

### L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### M. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved the issuance of this final rule.

### List of Subjects

#### 10 CFR Part 708

Administrative practice and procedure, Government contracts, Whistleblowing.

#### 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC, on August 19, 2013.

#### Poli A. Marmolejos,

Director, Office of Hearings and Appeals.

For the reasons stated in the preamble, DOE amends parts 708 and 710 of chapter III, title 10, Code of Federal Regulations, as set forth below:

### PART 708—DOE CONTRACTOR EMPLOYEE PROTECTION PROGRAM

■ 1. The authority citation for part 708 continues to read as follows:

**Authority:** 42 U.S.C. 2201(b), 2201(c), 2201(l), and 2201(p); 42 U.S.C. 5814 and 5815; 42 U.S.C. 7251, 7254, 7255, and 7256; and 5 U.S.C. Appendix 3.

#### §§ 708.2, 708.24, 708.25, 708.26, 708.27, 708.28, 708.30, 708.31, and 708.32 [Amended]

■ 2. Sections 708.2 (definition); 708.24(b); 708.25; 708.26; 708.27; 708.28(b); 708.30; 708.31; and 708.32(a) and (c) are amended by removing the words "Hearing Officer" and adding in their place the words "Administrative Judge".

### PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

■ 3. The authority citation for part 710 continues to read as follows:

**Authority:** 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.*, 7383h-1; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949-1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 13526, 3 CFR 2010 Comp., pp. 298-327

(or successor orders); E.O. 12968, 3 CFR 1995 Comp., p. 391.

#### §§ 710.5, 710.21, 710.22, 710.25, 710.26, 710.27, 710.28, 710.29, 710.30, 710.32, 710.34, and 710.35 [Amended]

■ 4. Sections 710.5(a); 710.21(b)(3)(ii) and (6) through (8); 710.22(a)(1) through (3); 710.25 section heading and (b) through (f); 710.26(a) through (k), (l) introductory text, (l)(2)(ii), and (p); 710.27; 710.28 section heading, (a)(1) and (4), (b) introductory text, (b)(3), and (c) introductory text; 710.29(i); 710.30(b)(1) and (2); 710.32(a) and (b) introductory text; 710.34; and 710.35 are amended by removing the words "Hearing Officer" and adding, in their place, the words "Administrative Judge".

[FR Doc. 2013-20597 Filed 8-22-13; 8:45 am]

BILLING CODE 6450-01-P

## 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:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a final rule to implement section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 318 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.

**DATES:** *Effective date:* The final rule is effective October 25, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark Greiner, Senior Supervisory Financial Analyst (202-452-5290), Nancy Perkins, Assistant Director (202-973-5006), or William Spaniel, Senior

Associate Director (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.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Description of the Final Rule
  - A. Key Definitions
    - 1. Assessed Companies
    - 2. Total Assessable Assets
    - 3. Assessment Periods
    - 4. Assessment Basis
  - B. Apportioning the Assessment Basis to Assessed Companies
    - 1. Apportionment Based on Size
    - 2. Assessment Formula
  - C. Collection Procedures
    - 1. Notice of Assessment and Appeal Procedure
    - 2. Collection of Assessments
    - D. Revisions to the FR Y-7Q
- III. Administrative Law Matters
  - A. Solicitation of Comments and Use of Plain Language
  - B. Paperwork Reduction Act Analysis
  - C. Regulatory Flexibility Act Analysis

#### I. Introduction

On April 18, 2013, the Board published in the **Federal Register** a notice of proposed rulemaking (the NPR or the proposal) seeking public comment on the Board's proposal to implement section 318 of the Dodd-Frank Act.<sup>1</sup> Section 318 directs the Board to collect assessments, fees, or other charges (assessments) from bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with \$50 billion or more in total consolidated assets, and from nonbank financial companies designated by the Financial Stability Oversight Council (Council) pursuant to section 113 of the Dodd-Frank Act for supervision by the Board (Board-supervised nonbank financial companies), (collectively, assessed companies), equal to the expenses the Board estimates are necessary or appropriate to carry out its supervision and regulation of those companies. The proposed rule outlined the Board's assessment program, including how the Board would: (a) Determine which companies are assessed companies 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

<sup>1</sup> 78 FR 23162 (April 18, 2013).

covered by the assessment, (c) determine the assessment for each assessed company, and (d) bill for and collect the assessment from the assessed companies.

The proposal provided that each calendar year would be an assessment period (assessment period) and that a BHC or SLHC would be an assessed company for that assessment period if the company's average total consolidated assets over the assessment period met or exceeded \$50 billion, and a nonbank financial company would be an assessed company if it was a Board-supervised nonbank financial company on December 31 of the assessment period. The Board proposed to notify assessed companies of the amount of their assessment no later than July 15 of the year following each assessment period. After an opportunity for appeal, each assessed company would have been required to pay its assessment by September 30 of the year following the assessment period. The Board proposed to collect assessments beginning with the 2012 assessment period.

The Board received 16 comments on the NPR from industry associations, companies, individuals, and members of the U.S. Congress. Certain commenters expressed concerns with the Board's methodology for allocating its expenses among assessed companies, as well as with the Board's determination of its assessment basis. Commenters also criticized the Board's methodology for assessing Board-supervised nonbank financial companies and SLHCs that are predominantly insurance companies. A more detailed discussion of the comments on particular aspects of the proposal is provided in the remainder of this preamble.

## II. Description of the Final Rule

### A. Key Definitions

#### 1. Assessed Companies

The proposed rule would have defined assessed companies to be BHCs and SLHCs with total consolidated assets of \$50 billion or more and Board-supervised nonbank financial companies. In particular, for each assessment period, assessed companies were defined as:

- A company that, on December 31 of the assessment period, is a top-tier BHC, as defined in section 2 of the Bank Holding Company Act,<sup>2</sup> other than a foreign BHC, that has total consolidated assets of \$50 billion or more as determined based on the average of the BHC's total consolidated assets reported for the assessment period on its

Schedule HC—Consolidated Balance Sheet of the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y-9C);

- A company that, on December 31 of the assessment period, is a top-tier SLHC, as defined in section 10 of the Home Owners' Loan Act,<sup>3</sup> other than a foreign SLHC, that has total consolidated assets of \$50 billion or more as determined based on the average of the SLHC's total consolidated assets reported for the assessment period on the SLHC's FR Y-9C, or on the SLHC's Quarterly Savings and Loan Holding Company Report (FR 2320), as applicable<sup>4</sup>;

- A foreign company that, on December 31 of the assessment period, is a top-tier BHC 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>5</sup>;

- A foreign company that, on December 31 of the assessment period, is a top-tier SLHC that has total consolidated assets of \$50 billion or more as determined based on the average of the foreign SLHC's total consolidated assets reported for the assessment period on regulatory reports required for the foreign SLHC<sup>6</sup>; and

<sup>3</sup> 12 U.S.C. 1467.

<sup>4</sup> The FR 2320 form is filed by top-tier savings and loan holding companies exempt from filing Federal Reserve regulatory reports, which include the Y-9C form submitted by BHCs and SLHCs with total consolidated assets of \$500 million or more. Under the proposal, for multi-tiered BHCs and multi-tiered SLHCs 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. 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 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) (BHCs) and 12 U.S.C. 1467a(a)(2) (SLHCs).

<sup>5</sup> For annual filers of the FR Y-7Q, the proposal provided that 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>6</sup> At present, there are no foreign savings and loan holding companies.

- A company that is a Board-supervised nonbank financial company on December 31 of the assessment period.

In the proposal, the Board stated that it believed that relying on the average of 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>7</sup>

The Board received comments regarding this aspect of the proposal. Several comments related to the Board's use of generally accepted accounting principles (GAAP) in determining whether a company is an assessed company, noting that state insurance law and regulations require U.S. insurance companies to prepare their financial statements in accordance with statutory accounting principles (SAP) and that some of those companies do not prepare GAAP-based financial statements in addition to their SAP statements. Commenters asserted that the Board should use financial statements prepared in accordance with SAP to determine whether a company is an assessed company so that an assessed company would not have to expend significant financial and other resources in order to provide GAAP financial statements. In the final rule, for an assessed company that reports its consolidated assets under GAAP, the Board is retaining the requirement that the determination of that company's total consolidated assets will be based on GAAP accounting requirements. There are, however, a small number of companies that only file financial statements in accordance with SAP and do not report consolidated financial statements under GAAP. In response to the comments received, to avoid requiring companies that only file financial statements in accordance with SAP to undertake the full burden of preparing GAAP financial statements, such a company may request that the Board permit the company to file quarterly an estimate of its total consolidated assets, which the Board will consider. If a U.S.-domiciled company does not report total

<sup>7</sup> A four-quarter average of a company's total consolidated assets has also been used in the definition of a covered company in the notice of proposed rulemaking establishing enhanced prudential standards and early remediation requirements for covered companies, published in the *Federal Register*, 77 FR 594 (January 5, 2012), and the final rulemaking establishing the supervisory and company-run stress test requirements for covered companies, published in the *Federal Register*, 77 FR 62378 (October 12, 2012).

<sup>2</sup> 12 U.S.C. 1841(a).

consolidated assets in its public reports or uses a financial reporting methodology other than GAAP, the Board may use, at its discretion, any comparable financial information that the Board may require from the company for the determination of whether the company is an assessed company.

One commenter stated that the Board should detail the manner in which information regarding nonpublic companies would need to be reported to the Board for purposes of the assessment and that, to the extent such information related to the assessment process is non-public and exempt from public disclosure, the Board should make reference to the rules and regulations regarding the confidential treatment of such information. The Board notes that the information used for purposes of the assessment, in general, is the type of information that is already being provided to the Board. Moreover, the FR Y-9C, FR Y-7Q, and FR 2320 reporting forms each provide that a reporting company may request confidential treatment if the company believes that disclosure of specific commercial or financial information in the report would likely result in substantial harm to its competitive position or that disclosure of the submitted information would result in unwarranted invasion of personal privacy.

A few commenters argued that, when determining which foreign companies are subject to assessments, the Board should not use a foreign company's worldwide assets but should instead only consider the assets associated with the company's U.S. operations because the Board is not the primary supervisor of foreign companies. Another commenter asserted that using a foreign BHC's worldwide assets to determine whether it is an assessed company exposes the company to double assessment by the Board and the home country supervisor. Another commenter recommended that grandfathered unitary SLHCs should be designated as assessed companies only if the assets associated with the savings association and other financial activities were greater than \$50 billion, and another asserted that separate accounts held at insurance companies should be excluded from total consolidated assets for purposes of determining whether a company should be an assessed company. One commenter argued that total consolidated assets should not include foreign affiliates that are consolidated for accounting and public reporting purposes.

Section 318 of the Dodd-Frank Act requires the Board to use total consolidated assets for BHCs and SLHCs to determine whether a company should be an assessed company. In determining whether a BHC or SLHC meets the \$50 billion threshold, section 318 does not provide a basis for treating foreign companies that are BHCs or SLHCs differently from domestic companies or excluding specific types of assets from the determination of a company's total consolidated assets. The statute states that BHCs and SLHCs with total consolidated assets of \$50 billion or greater will be subject to an assessment. Therefore, the Board is not modifying its definition of total consolidated assets in response to these comments.

One commenter asserted that the proposal does not account for foreign BHCs that file on an annual basis on form FR Y-7Q. Expressing concern that this approach might overstate variations in asset size, the commenter recommended that, to treat foreign BHCs that report total consolidated assets annually in a similar manner to assessed companies that report quarterly, the foreign BHC's total consolidated assets should be based on the average of its total consolidated assets as reported in the FR Y-7Q for the assessment period and the year immediately preceding the assessment period. In response to this comment, for a foreign BHC that files annually, the Board will average its total consolidated assets from the FR Y-7Q from the assessment period and from the FR Y-7Q filed for the prior year to determine whether the foreign BHC is an assessed company. The Board notes that after the proposed revisions to the FR Y-7Q become effective, foreign BHCs that are assessed companies will file on a quarterly basis and both foreign and domestic assessed companies will generally be determined to be assessed companies on the basis of a four-quarter average of total consolidated assets.

Another commenter requested that the Board index the \$50 billion threshold to inflation; however, section 318 of the Dodd-Frank Act requires the Board to use a \$50 billion threshold and does not provide for the threshold to be indexed.

The proposal provided that the organizational structure and financial information that the Board will 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, will be that information which the Board has received on or before June 30 of the year following that the applicable assessment

period. Because the Board is changing the date on which it will notify assessed companies of the assessment to June 30 from July 15, described further below, the Board is clarifying that all organizational structure and financial information must be received by the Board no later than June 15 to be consistent with the revised date.

In the final rule, the Board also has amended the proposal to reserve the authority to avoid an inequitable or inconsistent application of the rule. Other than as noted above, the final rule adopts the proposed definition of assessed company without change.

## 2. Total Assessable Assets

The proposed rule defined the term "total assessable assets" as the amount of assets that would be used to calculate an assessed company's assessment. In order to collect assessments that reflect the expenses of the Board in performing its role as the consolidated supervisor of assessed companies, total assessable assets included total assets for all activities subject to the Board's supervisory authority as the consolidated supervisor. For a U.S.-domiciled assessed company, the proposal provided that 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>8</sup> For a Board-supervised nonbank financial company, the proposal provided that 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 would be determined by the Board.<sup>9</sup> At such time as a foreign SLHC would become an assessed company, the proposal provided that total assessable assets would be the average of the foreign SLHC's total combined assets of U.S. operations as reported during the assessment period by the foreign SLHC.

For a foreign BHC, the proposal provided that the total assessable assets

<sup>8</sup> For assessed companies that are grandfathered unitary savings and loan holding companies, the proposal included only assets associated with its savings association subsidiary and its other financial activities in total assessable assets.

<sup>9</sup> If the Board-supervised nonbank financial company is a foreign company, the proposal provided that its assessable assets would be the average of the company's U.S. assets as reported during the assessment period. The Board may evaluate its methodology for determining total assessable assets for nonbank financial companies as the Board gains experience supervising nonbank financial companies.

would be equal to the company's total combined assets of U.S. operations,<sup>10</sup> including U.S. branches and agencies, as the Board is the consolidated supervisor for the company's U.S. activities. Foreign BHCs do not currently submit a 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>11</sup> In order to determine a foreign BHC's total assessable assets for the 2012 and 2013 assessment periods, the proposal provided that a foreign BHC'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>12</sup> from the regulatory reports for, specifically:

- Top-tier, U.S.-domiciled BHCs and SLHCs<sup>13</sup>;
- U.S. branches and agencies<sup>14</sup>;

<sup>10</sup> The proposal provided that a foreign BHC's total assessable assets does 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>11</sup> Currently, foreign BHCs, as foreign banking organizations, report total consolidated assets of worldwide operations on the FR Y-7Q. As described further below, the proposal provided that the FR Y-7Q would be amended to require a foreign banking organization to report its total combined assets of U.S. operations, in addition to its total consolidated assets of worldwide operations.

<sup>12</sup> The proposal provided that net intercompany balances and transactions between a U.S. entity and a foreign affiliate are not eliminated when determining total assessable assets, as such balances and transactions do not result in double counting of assets on a U.S.-combined basis. Further, only intercompany balances and transactions between U.S.-domiciled affiliates, branches or agencies that are itemized on a standalone regulatory report may be eliminated in the calculation of total assessable assets. For regulatory reports 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 proposal provided that the Board will 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>13</sup> The proposal provided that total assets for each U.S.-domiciled, top-tier BHC or SLHC 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>14</sup> The proposal provided that total assets for each branch or agency would be calculated as total claims on 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.

- U.S.-domiciled nonbank subsidiaries<sup>15</sup>;
- Edge Act and Agreement Corporations<sup>16</sup>;
- U.S. banks and U.S. savings associations<sup>17</sup>; and
- Broker-dealers that are not reflected in the assets of a U.S. domiciled parent's regulatory reporting form submission.<sup>18</sup>

Some commenters requested that the Board refine its methodology for calculating total combined assets of a foreign assessed company prior to the effective date of the modified FR Y-7Q by excluding intercompany balances reported in Form FFIEC 002, Schedule M, amounts outstanding from related nondepository majority-owned subsidiaries in the U.S. The final rule reflects this comment.<sup>19</sup>

<sup>15</sup> Under the proposal, 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 have been calculated as total assets (line item 10, Schedule BS), minus gross balances due from related institutions located in the United States (line item 4.a of Schedule BS-M) as reported on 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 are 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 rule, the Board will 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>16</sup> Under the proposal, total assets for each Edge Act or agreement corporation would have been 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>17</sup> Under the proposal, 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 have been 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>18</sup> Under the proposal, total assets for each broker-dealer would have been 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).

<sup>19</sup> Under the final rule, total assets for each U.S. branch or agency will be calculated as total claims on nonrelated parties (line item 1.i from column A on Schedule RAL) plus net due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, minus line items 2.a, 2.b(1), 2.b(2) and 2.c from column B, part 1 on Schedule M), minus transactions with related nondepository majority-owned subsidiaries in the U.S. (line item 1 from column A, part 3 on Schedule M), as reported on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002). Further, under the final rule, net due from related institutions in foreign countries

As described above, there are a small number of companies that only file financial statements in accordance with SAP and do not report consolidated financial statements under GAAP. In response to comments that urge the Board to avoid requiring companies that only file financial statements in accordance with SAP to also provide GAAP financial statements, such a company may request the Board to permit the company to file quarterly an estimate of its total assessable assets, which the Board will consider.

The final rule otherwise adopts the methodology for calculating total assessable assets for a foreign assessed company for the 2012 and 2013 assessment periods as proposed. As provided in the proposal, beginning with the 2014 assessment periods, the Board will modify the FR Y-7Q by adding a line item for an FBO to report the total combined assets of a foreign banking organization's U.S. operations and base the determination of a foreign BHC's assessable assets on that line item.

A number of commenters criticized how the Board proposed to calculate total assessable assets. Several of these commenters asserted that the final rule should exclude an insurance company's separate accounts from the calculation of total assessable assets, arguing that separate account assets are not indicative of insurer risk, and thus are not the focus of consolidated Board supervision and regulation. One commenter argued that when the Council assesses the systemic risk posed by nonbank financial companies, the Council excludes separate account assets from the calculation of "total consolidated assets" for purposes of the leverage ratio and short-term debt ratio Stage 1 designation criteria, and therefore such assets should be excluded from total assessable assets. The Board notes that the designation criteria cited by the commenters are screening thresholds only for the purpose of determining whether to subject a company to further review under the Council's interpretive guidance, and, furthermore, the Council does not exclude separate accounts from the total consolidated assets Stage 1 designation criterion.<sup>20</sup>

(line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, minus line items 2.a, 2.b(1), 2.b(2) and 2.c from column B, part 1 on Schedule M) are added to total assets only when there is a net due from position. A net due to related institutions in foreign countries results in no reduction to total assets.

<sup>20</sup> See 77 FR 21637 (April 11, 2012). The Council approved a rule and interpretive guidance on the "Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies" in April

The Board believes that separate accounts are appropriately included in the calculation of total assessable assets. The Board is the consolidated supervisor of an assessed company that is an insurance company or has one or more subsidiaries that are insurance companies that engages in the activities that result in separate accounts. Accordingly, the activities involving separate accounts contribute to the cost of the Board's supervision for that assessed company.

Some commenters also asserted that the Board should exclude assets attributable to nonfinancial activities of an assessed company. One commenter stated that the Board should resolve this issue by promulgating an intermediate holding company rule. As stated in the proposal, and under the final rule, total assessable assets for an assessed company, including Board-supervised nonbank financial company will be the total consolidated assets of that company because the Board would be the consolidated supervisor for the Board-supervised nonbank financial company. The Board may evaluate its methodology for determining total assessable assets for such companies as the Board gains experience supervising nonbank financial companies. Thus, the Board is adopting this aspect of the proposal without change.

### 3. Assessment Periods

The proposal established each calendar year as an assessment period. For each assessment period, the Board proposed to make a determination as to whether an entity is an assessed company for that assessment period. The Board proposed to determine whether a company, as of December 31 of the assessment period, is (i) a BHC or SLHC with average total consolidated assets equal to or exceeding the \$50 billion threshold, as reported on the relevant reporting form(s) or based on such other information as the Board might consider or (ii) a Board-supervised nonbank financial company. The Board is adopting this aspect of the proposal without change.

### 4. Assessment Basis

The proposal defined the assessment basis as the applicable estimated expenses of the Board and the Reserve Banks (to which the Board has delegated

supervisory responsibility) relating to acting as the consolidated supervisor of assessed companies. Under the proposal, expenses are all operating expenses, including support, overhead, and pension expenses associated with the consolidated supervision and regulation of assessed companies. In order to determine the annual assessment basis, the proposal provided that the Board would estimate its aggregate expenses for activities related to the supervision and regulation of all assessed companies. These expenses included: conducting onsite and offsite examinations, inspections, visitations and reviews; providing ongoing supervision; meeting and corresponding with assessed companies regarding supervision matters; conducting stress tests; assessing resolution plans; developing, administering, interpreting and 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 BHC mergers, acquisitions, and other similar transactions; processing consumer complaints; and implementing a macro-prudential supervisory approach.<sup>21</sup>

In addition, the proposal provided that the estimated expenses in the assessment basis would include a proportion of expenses associated with activities that are integral to carrying out the supervisory and regulatory responsibilities of the Board as consolidated supervisor for assessed companies, although those expenses are not directly attributable to specific companies. These activities include: (i) The Shared National Credit 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 and analysis, which includes library and subscription services, and development of supervisory and regulatory policies, procedures, and products of the Board; (iv) collecting, receiving, and processing regulatory

reports received from institutions supervised and regulated by the Board; and (v) supervision and regulation automation (e.g., information technology) services. For these activities, the Board noted in the proposal that it would calculate the relative proportion of its supervision expenses that are attributable to assessed companies divided by expenses for those activities that are attributable to all companies supervised by the Board, and include that proportion of expenses associated with activities that are integral to carrying out the Board's supervisory and regulatory responsibilities in the assessment basis.

Several commenters expressed concern with the proposal's description of the Board's procedures, accounting, and methodology for arriving at the assessment basis and asserted that the Board had not provided sufficient detail to assess whether the Board had met the "necessary or appropriate" standard established by section 318 of the Dodd-Frank Act. Other commenters argued that the proposal did not distinguish between the supervision and regulation of assessed companies and the large number of other institutions subject to Board oversight. Some commenters recommended that the Board publish a report itemizing the expenses for each assessment period by the type of expenses. A few commenters asserted that the Board should clarify and publish for further comment the methodology it plans to use to identify and measure both those expenses that are directly related to its consolidated oversight of assessed companies, and those expenses that are not directly related to its consolidated oversight of assessed companies but are included in the assessment basis.

With respect to the comments that the Board publish for comment more detail with respect to the assessment basis, the Board believes that the proposal provided meaningful opportunity for public comment. The proposal provided a description of expenses related to supervising and regulating assessed companies and described how the Board would also apply a proportion of expenses related to activities that are integral to carry out the supervisory and regulatory responsibilities of the Board. Nonetheless, the Board is clarifying for commenters the manner in which it will compute and apportion the assessment basis.

The Board's operating expenses are published annually in the Board of Governors' Annual Report: Budget

2012. The interpretive guidance establishes six thresholds that the Council uses to identify nonbank financial companies for further evaluation. The first threshold is \$50 billion in total consolidated assets, with no exclusion of separate accounts. The fifth and sixth thresholds are the leverage ratio and the short-term debt ratio described by the commenter, both of which exclude separate accounts.

<sup>21</sup> Under the proposal, the Board's expenses with respect to its direct supervision of state member banks and branches and agencies of foreign banking organizations are excluded from the assessment basis because such expenses are not attributable to the Board's role as the consolidated supervisor of the assessed company, which is the unique supervisory role the Board serves among all federal banking supervisors. Therefore, it is the expenses associated with the Board's consolidated supervision and regulation of assessed companies that provide the basis for the Board's assessments.

Review.<sup>22</sup> For 2012, supervision and regulation operating expenses at the Board and the Reserve Banks totaled \$1.172 billion, comprised of \$1.057 billion in supervision and regulation operating expenses for the Federal Reserve Banks (Reserve Banks)<sup>23</sup> and \$115 million in supervision and regulation operating expenses for the Board.<sup>24</sup>

The Reserve Banks' operating expenses are determined through a cost accounting system that provides uniform methods of accounting for expenses, allowing each Reserve Bank to determine the full cost of its and all Reserve Bank services. The activities involved in the supervision and regulation of assessed companies are used to identify the relevant expenses for the assessment basis. For example: employee-time data are analyzed to determine the amount of time employees spend supervising assessed companies, and this analysis along with other, similar analyses are used to allocate salaries and other personnel expenses.

Operating expenses for the assessment basis include all expenses associated with the supervision and regulation of assessed companies, which are comprised primarily of personnel expenses, as well as those expenses for related administrative processes, support operations, and travel. Certain expenses associated with activities that cannot be directly attributed to assessed companies, but are integral to carrying out the supervisory responsibilities of the Reserve Banks, are added to the assessment basis on a proportional basis. For these expenses, the Board

<sup>22</sup> See <http://www.federalreserve.gov/publications/budget-review/default.htm>.

<sup>23</sup> Refer to 2012 actual expenses in Table C.3. Operating Expenses of the Federal Reserve Banks, Federal Reserve Information Technology (FRIT), and Office of Employee Benefits (OEB) by operational area, as reported in the Board's 2013 Annual Report: Budget Review. Reserve Bank operating expenses include an allocation of all direct, support, and overhead expenses.

<sup>24</sup> Refer to 2012 actual expenses in Table B.1. Operating expenses of the Board of Governors, by division, office or special accounts as reported in the Board's 2013 Annual Report: Budget Review. The Board's total operating expenses for 2012 was \$497 million. The Board's supervision and regulation operating expenses reflect the expenses of the Division of Banking Supervision and Regulation (\$93 million) and the Division of Consumer and Community Affairs (\$22 million). The total of \$115 million for 2012, however, does not include the contribution of expenses from other divisions at the Board that also perform supervision and regulation activities, including the Legal Division and to some extent the divisions of Research and Statistics, International Finance, Monetary Affairs, and Office of Financial Stability Policy and Research. The method for estimating the Board's expenses associated with the supervision and regulation of assessed companies is described below.

determines the proportion of expenses directly attributable to the supervision of those companies subject to assessment, relative to the expenses directly attributable to the supervision of all financial institutions supervised by the Board. This proportion is then applied to the expenses for the activities integral to carrying out the supervisory responsibilities of the Reserve Banks<sup>25</sup> and the resulting proportion of expenses is included in the assessment basis. For 2012, the Reserve Banks' proportion of expenses directly attributable to the supervision of assessed companies was about 34 percent of the \$742 million directly attributable to the Board's cost of supervising all financial institutions.

Since publishing the proposed rule, the Board has revised its calculation of the assessment basis for 2012 to incorporate actual, rather than budgeted, expenses for the assessment year, and to adjust the assessment basis in accordance with a change made to the final rule.<sup>26</sup> The 2012 expenses associated with activities directly attributable to the supervision of assessed companies contribute about \$256 million to the assessment basis, and the proportion of expenses (about 34 percent) for activities integral to carrying out the supervisory responsibilities of the Reserve Banks (a total of about \$240 million) adds about \$82 million. In addition, the Board assigned to the assessment basis a proportional share of pension expenses of about \$56 million. Thus, the total estimated Reserve Bank operating expenses (direct, related, and pension expenses) attributed to the supervision and regulation of assessed companies for 2012 is about \$394 million.

With respect to the operating expenses of the Board, the Board groups all divisions into one of two categories for the purpose of determining the contribution to the assessment basis—those that perform supervision- and regulation-related activities with respect to assessed companies (direct) and those that provide support to supervision and regulation related activities (indirect). Divisions that are categorized as direct are Banking Supervision and Regulation, Consumer and Community Affairs, Research and Statistics, International Finance, Monetary Affairs, Office of Financial Stability Policy and Research, and Legal. The remaining divisions are classified as indirect based

<sup>25</sup> Activities integral to carry out the supervisory responsibilities of the Reserve Banks include staff training and education, supervision policy and projects, regulatory reports processing, and supervision and regulation automation services.

<sup>26</sup> This change, relating to the Shared National Credit Program, is described below.

on the support they provide to the direct divisions, necessary for the continuation of normal operations.<sup>27</sup>

Similar to the employee time data the Reserve Banks use to estimate operating expenses attributable to the supervision and regulation of assessed companies, the Board uses annual time surveys from employees in the direct divisions to determine the estimated proportion of time attributable to the supervision and regulation of assessed companies. For 2012, operating expenses of the direct divisions totaled \$246 million, of which \$29 million is directly attributable to the cost of supervising and regulating assessed companies. These totals are comprised of (i) the Division of Banking Supervision and Regulation, with total operating expenses of \$93 million, of which about \$22 million is directly attributable to the supervision and regulation of assessed companies; (ii) the Division of Consumer and Community Affairs with total operating expenses of \$22 million, of which about \$1 million is directly attributable to the supervision and regulation of assessed companies; (iii) the Legal Division with total operating expenses of \$20 million, of which about \$4 million is directly attributable to the supervision and regulation of assessed companies; and (iv) the divisions of Research and Statistics, International Finance, Monetary Affairs and the Office of Financial Stability Policy and Research with total operating expenses of \$111 million, of which about \$2 million is directly attributable to the supervision and regulation of assessed companies. The employee-time survey data are also used to estimate the proportion of each direct division's non-personnel expenses, such as travel expenses, that is attributable to the supervision and regulation of assessed companies.

To determine the proportion of the indirect divisions' expenses included in the assessment basis, the Board calculates the proportion of employee time in the direct divisions attributable to the supervision and regulation of assessed companies relative to the total employee time at the Board, which is then applied to the total expenses of the indirect divisions, and this proportion of indirect division expenses is added to the assessment basis. For the 2012 assessment period, the indirect divisions' expenses totaled \$252 million, of which about 5 percent (\$13 million) was added to the assessment

<sup>27</sup> The indirect divisions include the Office of Board Members, Office of the Secretary, Division of Financial Management, Information Technology, Office of the Chief Operating Officer, Office of the Chief Data Officer, the Management Division, and Reserve Bank Operations and Payment Systems.

basis. The Board also includes in the assessment basis a similarly calculated proportion of the Board's pension expenses, which for 2012 was \$4 million. Thus, the total estimated Board operating expenses (direct, indirect and pension expenses) attributed to the supervision and regulation of assessed companies for 2012 is about \$46 million.

In total, the Board estimates that the total expenses necessary or appropriate to carry out its supervision and regulation of assessed companies in 2012 is \$440 million. The Board does not anticipate changes to this estimate before publishing the assessment basis upon the effective date of this rule. Should any changes become necessary, the Board will provide explanation of the changes within the publication of the assessment basis and assessment rate for the 2012 assessment.

In response to commenters' requests that the Board provide a detailed report of its costs related to supervising and regulating assessed companies for a given assessment period, the Board will provide, on the Board's Web site each year by June 30, a report similar to the description contained in this preamble containing the operating expenses, together with the amount of those expenses that the Board estimates are attributable to supervision and regulation of assessed companies.

One commenter asserted that some Reserve Banks do not supervise or regulate any assessed companies and, therefore, the assessment basis should not include the cost of support and overhead for those offices. Although certain Reserve Banks do not supervise assessed companies, they may provide support associated with the Board's and other Reserve Banks' supervision and regulation of assessed companies, such as staff training and automation services. In determining the assessment basis, the Board includes only the supervision and regulation expenses attributable to the supervision and regulation of assessed companies, as described above. The Board does not include support and overhead expenses of any portion of the Reserve Banks' operations that are not attributable to the supervision and regulation of assessed companies.

Some commenters asserted that costs associated with functionally-regulated subsidiaries of BHCs or SLHCs, such as national banks and state non-member banks, should not be included in the assessment basis. As the consolidated supervisor, the Board is charged with the supervision and regulation of the holding company parent, including its capital, leverage, liquidity, and

enterprise-wide compliance risk management, which are affected by and may affect functionally regulated subsidiaries. In fulfilling its role, the Board relies to the fullest extent possible on the supervisory activities and reports of functional regulators. Thus, the Board does incur some expenses related to functionally regulated entities, including working with functional regulators to understand the consolidated risk profile of the firm. The Board believes it is appropriate to include those expenses in the assessment basis.

A few commenters asserted that the Board's cost of development of the infrastructure for the supervision and regulation of Board-supervised nonbank financial companies should be excluded from the assessment basis applicable to BHCs and SLHCs. Some commenters requested that costs associated with investigations and enforcement actions against BHCs should not be charged to SLHCs or Board-supervised nonbank financial companies. The Board, however, believes that a simple standard for apportioning all costs across all assessed companies is the most objective and transparent way to allocate the costs of supervision and regulation of assessed companies. Therefore, all of the Board's estimated expenses that are necessary and appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to assessed companies are being apportioned across all assessed companies.

Commenters also urged the Board to exclude the cost of the Shared National Credit Program from the assessment basis. Upon consideration, the Board agrees with commenters that it should remove the proportion of expenses related to the Shared National Credit Program, which was approximately \$6 million, from the assessment basis.

Some commenters asked whether certain expenses included in the assessment basis can be classified properly as supervisory and regulatory, such as the processing of applications, competitive analyses, and the processing of consumer complaints. With respect to these commenters' views, the Board reviewed its determination that these expenses were necessary or appropriate to be included in the assessment basis. The Board is clarifying that, while the processing of consumer complaints is not included in the assessment basis, the Board does supervise and regulate an assessed company's enterprise-wide compliance risk management. The Board's processing of applications and competitive analyses are included as

part of the Board's costs relating to its supervision and regulation of assessed companies because those activities are required under the Bank Holding Company Act and the Home Owners Loan Act and are therefore part of the Board's role as consolidated supervisor of assessed companies.

The Board also received comments that supported the assessment basis as reasonable given the intricacies involved in monitoring, analyzing, and ensuring the safety and soundness of complex institutions. Other commenters asserted that the methodology appropriately recognizes the distinctive nature of the different types of companies subject to the assessment.

The proposal also provided that the estimate of the Board's expenses would be based on an average of estimated expenses over the current and prior two assessment periods, with a transition period for 2012, 2013, and 2014 during which the Board would use the assessment basis for the 2012 assessment period, with the effect of using the same assessment rate for each of those years. Thereafter, to mitigate volatility in assessments and provide a more stable basis from year to year, the Board would calculate a three-year rolling average of its estimated expenses, and would determine assessments for each year based on that three-year average. The proposal also noted that 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. The Board is finalizing this portion of the methodology for determining the assessment basis without change.

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

##### *1. Apportionment Based on Size*

As discussed in the proposal, total expenses relating to the supervision of a company generally are a function of the size and associated complexity of the company. Larger companies are often more complex companies, with associated risks that play a large role in determining the supervisory resources necessary in relation to that company. The largest companies, because of their increased complexity, risk, and geographic footprints, usually receive more supervisory attention.<sup>28</sup>

<sup>28</sup> See, e.g., "Capital Plans," final rule published in the *Federal Register*, 76 FR 231 (Dec. 1, 2011), and "Enhanced Prudential Standards and Early Remediation Requirements for Covered



Many commenters asserted that asset size should not be used as a proxy for the cost of supervision. For example, some commenters argued that the rule should provide for tailoring the assessments based on complexity, capital structure, risk, and interconnectedness and less on asset size. Some commenters asserted that an asset size measure may not provide adequate sensitivity for the types of risks to which a company might be exposed, and could result in less-complex companies, which the commenters asserted included smaller assessed companies or SLHCs, subsidizing the supervisory expenses for more complex institutions. Some of these commenters requested that the Board allocate higher costs to the nonbank operations of assessed companies, since those operations would not be subject to comprehensive prudential regulation similar to banking regulation. Some commenters urged the Board to adopt a methodology for apportioning expenses associated with the supervision and regulation of assessed companies on a company-specific basis. A few commenters suggested a tiered approach in which the assessment basis would be apportioned among assessed companies based on the number of supervisory activities to which the assessed company is subject, with each supervisory activity weighted based on the expense or percentage of time the Board devotes to that supervisory activity. Some commenters, however, supported the Board's approach to

*Assessment rate =*

The proposal would have determined the assessment rate by dividing the assessment basis (minus the base dollar amount covering 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 would have multiplied an assessed company's total assessable assets by the resulting assessment rate. Thus, under the proposal, a company with higher total assessable assets would have been charged a higher assessment than a

allocating assessments based on asset size.

In the proposal, the Board stated that it believes that apportioning the assessment basis based on the total assessable asset size of assessed companies is generally reflective of the amount of supervisory and regulatory expenses associated with a particular company, and is an approach based on information that is well understood, objective, transparent, readily available, and comparable among all types of assessed companies. The Board is concerned that the alternatives suggested by commenters could result in assessment fees based upon subjective, non-transparent criteria, and would not provide assessed companies with a means for evaluating whether the Board is consistently or appropriately allocating the assessment basis among assessed companies. Moreover, the Board is concerned that, if an assessed company publicly reported the amount of its assessment, a system of allocating the assessment basis that is not relatively straightforward and objective could cause market participants and counterparties to draw incorrect inferences about one or more assessed companies, to the potential detriment of assessed companies and the efficient functioning of markets.

Some commenters asserted that apportioning the assessment basis using size alone would result in SLHCs, which are not subject to section 165 of the Dodd-Frank Act (enhanced prudential standards), having to subsidize the Board's cost of carrying out enhanced prudential standards over other assessed companies. The Board

*Assessment Basis – (Number of Assessed Companies x \$50,000)*

*Total Assessable Assets of All Assessed Companies*

company with lower total assessable assets, which generally reflects the greater supervisory and regulatory attention and associated workloads and expenses associated with larger companies.

Some commenters suggested that an assessed company should be assessed on a pro-rata basis for the time within the year that the company becomes one of the types of companies listed in section 318 (*i.e.*, a BHC, SLHC or Board-supervised nonbank financial company) and falls under the Board's supervisory authority. In response to that comment,

notes that all assessed companies present unique supervisory concerns that require significant supervisory attention, including SLHCs. In fact, assessed companies that are SLHCs may present supervisory concerns that are not present for BHCs subject to enhanced prudential standards. As stated above, the Board believes that size is a reasonable proxy for estimating the amount of the Board's costs for regulating and supervising assessed companies. The Board is finalizing this aspect of the proposal without change.

## 2. Assessment Formula

The proposal would have apportioned the assessment basis among assessed companies by means of an assessment formula that used the total assessable assets of each assessed company. For each assessment period, the assessment formula applied to the assessed companies was proposed to be:

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

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

the Board has determined that when a company becomes a BHC, SLHC or Board-supervised nonbank financial company for the first time and it is also an assessed company, its assessment will be pro-rated based on the quarter in which it became an assessed company. For example, if, on August 30 of an assessment period, a foreign banking organization (that is not a BHC) with greater than \$50 billion in total consolidated assets buys a U.S. bank and becomes a BHC and an assessed company for the first time, its assessment will be pro-rated at 50



percent to reflect the fact that the foreign BHC was an assessed company for two quarters. Additionally, if a nonbank company is designated by the Council for supervision by the Board on April 30 of an assessment period, its assessment will be pro-rated at 75 percent to reflect the fact that the Board-supervised nonbank financial company was an assessed company for three quarters.

The proposal provided that over the first three years of the program, the assessment rate would be fixed, using the 2012 assessment rate for calculating the assessment for the following two assessment periods, ending with the assessments for 2014. Thereafter, for each assessment period, the proposal provided that the Board would calculate an assessment rate by averaging the Board's relevant expenses for the past three years in order to reduce year-to-year fluctuations in assessments (*i.e.*, for the 2015 assessment period, the Board would average the expenses for the 2013, 2014, and 2015 assessment periods).

Some commenters requested that Board-supervised nonbank financial companies not be required to pay an assessment until the first assessment period following designation as a Board-supervised company to allow such companies to prepare and budget accordingly. Considering that assessments are collected the year following an assessment period (for example, assessments for the 2013 assessment period will be collected in 2014), the Board believes that a Board-supervised nonbank financial company will have sufficient time to prepare and budget for its assessment.

#### Collection Procedures

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

The proposal provided that the Board would send a notice of assessment no later than July 15 of the year following the assessment period to each assessed company stating: (1) That the Board had determined the company to be an assessed company, (2) the amount of the company's total assessable assets, and (3) the amount the assessed company must pay by September 30. The proposal also provided that the Board would, no later than July 15, publish on its public Web site the assessment rate for that assessment period.

Under the proposal, companies identified as assessed companies would have 30 calendar days from July 15 to appeal the Board's determination that the company is an assessed company or the company's total assessable assets.

Companies choosing to appeal would have been required to submit a request for redetermination in writing and include all the pertinent facts that the company believed would be relevant for the Board to consider. Grounds for appeal would have been limited to (i) that the assessed company is not an assessed company (*i.e.*, it is not a BHC or SLHC with \$50 billion in total consolidated assets, or a Board-supervised nonbank financial company 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 proposal provided that the Board would consider the company's appeal and respond within 15 calendar days after the end of the appeal period with the results of its review. A successful appeal would not change the assessment for any other company.

Several commenters recommended that the Board send the notices no later than June 30 rather than July 15 so that the assessed companies would have sufficient time to review and potentially appeal the assessment before they might be required to disclose the assessment publicly under the securities laws or respond to an investor question during an earnings call. They also expressed an interest in being able to incorporate the assessment into second quarter disclosures. In the final rule, in response to commenters, the Board is changing the date by which it will send the notice of assessments from July 15 to June 30. In addition, consistent with the amendment to the notification date (from July 15 to June 30 in the final rule), the Board will also adjust the date by which it must receive payment from September 30 to September 15. The Board will publish on its public Web site the assessment rate for that assessment period and the description of how the Board determined the assessment basis no later than June 30.

In response to the proposal's notification and appeal procedure, some commenters requested that the Board informally communicate with assessed companies before sending assessment notices, or explain any variation in its calculation of total assessable assets for a foreign assessed company, and that the Board notify assessed companies of any material changes to the composition of the assessment basis and provide them a reasonable opportunity to comment. One commenter suggested that the Board deliver the notice of assessment confidentially to each assessed company and itemize the Board's expenses. The Board notes that the rule as proposed provides the assessed companies with a process for

appeal during which they may communicate with the Board about the assessment and that the assessment would be based on an assessed company's asset size, not an itemized list of expenses.

One commenter recommended that the Board provide foreign assessed companies with a detailed explanation of the calculation of the foreign assessed company's total assessable assets during the transition period. The Board notes that the final rule provides the line items from which the Board will calculate a foreign assessed company's total assessable assets during the transition period, and the Board will follow that methodology each year during the transition period.<sup>29</sup> In addition, the Board notes that the rule as proposed provides the assessed companies with a process for appeal during which they may communicate with the Board about the assessment. Thus, the final rule adopts the appeal procedure as proposed.

In addition, in the final rule, the Board is amending the dates on which it will notify assessed companies of, and collect the 2012 assessment period. For the 2012 assessment period only, the Board will provide the date by which an assessed company must pay its assessment in the 2012 notice of assessments, which the Board anticipates will be sent out shortly after the effective date of this rule. The Board anticipates that the date by which an assessed company must pay its assessment will be sometime in December and, in any event, will be no later than December 15, 2013. Thereafter, the Board will notify assessed companies of their assessments and collect the assessments according to the dates set forth in the final rule.

##### 2. Collection of Assessments

Under the proposal, each assessed company would have been required to pay its assessments using the Fedwire Funds Service (Fedwire) to the Federal Reserve Bank of Richmond. The proposal provided that the assessments would then be transferred to the U.S. Treasury's General Account. The proposal provided that the assessments would need to be credited to the Board by September 30 of the year following the assessment period. The proposal provided that in the event that the Board did 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 have been considered delinquent and the Board

<sup>29</sup> See also discussion of changes to the FR Y-7Q.

would have charged 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,<sup>30</sup> were paid.

Several commenters asked the Board to postpone the commencement of its assessment program until 2014, asserting that assessed companies would need time to budget for the expenses. Other commenters asked the Board to charge the assessment prospectively. The Board provided notice of the assessment through its publication of the notice of proposed rulemaking on April 18, 2013. The proposal provided adequate notice of the Board's intent to collect assessments in 2013. Therefore, the Board believes that the notice provided adequate time for assessed companies to prepare for expenses payable in the second half of 2013. The Board is otherwise adopting this aspect of the proposal without change.

#### 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>31</sup> while Part 2 requires capital and asset information for lower-tier foreign banking organizations operating a U.S. 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>32</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 nor Part 2 collects capital and asset information with respect to only the

<sup>30</sup> The current value of funds rate percentage is issued under the Treasury Fiscal Requirements Manual and published quarterly in the **Federal Register**.

<sup>31</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>32</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 noted in the proposal 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 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 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 as set forth in the proposal, the Board proposed 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>33</sup> net of intercompany balances and transactions between U.S. domiciled affiliates, branches and agencies.<sup>34</sup> The amended instructions for the amended FR Y-7Q would have closely paralleled, to all practicable extents, the instructions for the FR Y-9C for consolidating assets of U.S. operations, including with respect to accounting for less-than-majority-owned affiliates.

One commenter asserted that in determining total assessable assets for domestic BHCs, the Board should use Schedule HC-K of the FR Y-9C, which provides quarterly average numbers, rather than quarter-end asset numbers. To ensure consistency in reporting, however, the Board believes that the determination of total assessable assets should rely on quarter-end asset numbers so that the methodology used should be consistent with that used for other assessed companies<sup>35</sup> and for

<sup>33</sup> For purposes of the amended FR Y-7Q, total combined assets do 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>34</sup> For purposes of FR Y-7Q reporting, U.S.-domiciled affiliates are defined as subsidiaries, associated companies, and entities treated as associated companies (e.g., corporate joint ventures) as defined in the FR Y-9C.

<sup>35</sup> The Board notes that regulatory reporting forms used for determining the total assessable assets of foreign-owned assessed companies do not universally report quarterly averages, as reported on Schedule HC-K of the FR Y-9C. Moreover, those forms that do, such as the FFIEC 002, do not report quarterly averages in a manner that is consistent with the exclusion of intercompany balances between only U.S.-domiciled affiliates.

similar rulemakings.<sup>36</sup> The Board intends to implement the reporting requirements as proposed.

The Board also proposed 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 proposed 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 quarter 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 Foreign Banking Organization (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.

One commenter asserted that it was unnecessary to expand the FR Y-7Q to require quarterly filing from all top-tier foreign banking organizations that are not financial holding companies, or to require all top-tier reporting entities to report total combined U.S. assets. However, the Board believes that

<sup>36</sup> See, e.g., the final rulemaking establishing the supervisory and company-run stress test requirements for covered companies, published in the **Federal Register** 77 FR 62378 (October 12, 2012).

collecting comparable, more frequent information from foreign assessed companies will allow it to implement the assessment program more equitably among foreign and domestic assessed companies. Quarterly filing from all foreign banking organizations with more than \$50 billion in total consolidated assets will provide the data necessary for consistent determinations of whether a potential assessed company should be included in a given assessment period and such company's total assessable assets, and will also provide for consistent treatment between foreign and domestic banking organizations.

Another commenter asked the Board to clarify the effective date of the revised FR Y-7Q. Companies required to file on the FR Y-7Q will be required to file on the amended form for the reporting periods ending on or after March 31, 2014. Finally, another commenter asked the Board to replace the "Examples of who must report" section of the reporting form. However, in the Board's experience, filers did not find the examples helpful, and the Board does not intend to replace them in the instructions to the reporting requirements for the amended FR Y-7Q. The Board intends to implement the reporting requirements as proposed.

### 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 sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

#### B. Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final 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 final rule contains reporting requirements that are found in §§ 246.3(e)(3) and 246.5(b). The OMB control numbers for these requirements are described below. As discussed above, on April 18, 2013, the Board published in the **Federal Register** a notice of proposed rulemaking seeking public comment on

its proposal to implement section 318 of the Dodd-Frank Act.

#### 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. An assessed company is any company that, on December 31 of the assessment period, is: (1) A BHC (other than a foreign BHC) with \$50 billion or more in total consolidated assets as determined based on the average of the BHC's total consolidated assets reported for the assessment period on the BHC's Consolidated Financial Statements for Holding Companies (FR Y-9C) (OMB No. 7100-0128) forms; (2) an SLHC (other than a foreign SLHC) with \$50 billion or more in total consolidated assets, as determined based on the average of the SLHC's total consolidated assets as reported for the assessment period on the FR Y-9C, on column B of the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100-0345), or based on an estimate agreed to by the Board, (3) a top-tier foreign company that is a BHC or SLHC on December 31 of the assessment period, 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), or, for annual filers of the FR Y-7Q, the average of the company's total consolidated assets for the assessment period and the year preceding the assessment period, and (4) a Board-supervised nonbank financial company designated by the Council pursuant to section 113 of the Dodd-Frank Act, for supervision by the Board. In order to improve parity among all assessed companies with respect to the determination of total assessable assets, as set forth in the final rule, the Board would 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 would 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>37</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. In the proposed rule, the Board estimated that respondents affected by reporting requirements would take, on average, 15 minutes to submit the new data item on the FR Y-7Q. Upon a review of all these matters, including the comment received, described below, the annual reporting burden associated with the FR Y-7Q is estimated to be 404 hours.<sup>38</sup>

The Board received one comment from an industry association in response to the PRA estimate in the proposed rule. The commenter asserted that the Board's PRA estimate to comply with the new reporting requirement contained in § 246.3(e)(3) appears to be understated; however, the commenter did not provide an alternative estimates. In response, the Board recognizes that the amount of time required of any institution to comply with the reporting requirement may vary; however, the Board believes that estimates provided are reasonable averages.

#### Reporting Requirements in § 246.5(b)

Under § 246.5(b) upon the Board issuing the notice of assessment to each assessed company, the company would have 30 calendar days from June 30, or, for the 2012 assessment period, 30 calendar day from the Board's issuance of a notice of assessment for that assessment period, 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. 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

<sup>37</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.

<sup>38</sup> The burden estimate associated with 7100-0125 does not include the current burden.

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.

The Board has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100—to-be-assigned), Washington, DC 20503.

### C. Regulatory Flexibility Act

In accordance with Section 4(a) of the Regulatory Flexibility Act, 5 U.S.C. 604 ("RFA"), the Board is publishing a final regulatory flexibility analysis for this rulemaking. The RFA requires an agency either to provide a regulatory flexibility analysis with the final rule or to certify that the final 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 final rule would not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

As required by section 318 of the Dodd-Frank Act, the Board is finalizing a rule to assess BHCs and SLHCs 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. The Board received no comments relating to its regulatory flexibility analysis.

Under regulations issued by the Small Business Administration, a "small entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from \$35 million or less to \$500 million or less.<sup>39</sup> The final rule, by definition, will affect BHCs and SLHCs with assets of equal to or greater than \$50 billion. The final 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's final rule is unlikely to impose any new recordkeeping, reporting, or compliance requirements or otherwise affect a small banking entity.

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

The Board believes that no alternatives to the final rule are available for consideration.

### 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 amends 12 CFR Chapter II by adding part 246 to read as follows:

### 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)).

#### § 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 paragraph (b) of this section 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.

(d)(1) *Reservation of authority.* In exceptional circumstances, for the purpose of avoiding inequitable or inconsistent application of the rule, the Board may require an assessed company to pay a lesser amount of assessments than would otherwise be provided for under this Part.

(2) *Use of comparable financial information.* The Board may use, at its discretion, any comparable financial information that the Board may require from a company in considering whether the company must pay to the Board an assessment and the amount of such assessment, pursuant to section 318 of the Dodd-Frank Act.

### § 246.2 Definitions.

As used in this part:

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

(b) *Bank* means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Bank holding company* is defined as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), and the Board's Regulation Y (12 CFR part 225).

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

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

(f) *Foreign bank holding company* means a foreign bank that is a bank holding company and any foreign company that owns such foreign bank.

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

(h) *GAAP* means generally accepted accounting principles, as used in the United States.

(i) *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)).

(j) *Nonbank financial company supervised by the Board* means a company that the Council has determined pursuant to section 113 of the Dodd-Frank Act shall be supervised by the Board and for which such determination is in effect.

<sup>39</sup> 13 CFR 121.201.

(k) *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.

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

(m) *Savings association* is defined as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

**§ 246.3 Assessed companies.**

An assessed company is any company that:

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

(1) 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"),

(2)(i) 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, except as provided in paragraph (a)(2)(ii) of this section, 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 the Quarterly Savings and Loan Holding Company Report (FR 2320), as applicable.

(ii) If a company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may request that the Board permit the company to file a quarterly estimate of its total consolidated assets. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated assets on a quarterly basis. For purposes of this part, the company's total consolidated assets will be the average of the estimated total consolidated assets provided for the assessment period.

(b) 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"), provided, however, that if any such company has filed only one FR Y-7Q during the assessment period, the Board shall use an average of the foreign bank holding company's total consolidated assets reported on that FR Y-7Q and on

the FR Y-7Q for the corresponding period in the year prior to the assessment period.

(c) 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, provided, however, that if any such company has filed only one reporting form during the assessment period, the Board shall use an average of the foreign savings and loan holding company's total consolidated assets reported on that reporting form and on the reporting form for the corresponding period in the year prior to the assessment period, or

(d) Is a nonbank financial company supervised by the Board.

**§ 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)(1) *Assessment formula.* Except as provided in paragraph (b)(2) of this section, the assessment will be calculated according to the Assessment Formula, as follows:

Column A		Column B		Column C		Column D
Base Amount (\$50,000)	+	(Total Assessable Assets	×	Assessment Rate)	=	Assessment

(2) In any assessment period, if, at the time a company becomes a bank holding company or savings and loan holding company, it also becomes an assessed company, as defined in § 246.3, the Board shall pro-rate that company's assessment for that assessment period based on the number of quarters in which such company is an assessed

company. For a nonbank financial company supervised by the Board, for the assessment period that the company is designated for Board supervision, Board shall pro-rate that company's assessment for that assessment period based on the number of quarters the company has been a nonbank financial company supervised by the Board.

(c) *Assessment rate.* Assessment rate means, with regard to a given assessment period, the rate published by the Board on its Web site 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 paragraph (c)(1) of this section, 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.*

(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.<sup>1</sup>

<sup>1</sup> The categories of operating expenses that the Board believes are necessary or appropriate include but are not limited to (1) direct operating expenses for supervising and regulating assessed companies such as conducting examinations, conducting stress tests, communicating with the company regarding supervisory matters and laws and regulations, etc.;

(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.<sup>2</sup>

(e) *Total assessable assets.* Except as provided in paragraph (f) of this section, total assessable assets are calculated as follows:

(1) *Bank holding companies.* For any bank holding company, other than a foreign bank holding company, total assessable assets will be 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 any foreign savings and loan holding company, with the exception of the 2012 and 2013 assessment periods, total assessable assets will be the average of the foreign bank holding company's or foreign savings and loan holding company's total combined assets of its 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

and (2) operating expenses for activities integral to carrying out supervisory and regulatory responsibilities such as training staff in the supervisory function, research and analysis functions including library subscription services, collecting and processing regulatory reports filed by supervised institutions, *etc.* All operating expenses include applicable support, overhead, and pension expenses.

<sup>2</sup> The categories of operating expenses that the Board believes are necessary or appropriate include but are not limited to (1) direct operating expenses for supervising and regulating assessed companies such as conducting examinations, conducting stress tests, communicating with the company regarding supervisory matters and laws and regulations, *etc.*; and (2) operating expenses for activities integral to carrying out supervisory and regulatory responsibilities such as training staff in the supervisory function, research and analysis functions including library subscription services, collecting and processing regulatory reports filed by supervised institutions, *etc.* All operating expenses include applicable support, overhead, and pension expenses.

assessment periods, for any foreign bank holding company, total assessable assets will be the average of the sum of the line items set forth in this section reported quarterly, plus any line items set forth in this section reported annually for the assessment period on an applicable regulatory reporting form for the assessment period for all of the foreign bank holding company's majority-owned:

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

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

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

(B) Related branches and agencies of Foreign Banks in the United States, calculated as: total claims on nonrelated parties (line item 1.i from column A on Schedule RAL) plus net due from related institutions in foreign countries (line items 2.a, 2.b(1), 2.b(2), and 2.c from column A, minus line items 2.a, 2.b(1), 2.b(2) and 2.c from column B, part 1 on Schedule M), minus transactions with related nondepository majority-owned subsidiaries in the U.S. (line item 1 from column A, part 3 on Schedule M), as reported on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002);

(C) U.S.-domiciled nonbank subsidiaries, calculated as:

(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); minus balances due from related institutions located in the United States, gross (line item 4.a), as reported on Schedule BS—Memoranda, and, as applicable;

(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) Edge Act and agreement corporations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, calculated as 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) Banks and savings associations that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, calculated as: 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; and

(F) Broker-dealers that are not reflected in the assets of a U.S.-domiciled parent's regulatory reporting form submission, calculated as: total assets as reported on statement of financial condition of the Securities and Exchange Commission's Form X-17A-5 (FOCUS REPORT), Part II line item 16, Part IIa, line item 12, or Part II CSE, line item 18, as applicable.

(3)(i) *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, except as provided in paragraph (e)(3)(ii) of this section, 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.

(ii) If a company does not calculate its total consolidated assets under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may request that the Board permit the company to file a quarterly estimate of its total consolidated assets. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated assets on a quarterly basis. The company's total assessable assets will be the average of the estimated total consolidated assets provided for the assessment period.

(4) *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 June 30 of each calendar year following the assessment period, provided, however, that for the 2012 assessment period, the Board shall issue a notice of assessment as soon as reasonably practical after publication of the final rule in the **Federal Register**.

(b) *Appeal Period.*

(1) Each assessed company will have thirty calendar days from June 30, or, for the 2012 assessment period, thirty calendar days from the Board's issuance of a notice of assessment for that assessment period, 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 in paragraph (b)(1) of this section.

**§ 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 15 of the calendar year following the assessment period, or, for the 2012 assessment period, by a date specified in the notice of assessment for that 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 States 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, August 15, 2013.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2013-20306 Filed 8-22-13; 8:45 am]

**BILLING CODE P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 390**

**Regulations Transferred From the Office of Thrift Supervision**

*CFR Correction*

■ In Title 12 of the Code of Federal Regulations, Parts 300 to 499, revised as of January 1, 2013, in Appendix A to Subpart Z of Part 390, at the bottom of page 1015, reinstate footnotes 10 through 12, and at the bottom of page 1019, reinstate footnotes 28 through 32, to read as follows:

**Appendix A to Subpart Z to Part 390—Risk-Based Capital Requirements—Internal-Ratings-Based and Advanced Measurement Approaches**

\* \* \* \* \*

<sup>10</sup> Entities include securities, insurance and other financial subsidiaries, commercial subsidiaries (where permitted), and significant minority equity investments in insurance, financial and commercial entities.

<sup>11</sup> Representing 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed eligible credit reserves, which must be deducted from tier 1 capital.

<sup>12</sup> Including 50 percent of the amount, if any, by which total expected credit losses as calculated within the IRB approach exceed

eligible credit reserves, which must be deducted from tier 2 capital.

\* \* \* \* \*

<sup>28</sup> Net unsecured credit exposure is the credit exposure after considering the benefits from legally enforceable netting agreements and collateral arrangements, without taking into account haircuts for price volatility, liquidity, etc.

<sup>29</sup> This may include interest rate derivative contracts, foreign exchange derivative contracts, equity derivative contracts, credit derivatives, commodity or other derivative contracts, repo-style transactions, and eligible margin loans.

<sup>30</sup> At a minimum, a State savings association must provide the disclosures in Table 11.7 in relation to credit risk mitigation that has been recognized for the purposes of reducing capital requirements under this appendix. Where relevant, State savings associations are encouraged to give further information about mitigants that have not been recognized for that purpose.

<sup>31</sup> Credit derivatives that are treated, for the purposes of this appendix, as synthetic securitization exposures should be excluded from the credit risk mitigation disclosures and included within those relating to securitization.

<sup>32</sup> Counterparty credit risk-related exposures disclosed pursuant to Table 11.6 should be excluded from the credit risk mitigation disclosures in Table 11.7.

\* \* \* \* \*

[FR Doc. 2013-20707 Filed 8-22-13; 8:45 am]

**BILLING CODE 1505-01-D**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2013-0335; Directorate Identifier 2012-NM-187-AD; Amendment 39-17549; AD 2013-16-11]

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Airbus Model A330-300, A340-200, and A340-300 series airplanes. This AD was prompted by a determination that ballscrew rupture could occur on certain trimmable horizontal stabilizer actuators (THSAs). This AD requires repetitive THSA ballscrew shaft integrity tests, and replacement if necessary. We are issuing this AD to detect and correct ballscrew rupture, which, along with corrosion on the ballscrew lower splines, may lead to