

Rules and Regulations

Federal Register

Vol. 83, No. 37

Friday, February 23, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 46

[Docket ID OCC–2017–0021]

RIN 1557–AE28

Annual Stress Test—Technical and Conforming Changes

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: On October 27, 2017, the Office of the Comptroller of the Currency (OCC) published a proposed rule that would have made several revisions to its stress testing regulation. The OCC is now adopting the proposed rule as final. The final rule changes the range of possible “as-of” dates used in the global market shock component to conform to changes already made by the Board of Governors of the Federal Reserve System (Board) to its stress testing regulations. The final rule also changes the transition process for covered institutions with \$50 billion or more in assets. Under the final rule, a covered institution that becomes an over \$50 billion covered institution, as that term is defined in the OCC stress testing regulation, before September 30 will become subject to the requirements applicable to an over \$50 billion covered institution beginning on January 1 of the second calendar year after the covered institution becomes an over \$50 billion covered institution, and a covered institution that becomes an over \$50 billion covered institution after September 30 will become subject to the requirements applicable to an over \$50 billion covered institution beginning on January 1 of the third calendar year after the covered institution becomes an over \$50 billion covered institution. The final rule also makes certain technical

changes to clarify the requirements of the OCC’s stress testing regulation.

DATES: The rule is effective March 26, 2018.

FOR FURTHER INFORMATION CONTACT:

Hein Bogaard, Lead Economic Expert, International Analysis and Banking Condition, (202) 649–5450; Andrew Tschirhart, Financial Analyst, Large Bank Supervision, (202) 649–6210; Kari Falkenborg, Senior Financial Analyst, Midsize and Community Bank Supervision, (312) 917–5000; Henry Barkhausen, Counsel, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (“Dodd-Frank Act”) requires two types of stress tests. Section 165(i)(1) requires the Board to conduct annual stress tests of holding companies with \$50 billion or more in assets (“supervisory stress tests”). Section 165(i)(2) requires the federal banking agencies to issue regulations requiring financial companies with more than \$10 billion in assets to conduct annual stress tests themselves (“company-run stress tests”). In October 2012, the OCC, the Board, and the Federal Deposit Insurance Corporation issued final rules implementing the company-run stress tests.

The Dodd-Frank Act requires that the OCC and other federal primary financial regulatory agencies issue consistent and comparable regulations to implement the statutory stress testing requirement. In order to fulfill this requirement and minimize regulatory burden, the OCC has worked to ensure that its stress testing regulation remains consistent and comparable to the regulations enacted by other regulatory agencies, including the Board.

II. Description of the Final Rule

A. New Range of Possible As-Of Dates for Trading and Counterparty Scenario Component

Under 12 CFR 46.5(c) the OCC may require a covered institution with

significant trading activities to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component is as of a date between January 1 and March 1 of a calendar year. On February 3, 2017, the Board issued a final rule that extended this range to run from October 1 of the calendar year preceding the year of the stress test to March 1 of the calendar year of the stress test.² The proposed rule would have made this same change to the OCC’s stress testing regulation. The OCC received no comments on this change and is adopting the change as proposed. Extending this range will increase the OCC’s flexibility to choose an appropriate as-of date. The OCC continues to coordinate its stress testing program with the Board in order to minimize regulatory burden.

B. New Applicability Transition and Terminology for Covered Institutions With \$50 Billion or More in Assets

The proposed rule would have changed the term “over \$50 billion covered institution” to “\$50 billion or over covered institution.” The change would not have altered the scope of this defined term and would not change the substantive requirements of the regulation. The OCC did not receive any comments on this change and is adopting the change as proposed. The new defined term will be a more precise description of the entities included within this category, which includes all national banks and federal savings associations “with average total consolidated assets . . . that are not less than \$50 billion.”³ While the final rule will change the defined term “over \$50 billion covered institution” to “\$50 billion or over covered institution,” this supplementary information section will continue to use the defined term “over \$50 billion covered institution” since that is the term used in the current regulatory text.

The proposed rule would also have changed the transition process for covered institutions that become an “over \$50 billion covered institution.” On February 3, 2017, the Board issued a final rule that would provide additional time for bank holding companies that cross the \$50 billion

² 82 FR 9308 (February 3, 2017).

³ 12 CFR 46.2.

¹ Public Law 111–203, 124 Stat. 1376 (2010).

asset threshold close to the April 5 submission date.⁴ The proposed rule would have made a parallel amendment to the OCC's stress testing regulation. The OCC did not receive any comments addressing this change and is adopting the change as proposed. Under the final rule, a national bank or federal savings association that becomes an over \$50 billion covered institution in the fourth quarter of a calendar year⁵ will not be subject to the stress testing requirements applicable to over \$50 billion covered institutions until the third year after it crosses the asset threshold. For example, if a national bank or federal savings association became an over \$50 billion covered institution on September 15, 2017, the institution would be expected to comply with the requirements applicable to over \$50 billion covered institutions beginning in 2019 and file the OCC DFAST-14A in April 2019. If a national bank or federal savings association became an over \$50 billion covered institution on October 15, 2017, the institution would be required to comply with the stress testing requirements applicable to over \$50 billion covered institutions beginning in 2020 and file the OCC DFAST-14A in April 2020.

The stress testing timeline and transition process for national banks or federal savings associations which become \$10 to \$50 billion covered institutions remain unchanged. A national bank or federal savings association that becomes a \$10 to \$50 billion covered institution on or before March 31 of a given year would be required to conduct its first stress test in the next calendar year. For example, a national bank or federal savings association that becomes a \$10 to \$50 billion covered institution as of March 31, 2017, would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2018. A national bank or federal savings association that becomes a \$10 to \$50 billion covered institution after March 31 of a given year would be required to conduct its first stress test in the second calendar year after the date the national bank or federal savings association becomes a covered institution. For example, a national bank or federal savings association that becomes a \$10 to \$50 billion covered institution on June 30, 2017 would be required to

conduct its first stress test in the stress testing cycle beginning January 1, 2019.

C. Remove Obsolete Transition Language

In 2014 the OCC, in coordination with the Board and Federal Deposit Insurance Corporation, shifted the dates of the annual stress testing cycle by approximately three months.⁶ The OCC's stress testing regulation continues to include transition language to facilitate this schedule shift. The transition to the new schedule is now complete, and the final rule removes this obsolete transition language.

III. Comments

The OCC received three comments on the proposed rule from individuals. Two of the comments did not address the contents of the proposed rule or stress testing. One comment mentioned stress testing but was very brief and did not make any specific recommendations. Accordingly, the OCC is adopting the final rule as proposed.

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This final rule amends 12 CFR part 46, which has an approved information collection under the PRA (OMB Control No. 1557-0319). The amendments do not introduce any new collections of information, nor do they amend 12 CFR part 46 in a way that modifies the collection of information that OMB has approved. Therefore, this final rule does not require a PRA submission to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires generally that, in connection with a final rule, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to

\$550 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As discussed in the **SUPPLEMENTARY INFORMATION** section, the final rule will only affect institutions with more than \$10 billion in total assets. Therefore, the rule will not affect any small entities. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this final rule would not have a significant economic impact on a substantial number of small entities because no small national banks or federal savings associations would be affected by the final rule. Accordingly, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁷ The final rule would not impose

⁴ 82 FR 9308 (February 3, 2017).

⁵ An institution becomes an over \$50 billion covered institution when its average total consolidated assets, as reported on the covered institution's Call Reports, for the four most recent consecutive quarters, equals \$50 billion or more. 12 CFR 46.3(a).

⁶ 79 FR 71630 (December 3, 2014).

⁷ 12 U.S.C. 4802.

additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the final rule in a simple and straightforward manner. The OCC did not receive any comments on its use of plain language.

List of Subjects in 12 CFR Part 46

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Risk, Savings associations, Stress test.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends 12 CFR part 46 as follows:

PART 46—ANNUAL STRESS TEST

■ 1. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

■ 2. Section 46.2 is amended by:

■ a. Removing the phrase “an over \$50 billion covered institution” and adding the phrase “a \$50 billion or over covered institution” in its place in the definition of “covered institution”; and

■ b. Removing the definition of “over \$50 billion covered institution” and adding the definition for “\$50 billion or over covered institution” in alphabetical order.

The addition reads as follows:

§ 46.2 Definitions.

* * * * *

\$50 billion or over covered institution means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are not less than \$50 billion.

* * * * *

■ 3. Section 46.3 is amended by:

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively;

■ c. Revising newly redesignated paragraphs (b) and (c); and

■ d. Removing the phrase “an over \$50 billion covered institution” and adding the phrase “a \$50 billion or over covered institution” in its place wherever it appears in newly redesignated paragraph (d).

The revisions read as follows:

§ 46.3 Applicability.

* * * * *

(b) *Covered institutions that become subject to stress testing requirements.* A national bank or Federal savings association that becomes a \$10 to \$50 billion covered institution on or before March 31 of a given year shall conduct its first annual stress test under this part in the next calendar year after the date the national bank or Federal savings association becomes a \$10 to \$50 billion covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a \$10 to \$50 billion covered institution after March 31 of a given year shall conduct its first annual stress test under this part in the second calendar year after the calendar year in which the national bank or Federal savings association becomes a \$10 to \$50 billion covered institution, unless that time is extended by the OCC in writing.

(c) *Ceasing to be a covered institution or changing categories.* (1) A covered institution shall remain subject to the stress test requirements based on its applicable category, as defined in § 46.2, unless and until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution’s most recent Call Reports. The calculation shall be effective on the “as of” date of the fourth consecutive Call Report.

(2) Notwithstanding paragraph (c)(1) of this section, a national bank or Federal savings association that becomes a \$50 billion or over covered institution, whether by migrating from being a \$10 to \$50 billion covered institution or by directly becoming a \$50 billion or over covered institution, after September 30 of a calendar year must comply with the requirements applicable to a \$50 billion or over covered institution beginning on January 1 of the third calendar year after the national bank or Federal savings association becomes a \$50 billion or over covered institution, unless that time is extended by the OCC in writing. A national bank or Federal savings association that becomes a \$50 billion or over covered institution on or before September 30 of a calendar year must comply with the requirements applicable to a \$50 billion or over covered institution beginning on January 1 of the second calendar year after the national bank or Federal savings association becomes a \$50 billion or over covered institution,

unless that time is extended by the OCC in writing.

* * * * *

■ 4. Revise § 46.5 to read as follows:

§ 46.5 Annual stress test.

Each covered institution must conduct the annual stress test under this part subject to the following requirements:

(a) *Financial data.* A covered institution must use financial data as of December 31 of the previous calendar year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of three sets of economic and financial conditions, including baseline, adverse, and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than February 15 of that calendar year.

(c) *Significant trading activities.* The OCC may require a covered institution with significant trading activities, as determined by the OCC, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data to be used in this component will be as of a date between October 1 of the previous calendar year and March 1 of that calendar year in which the stress test is performed, and the OCC will communicate a description of the component to the covered institution no later than March 1 of that calendar year.

(d) *Use of stress test results.* The board of directors and senior management of each covered institution must consider the results of the stress tests conducted under this section in the normal course of business, including but not limited to the covered institution’s capital planning, assessment of capital adequacy, and risk management practices.

■ 5. Section 46.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.

(a) *\$10 to \$50 billion covered institution.* A \$10 to \$50 billion covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before July 31, the results of the stress test in the manner and form specified by the OCC.

(b) *\$50 billion or over covered institution.* A \$50 billion or over covered institution must report to the

OCC and to the Board of Governors of the Federal Reserve System, on or before April 5, the results of the stress test in the manner and form specified by the OCC.

* * * * *

■ 6. Section 46.8 is amended by revising paragraph (a) to read as follows:

§ 46.8 Publication of disclosures.

(a) *Publication date.* (1) *\$50 billion or over covered institution.* A \$50 billion or over covered institution must publish a summary of the results of its annual stress test in the period starting June 15 and ending July 15 provided:

(i) Unless the OCC determines otherwise, if the \$50 billion or over covered institution is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System pursuant to 12 CFR part 252, then within the June 15 to July 15 period such covered institution may not publish the required summary of its annual stress test earlier than the date that the Board of Governors of the Federal Reserve System publishes the supervisory stress test results of the covered bank's parent holding company.

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

(2) *\$10 to \$50 billion covered institution.* A \$10 to \$50 billion covered institution must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31.

* * * * *

Dated: February 13, 2018.

Joseph Otting,

Comptroller of the Currency.

[FR Doc. 2018-03687 Filed 2-22-18; 8:45 am]

BILLING CODE 4810-33-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133-AE77

Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting amendments to its share insurance requirements rule to provide stakeholders with greater transparency regarding the calculation of each eligible financial institution's pro rata share of a declared equity distribution from the National Credit Union Share Insurance Fund (NCUSIF). The Board is also adopting a temporary provision to govern all NCUSIF equity distributions related to the Corporate System Resolution Program (CSR), a special purpose program established by the Board to stabilize the corporate credit union system following the 2007-2009 financial crisis. Furthermore, the Board is making technical and conforming amendments to other aspects of the share insurance requirements rule to account for these changes.

DATES: This rule is effective March 26, 2018, except for the addition of § 741.13, which is effective from March 26, 2018, until December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, at (703) 518-6540; or Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance, at (703) 518-6360. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of the Proposed Rule
- III. Summary of Comments to the Proposed Rule
- IV. Section-by-Section Analysis
- V. Technical and Conforming Amendments
- VI. Regulatory Procedures

I. Background

The NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the federal supervisory authority for federally insured credit unions (FICUs).¹ In

addition to its chartering and supervisory responsibilities, the Board also administers the NCUSIF, a revolving fund within the U.S. Treasury that provides federal share insurance coverage to more than 106 million credit union members for member accounts held at FICUs and provides assistance in connection with the liquidation or threatened liquidation of FICUs in troubled condition.²

The Federal Credit Union Act (FCU Act) requires each FICU to pay and maintain a capitalization deposit with the NCUSIF equal to one percent of the FICU's insured shares to capitalize the NCUSIF.³ The amount of the FICU's required capitalization deposit is adjusted annually for a FICU with less than \$50 million in assets and semiannually for a FICU with \$50 million in assets or more.⁴ A FICU that terminates federal share insurance coverage is entitled to have its capitalization deposit returned within a reasonable time.⁵

The FCU Act also requires each FICU to pay a federal share insurance premium equal to a percentage of the FICU's insured shares to ensure that the NCUSIF has sufficient reserves to pay potential share insurance claims by credit union members and to provide assistance in connection with the

FCU Act (12 U.S.C. 1781-1790e). Title III of the FCU Act (12 U.S.C. 1795-1795k) governs the Board's responsibilities overseeing the NCUA Central Liquidity Facility, a federal instrumentality that provides liquidity for member credit unions.

² 12 U.S.C. 1783.

³ *Id.* at 1782(c)(1)(A)(i).

⁴ *Id.* at 1782(c)(1)(A)(iii)(I)-(II) ("The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares: (I) Annually, in the case of an insured credit union with total assets of not more than \$50,000,000; and (II) semi-annually, in the case of an insured credit union with total assets of \$50,000,000 or more."). Because the statutory text can be read to require the Board to adjust the capitalization deposit of a FICU with exactly \$50,000,000 in assets both annually and semi-annually, the Board interprets the phrase "not more than" to mean "less than" to give full effect to Congress' intended meaning of this phrase. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (if the meaning of the statutory provision is clear from its text, the sole responsibility of a federal agency is to enforce the statute according to its terms unless literal application of the statute "will produce a result demonstrably at odds with the intention of its drafters.").

⁵ *Id.* at 1782(c)(1)(B)(i). A FICU may terminate federal share insurance coverage by converting to, or merging into, a non-federally insured credit union or a non-credit union financial institution such as a mutual savings bank. If permitted under applicable state law, a federally insured, state-chartered credit union may also convert to private share insurance. *See* 12 CFR 708b (NCUA's regulation governing mergers and conversions to private share insurance). A FICU may also terminate federal share insurance coverage through voluntary or involuntary liquidation.

¹ The NCUA's authority to charter federal credit unions is contained in Title I of the FCU Act (12 U.S.C. 1752-1775), and its various authorities as federal share insurer are contained in Title II of the