(3) Any nonbank financial company supervised by the Board, as defined below.

(c) *Purpose.* This part implements provisions of section 318 of the Dodd-Frank Act that direct the Board to collect assessments, fees, or other charges from companies identified in subsection (b) that are equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to these assessed companies.

#### § 246.2 Definitions.

(a) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. § 1841), and the Board's Regulation Y (12 CFR part 225).

(b) *Company* means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

(c) *Council* means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. § 5321).

(d) *Foreign bank holding company* means a foreign bank or company that is a bank holding company.

(e) *Foreign savings and loan holding company* means a foreign bank or foreign company that is a savings and loan holding company.

(f) *Grandfathered unitary savings and loan holding company* means a savings and loan holding company described in section 10(c)(9)(C) of the Home Owners' Loan Act ("HOLA") (12 U.S.C. § 1467a(c)(9)(C)).

(g) *Notice of assessment* means the notice in which the Board informs a company that it is an assessed company and states the assessed company's total assessable assets and the amount of its assessment.

(h) *Savings and loan holding company* is defined as in section 10 of HOLA (12 U.S.C. § 1467a).

(i) *Savings association* means a savings association, as defined in 12 U.S.C. § 1813 of this title.

#### § 246.3 Assessed Companies

(a) *Assessed companies.* An assessed company is any company that:

(1) is a top-tier company that, on December 31 of the assessment period:

(i) is a bank holding company, other than a foreign bank holding company, with \$50 billion or more in total consolidated assets, as determined based on the average of the bank holding company's total consolidated assets reported for the assessment

period on the Federal Reserve's Form FR Y–9C ("FR Y–9C"),

(ii) is a savings and loan holding company, other than a foreign savings and loan holding company, with \$50 billion or more in total consolidated assets, as determined based on the average of the savings and loan holding company's total consolidated assets as reported for the assessment period on the FR Y–9C or on column B of the Quarterly Savings and Loan Holding Company Report (FR 2320), as applicable,

(2) is a top-tier foreign bank holding company on December 31 of the assessment period, with \$50 billion or more in total consolidated assets, as determined based on the average of the foreign bank holding company's total consolidated assets reported for the assessment period on the Federal Reserve's Form FR Y–7Q ("FR Y–7Q"),

(3) is a top-tier foreign savings and loan holding company on December 31 of the assessment period, with \$50 billion or more in total consolidated assets, as determined based on the average of the foreign savings and loan holding company's total consolidated assets reported for the assessment period on the reporting forms applicable during the assessment period, or

(4) the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. § 5323) to be supervised by the Board and for which such determination is in effect as of December 31 of the assessment period.

(b) *Assessment period* means January 1 through December 31 of each calendar year.

#### § 246.4 Assessments.

(a) *Assessment.* Each assessed company shall pay to the Board an assessment for any assessment period for which the Board determines the company to be an assessed company.

(b) *Assessment formula.* The assessment will be calculated according to the Assessment Formula, as follows:

Column A		Column B		Column C		Column D
Base amount	+	(Total assessable assets	×	Assessment rate)	=	Assessment
\$50,000	+	(\$B	×	C)	=	\$D

The assessed company's assessment would be comprised of the base amount, plus the amount of the assessed company's total assessable assets in

Column B times the assessment rate in Column C.

(c) *Assessment rate.* Assessment rate means, with regard to a given assessment period, the rate published by

the Board for the calculation of assessments for that period.

(1) The assessment rate will be calculated according to this formula:



$$\text{Assessment rate} = \frac{\text{Assessment Basis} - (\text{Number of Assessed Companies} \times 50,000)}{\text{Total Assessable Assets of All Assessed Companies}}$$

(2) For the calculation set forth in (1), above, the number of assessed companies and the total assessable assets of all assessed companies will each be that of the relevant assessment period, provided, however, that for the assessment periods corresponding to 2012, 2013 and 2014, the Board shall use the number of assessed companies and the total assessable assets of the 2012 assessment period to calculate the assessment rate.

(d) *Assessment basis.* Assessment basis means:

(1) For the 2012, 2013, and 2014 assessment periods, the assessment basis is the amount of total expenses the Board estimates is necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to assessed companies for 2012.

(2) For the 2015 assessment period and for each assessment period thereafter, the assessment basis is the average of the amount of total expenses the Board estimates is necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to assessed companies for that assessment period and the two prior assessment periods.

(e) *Total assessable assets.* Total assessable assets are calculated in accordance with this section as follows:

(1) *Bank holding companies.* For any bank holding company, other than a foreign bank holding company, total assessable assets will be determined by the average of the bank holding company's total consolidated assets as reported for the assessment period on the bank holding company's FR Y-9C or such other reports as determined by the Board as applicable to the bank holding company.

(2) *Foreign bank holding companies and foreign savings and loan holding companies.*

(i) *In general.* For any foreign bank holding company or for any foreign savings and loan holding company, with the exception of the 2012 and 2013 assessment periods, this amount will be the average of the foreign bank holding company's or savings and loan holding company's total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies, as reported for the assessment period on the Part 1 of the FR Y-7Q or such other reports as determined by the Board as applicable to the foreign bank

holding company or foreign savings and loan holding company,

(ii) *2012 and 2013 assessment periods.* For the 2012 and 2013 assessment periods, for any foreign bank holding company, total assessable assets will be the average of the sum of the respective line items reported quarterly, plus any line items reported annually for the assessment period on an applicable regulatory reporting form for the assessment period for all majority-owned U.S.-domiciled affiliates, branches and agencies of the foreign bank holding company, as set forth in this section:

(A) Top-tier, U.S.-domiciled bank holding companies and savings and loan holding companies,

(1) Total assets (line item 12) as reported on Schedule HC of the FR Y-9C, as applicable, and

(2) Total assets (line item 1, column B) as reported on FR 2320.

(B) Related branches and agencies in the United States (line items 1.i, column A, on Schedule RAL of Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) plus due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, part 1 on Schedule M), as reported on FFIEC 002, provided however that due from head office of parent bank (line item 2.a, column A, part 1 on Schedule M of FFIEC 002) would be included net of due to head office of parent bank (line item 2.a, column B, part 1 on Schedule M of FFIEC 002) when there is a net due from position reported for line item 2.a., while a net due to position for line item 2.a would result in no addition to total assets with respect to line item 2.a, part 1 on Schedule M of FFIEC 002.

(C) U.S.-domiciled nonbank subsidiaries:

(1) For FR Y-7N filers: total assets (line item 10) as reported for each nonbank subsidiary reported on Schedule BS—Balance Sheet of the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-7N); less balances due from related institutions located in the United States, gross (line item 4.a), as reported on Schedule BS—Memoranda.

(2) For FR Y-7NS (annual) filers: total assets (line item 2) as reported for each nonbank subsidiary reported on abbreviated financial statements (page 3) of the Abbreviated Financial Statements of U.S. Nonbank

Subsidiaries Held by Foreign Banking Organizations (FR Y-7NS).

(D) For Edge Act and agreement corporations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, claims on nonrelated organizations (line item 9, "consolidated total" column on Schedule RC of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b)), plus claims on related organizations domiciled outside the United States (line items 2.a and 2.b, column A on Schedule RC—M), as reported on FR 2886b.

(E) For banks and savings associations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, total assets (line item 12) as reported on Schedule RC—Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), or total assets (line item 12) as reported on Schedule RC—Balance Sheet of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), as applicable.

(F) For broker-dealers that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, total assets (line item 16, "total" column) as reported on statement of financial condition of the Securities and Exchange Commission's Form X-17A-5 (FOCUS REPORT), Part II, Part IIa, or Part II CSE, as applicable.

(4) *Savings and loan holding companies.* For any savings and loan holding company, other than a foreign savings and loan holding company, total assessable assets will be determined by the average of the savings and loan holding company's total consolidated assets as reported for the assessment period on the regulatory reports on the savings and loan holding company's Form FR Y-9C, column B of the Quarterly Savings and Loan Holding Company Report (FR 2320), or other reports as determined by the Board as applicable to the savings and loan holding company. If the savings and loan holding company is a grandfathered unitary savings and loan holding company, total assessable assets will only include the assets associated with its savings association subsidiary and its other financial activities.

(5) *Nonbank financial companies supervised by the Board.* For a nonbank financial company supervised by the

Board, if the company is a U.S. company, this amount will be the average of the nonbank financial company's total consolidated assets as reported for the assessment period on such regulatory or other reports as are applicable to the nonbank financial company determined by the Board; if the company is a foreign company, this amount will be the average of the nonbank financial company's total combined assets of U.S. operations, net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies, as reported for the assessment period on such regulatory or other reports as determined by the Board as applicable to the nonbank financial company.

#### **§ 246.5 Notice of Assessment and Appeal**

(a) *Notice of Assessment.* The Board shall issue a notice of assessment to each assessed company no later than July 15 of each calendar year following the assessment period.

(b) *Appeal Period.*

(1) Each assessed company will have thirty calendar days from July 15 to submit a written statement to appeal the Board's determination (i) that the company is an assessed company; or (ii) of the company's total assessable assets.

(2) The Board will respond with the results of its consideration to an assessed company that has submitted a written appeal within 15 calendar days from the end of the appeal period.

#### **§ 246.6 Collection of Assessments; Payment of Interest.**

(a) *Collection date.* Each assessed company shall remit to the Federal Reserve the amount of its assessment using the Fedwire Funds Service by September 30 of the calendar year following the assessment period.

(b) *Payment of interest.*

(1) If the Board does not receive the total amount of an assessed company's assessment by the collection date for any reason not attributable to the Board, the assessment will be delinquent and the assessed company shall pay to the Board interest on any sum owed to the Board according to this rule (delinquent payments).

(2) Interest on delinquent payments will be assessed beginning on the first calendar day after the collection date, and on each calendar day thereafter up to and including the day payment is received. Interest will be simple interest, calculated for each day payment is delinquent by multiplying the daily equivalent of the applicable interest rate by the amount delinquent. The rate of interest will be the United State Treasury Department's current

value of funds rate (the "CVFR percentage"); issued under the Treasury Fiscal Requirements Manual and published quarterly in the **Federal Register**. Each delinquent payment will be charged interest based on the CVFR percentage applicable to the quarter in which all or part of the assessment goes unpaid.

By order of the Board of Governors of the Federal Reserve System, April 12, 2013.

**Robert deV. Frierson,**  
*Secretary of the Board.*

[FR Doc. 2013-09061 Filed 4-17-13; 8:45 am]

**BILLING CODE P**

## **BUREAU OF CONSUMER FINANCIAL PROTECTION**

### **12 CFR Part 1026**

[Docket No. CFPB-2013-0009]

**RIN 3170-AA37**

#### **Amendments to the 2013 Escrows Final Rule Under the Truth in Lending Act (Regulation Z)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** This rule proposes clarifying and technical amendments to a final rule issued by the Bureau of Consumer Financial Protection (Bureau) on January 10, 2013, which, among other things, lengthens the time for which a mandatory escrow account established for a higher-priced mortgage loan (HPML) must be maintained. The rule also established an exemption from the escrow requirement for certain creditors that operate predominantly in "rural" or "underserved" areas. The amendments clarify the determination method for the "rural" and "underserved" designations and keep in place certain existing protections for HPMLs until other similar provisions take effect in January 2014.

**DATES:** Comments must be received on or before May 3, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2013-0009 or RIN 3170-AA37, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

*Instructions:* All submissions should include the agency name and docket

number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Whitney Patross, Attorney; Joseph Devlin and Richard Arculin, Counsels; Office of Regulations, at (202) 435-7700.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Summary of Proposed Rule**

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) Public Law 111-203, 124 Stat. 1376 (2010) (2013 Title XIV Final Rules). One of these rules was Escrow Requirements Under the Truth in Lending Act (Regulation Z) (2013 Escrows Final Rule),<sup>1</sup> issued on January 10.<sup>2</sup> The rule expanded on an existing Regulation Z requirement that creditors maintain escrow accounts for higher-priced mortgage loans and created an exemption for certain loans made by

<sup>1</sup> 78 FR 4726 (Jan. 22, 2013).

<sup>2</sup> The other rules include: Ability-to-Repay and Qualified Mortgage Standards under the Truth in Lending Act (Regulation Z) (2013 ATR Final Rule), 78 FR 6407; High-Cost Mortgages and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X) (2013 HOEPA Final Rule), 78 FR 6855; Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215; Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 10695; Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 78 FR 10901; Appraisals for Higher-Priced Mortgage Loans (issued jointly with other agencies) (2013 Interagency Appraisals Final Rule), 78 FR 10367; Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279.