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(v) Requiring prior approval of certain expansion proposals (section 38(e)(4) of the FDI Act).

(3) *Additional provisions applicable to significantly undercapitalized, and critically undercapitalized FDIC-supervised institutions.* In addition to the provisions of section 38 of the FDI Act described in paragraph (a)(2) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 324.402, that the FDIC-supervised institution is significantly undercapitalized, or critically undercapitalized, or that the FDIC-supervised institution is subject to the provisions applicable to institutions that are significantly undercapitalized because the FDIC-supervised institution failed to submit or implement in any material respect an acceptable capital restoration plan, the FDIC-supervised institution shall become subject to the provisions of section 38 of the FDI Act that restrict compensation paid to senior executive officers of the institution (section 38(f)(4) of the FDI Act).

(4) *Additional provisions applicable to critically undercapitalized institutions.* (i) In addition to the provisions of section 38 of the FDI Act described in paragraphs (a)(2) and (a)(3) of this section, immediately upon receiving notice or being deemed to have notice, as provided in § 324.402, that the insured depository institution is critically undercapitalized, the institution is prohibited from doing any of the following without the FDIC's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency;

(B) Extending credit for any highly leveraged transaction;

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order;

(D) Making any material change in accounting methods;

(E) Engaging in any covered transaction (as defined in section 23A(b) of

the Federal Reserve Act (12 U.S.C. 371c(b));

(F) Paying excessive compensation or bonuses;

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas; and

(H) Making any principal or interest payment on subordinated debt beginning 60 days after becoming critically undercapitalized except that this restriction shall not apply, until July 15, 1996, with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(ii) In addition, the FDIC may further restrict the activities of any critically undercapitalized institution to carry out the purposes of section 38 of the FDI Act.

(iii) The FDIC-supervised institution must remain in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

(b) Discretionary supervisory actions. In taking any action under section 38 of the FDI Act that is within the FDIC's discretion to take in connection with:

(1) An insured depository institution that is deemed to be undercapitalized, significantly undercapitalized, or critically undercapitalized, or has been reclassified as undercapitalized, or significantly undercapitalized; or

(2) An officer or director of such institution, the FDIC shall follow the procedures for issuing directives under §§ 308.201 and 308.203 of this chapter, unless otherwise provided in section 38 of the FDI Act or this subpart H.

PART 325—STRESS TESTING

Sec.

- 325.1 Authority, purpose, and reservation of authority.
- 325.2 Definitions.
- 325.3 Applicability.
- 325.4 Periodic stress tests required.
- 325.5 Methodologies and practices.
- 325.6 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.

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325.7 Publication of stress test results.

AUTHORITY: 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(C); 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p-1.

SOURCE: 77 FR 62424, Oct. 15, 2012, unless otherwise noted.

§ 325.1 Authority, purpose, and reservation of authority.

(a) *Authority.* This part is issued by the Federal Deposit Insurance Corporation (the “Corporation” or “FDIC”) under 12 U.S.C. 5365(i)(2), 12 U.S.C. 5412(b)(2)(B), 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p-1.

(b) *Purpose.* This part implements 12 U.S.C. 5365(i)(2), which requires the Corporation (in coordination with the Board of Governors of the Federal Reserve System (Board) and the Federal Insurance Office) to issue regulations that require each covered bank to conduct periodic stress tests, and establishes a definition of stress test, methodologies for conducting stress tests, and reporting and disclosure requirements.

(c) *Reservation of authority.* Notwithstanding any other provisions of this part, the Corporation may modify some or all of the requirements of this part.

(1) The Corporation may accelerate or extend any deadline for stress testing, reporting, or publication of the stress test results.

(2) The Corporation may require different or additional tests not otherwise required by this part or may require or permit different or additional analytical techniques and methodologies, different or additional scenarios (including components for the scenarios), or different assumptions for the covered bank to use in meeting the requirements of this part. In addition, the FDIC may specify a different as-of date for any or all categories of financial data used by the stress test.

(3) The Corporation may modify the reporting requirements of a report under this part or may require additional reports. The Corporation may modify the publication requirements of this part and or may require different or additional publication disclosures.

(4) The Corporation may also exempt a covered bank from the requirement

to conduct a stress test in a particular reporting year.

(5) Factors considered: Any exercise of authority under this section by the Corporation will be in writing and will consider the activities, level of complexity, risk profile, scope of operations, and the regulatory capital of the covered bank, in addition to any other relevant factors.

(6) Notice and comment procedures: In exercising its authority to require different or additional stress tests and different or additional scenarios (including components for the scenarios) under paragraph (c)(2) of this section, the Corporation will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 324.5, as appropriate.

(7) Nothing in this part limits the authority of the Corporation under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsound practices or conditions, or violations of law or regulation.

[77 FR 62424, Oct. 15, 2012. Redesignated and amended at 83 FR 17740, Apr. 24, 2018; 84 FR 56933, Oct. 24, 2019; 84 FR 64985, Nov. 26, 2019]

§ 325.2 Definitions.

For purposes of this part—

(a) *Average total consolidated assets* means the average of the covered bank’s total consolidated assets, as reported on the covered bank’s Consolidated Report of Condition and Income (Call Report) for the four most recent consecutive quarters. If the covered bank has not filed a Call Report for each of the four most recent consecutive quarters, the covered bank’s average total consolidated assets means the average of the covered bank’s total consolidated assets, as reported on the covered bank’s Call Reports, for the most recent one or more consecutive quarters. The date on which the state nonmember bank or the state savings association becomes a covered bank will be the as-of date of the most recent Call Report used in the calculation of the average.

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(b) *Baseline scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank, and that reflect the consensus views of the economic and financial outlook.

(c) *Covered bank* means any state nonmember bank or state savings association with average total consolidated assets calculated as required under this part that are greater than \$250 billion.

(d) *Planning horizon* means the period of at least nine quarters over which the relevant projections extend.

(e) *Pre-provision net revenue* means the sum of net interest income and non-interest income, less expenses, before adjusting for loss provisions.

(f) *Provision for credit losses* means:

(1) Until December 31, 2019:

(i) With respect to a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under U.S. generally accepted accounting principles (GAAP), the provision for loan and lease losses as reported on the Call Report in the current stress test cycle; and,

(ii) With respect to a state nonmember bank or state savings association that has adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses, as would be calculated and reported on the Call Report by a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under GAAP; and

(2) Beginning January 1, 2020:

(i) With respect to a state nonmember bank or state savings association that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as reported in the Call Report in the current stress test cycle; and

(ii) With respect to a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported in the Call Report in the current stress test cycle.

(g) *Regulatory capital ratio* means a capital ratio for which the Corporation established minimum requirements by

regulation or order, including the leverage ratio and tier 1 and total risk-based capital ratios applicable to that covered bank as calculated under the Corporation's regulations.

(h) *Reporting year* means the calendar year in which a covered institution must conduct, report, and publish its stress test, as required under 12 CFR 325.4(d).

(i) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered bank that the Corporation determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline and severely adverse scenarios.

(j) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered bank and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

(k) *State nonmember bank* and *state savings association* have the same meanings as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(l) *Stress test* means the process to assess the potential impact of scenarios on the consolidated earnings, losses, and capital of a covered bank over the planning horizon, taking into account the current condition of the covered bank and the covered bank's risks, exposures, strategies, and activities.

(m) *Stress test cycle* means the period beginning January 1 of a reporting year and ending on December 31 of that reporting year.

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69368, Nov. 21, 2014. Redesignated at 83 FR 17740, Apr. 24, 2018, as amended at 84 FR 4249, Feb. 14, 2019; 84 FR 56933, Oct. 24, 2019]

§ 325.3 Applicability.

(a) *Covered banks subject to stress testing.* (1) A state nonmember bank or state savings association that is a covered bank as of December 31, 2019, is subject to the requirements of this part for the 2020 reporting year.

(2) A state nonmember bank or state savings association that becomes a covered bank after December 31, 2019, shall conduct its first stress test under

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this part in the first reporting year that begins more than three calendar quarters after the date the state non-member bank or state savings association becomes a covered bank, unless otherwise determined by the Corporation in writing.

(b) *Ceasing to be a covered bank.* A covered bank shall remain subject to the stress test requirements of this part unless and until total consolidated assets of the covered bank falls to \$250 billion or less for each of four consecutive quarters as reported on the covered bank's most recent Call Reports. The calculation will be effective on the as-of date of the fourth consecutive Call Report.

(c) *Covered bank subsidiaries of a bank holding company or savings and loan holding company subject to periodic stress test requirements.* (1) Notwithstanding the requirements applicable to covered banks under this section, a covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct a periodic company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System may elect to conduct its stress test and report to the FDIC on the same timeline as its parent bank holding company or savings and loan holding company.

(2) A covered bank that elects to conduct its stress test under paragraph (c)(1) of this section will remain subject to the same timeline requirements of its parent company until otherwise approved by the FDIC.

[84 FR 56933, Oct. 24, 2019; 84 FR 64985, Nov. 26, 2019]

§ 325.4 Periodic stress tests required.

Each covered bank must conduct the periodic stress test under this part subject to the following requirements:

(a) *Financial data.* A covered bank must use financial data as of December 31 of the calendar year prior to the reporting year.

(b) *Scenarios provided by the Corporation.* In conducting the stress test under this part, each covered bank must use the scenarios provided by the Corporation. The scenarios provided by the Corporation will reflect a minimum of two sets of economic and fi-

nancial conditions, including baseline and severely adverse scenarios. The Corporation will provide a description of the scenarios required to be used by each covered bank no later than February 15 of the reporting year.

(c) *Significant trading activities.* The Corporation may require a covered bank with significant trading activities, as determined by the Corporation, to include trading and counterparty components in its severely adverse scenarios. The trading and counterparty position data used in this component will be as of a date between October 1 of the year preceding the reporting year and March 1 of the reporting year, and the Corporation will communicate a description of the component to the covered bank no later than March 1 of the reporting year.

(d) *Frequency.* A covered bank that is consolidated under a holding company that is required, pursuant to applicable regulations of the Board of Governors of the Federal Reserve System, to conduct a stress test at least once every calendar year must treat every calendar year as a reporting year, unless otherwise determined by the Corporation. All other covered banks must treat every even-numbered calendar year beginning January 1, 2020 (*i.e.*, 2022, 2024, 2026, etc.), as a reporting year, unless otherwise determined by the Corporation.

[84 FR 56934, Oct. 24, 2019]

§ 325.5 Methodologies and practices.

(a) *Potential impact on capital.* In conducting a stress test under this part, during each quarter of the planning horizon, each covered bank must estimate the following for each scenario required to be used:

(1) Pre-provision net revenues, losses, provision for credit losses, and net income; and

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Corporation, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon.

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(b) *Controls and oversight of stress testing processes.* (1) The senior management of a covered bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress test processes satisfy the requirements in this part. These policies and procedures must, at a minimum, describe the covered bank's stress test practices and methodologies, and processes for validating and updating the covered bank's stress test practices and methodologies consistent with applicable laws and regulations.

(2) The board of directors, or a committee thereof, of a covered bank must approve and review the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered bank may warrant, but no less than once every reporting year. The board of directors and senior management of the covered bank must receive a summary of the results of the stress test.

(3) The board of directors and senior management of each covered bank must consider the results of the stress tests in the normal course of business, including but not limited to, the covered bank's capital planning, assessment of capital adequacy, and risk management practices.

[77 FR 62424, Oct. 15, 2012, Redesignated and amended at 83 FR 17740, Apr. 24, 2018; 84 FR 4249, Feb. 14, 2019; 84 FR 56933, 56934, Oct. 24, 2019]

§ 325.6 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.

(a) *Report required for periodic stress test results.* A covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before April 5 of the reporting year, the results of the stress test in the manner and form specified by the FDIC.

(b) *Content of reports.* (1) The reports required under paragraph (a) of this section must include under the baseline scenario, severely adverse scenario, and any other scenario required by the Corporation under this part, a description of the types of risks being

included in the stress test, a summary description of the methodologies used in the stress test, and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for loan and lease losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC). In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the Corporation.

(2) The description of aggregate losses and net income must include the cumulative losses and cumulative net income over the planning horizon, and the description of each regulatory capital ratio must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

(c) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Corporation under this part and related materials will be determined in accordance with applicable law including any available exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Rules and Regulations regarding the Disclosure of Information (12 CFR part 309).

[84 FR 56934, Oct. 24, 2019]

§ 325.7 Publication of stress test results.

(a) *Publication date.* A covered bank must publish a summary of the results of its stress tests in the period starting June 15 and ending July 15 of the reporting year, provided:

(1) Unless the Corporation determines otherwise, if the covered bank is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System under 12 CFR part 252, then, within the June 15 to July 15 period, such covered bank may not publish the required summary of its periodic stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

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(2) If the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company prior to June 15, then such covered bank may publish its stress test results prior to June 15, but no later than July 15, through actual publication by the covered bank or through publication by the parent holding company under paragraph (b) of this section.

(b) *Publication method.* The summary required under this section may be published on the covered bank's website or in any other forum that is reasonably accessible to the public. A covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct a company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System will be deemed to have satisfied the public disclosure requirements under this part if it publishes a summary of its stress test results with its parent bank holding company's or savings and loan holding company's summary of stress test results. Subsidiary covered banks electing to satisfy their public disclosure requirement in this manner must include a summary of changes in regulatory capital ratios of such covered bank over the planning horizon, and an explanation of the most significant causes for the changes in regulatory capital ratios.

(c) *Information to be disclosed in the summary.* A covered bank must disclose the following information regarding the severely adverse scenario if it is not a consolidated subsidiary of a parent bank holding company or savings and loan holding company that has elected to make its disclosure under 12 CFR 325.3(d):

(1) A description of the types of risks included in the stress test;

(2) A summary description of the methodologies used in the stress test;

(3) Estimates of aggregate losses, pre-provision net revenue, provision for credit losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC); and

(4) An explanation of the most significant causes for the changes in the regulatory capital ratios.

(d) *Content of results.* (1) The disclosure of aggregate losses, pre-provision net revenue, provisions for credit losses, and net income under this section must be on a cumulative basis over the planning horizon.

(2) The disclosure of regulatory capital ratios and any other capital ratios specified by the Corporation under this section must include the beginning value, ending value, and minimum value of each ratio over the planning horizon.

[77 FR 62424, Oct. 15, 2012, as amended at 79 FR 69369, Nov. 21, 2014. Redesignated at 83 FR 17740, Apr. 24, 2018, as amended at 84 FR 4249, Feb. 14, 2019; 84 FR 56934, Oct. 24, 2019; 84 FR 64985, Nov. 26, 2019]

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT¹ COMPLIANCE

Subpart A—Minimum Security Procedures

Sec.

- 326.0 Authority, purpose, and scope.
- 326.1 Definitions.
- 326.2 Designation of security officer.
- 326.3 Security program.
- 326.4 Reports.

Subpart B—Procedures for Monitoring Bank Secrecy Act Compliance

326.8 Bank Secrecy Act compliance.

AUTHORITY: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883, 5412; 31 U.S.C. 5311–5314, 5316–5332.2.

Subpart A—Minimum Security Procedures

SOURCE: 83 FR 13842, Apr. 2, 2018, unless otherwise noted.

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(a) This part is issued by the Federal Deposit Insurance Corporation

¹In its original form, subchapter II of chapter 53 of title 31 U.S.C., was part of Pub. L. 91–508 which requires recordkeeping for and reporting of currency transactions by banks and others and is commonly known as the *Bank Secrecy Act*.