

requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities.

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) When the Secretary is considering a request for revocation or termination under paragraph (e) of this section, in addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of "Request for Revocation of Order" or "Request for Termination of Suspended Investigation" (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the

requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of "Intent To Revoke Order" or "Intent To Terminate Suspended Investigation" (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of "Revocation of Order" or "Termination of Suspended Investigation" (whichever is applicable).

(3) If the Secretary revokes an order, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

* * * * *

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DEPARTMENT OF THE TREASURY

31 CFR Part 150

RIN 1505-AC42

Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule and interim final rule.

SUMMARY: The Department of the Treasury is issuing this final rule and interim final rule to implement Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which directs the Treasury to establish by regulation an assessment schedule for bank holding companies with total consolidated assets of \$50 billion or greater and nonbank financial companies supervised by the Board of Governors of the Federal Reserve ("the Board") to collect assessments equal to the total expenses of the Office of Financial Research ("OFR" or "the Office").

Included in the Office's expenses are expenses of the Financial Stability Oversight Council ("FSOC" or "the Council"), as provided under Section 118 of the Dodd-Frank Act, and certain expenses of the Federal Deposit Insurance Corporation ("FDIC"), as provided under Section 210 of the Dodd-Frank Act. The portion of this rule concerning the assessment schedule for bank holding companies is issued as a final rule. The portion of this rule related to the assessments for nonbank financial companies supervised by the Board is issued as an interim final rule, to allow for the consideration of additional comments in conjunction with related FSOC rules. This final rule and interim final rule establish the key elements of Treasury's assessment program, which will collect semiannual assessment fees from these companies beginning on July 20, 2012. These rules take into account the comments received on the January 3, 2012 proposed rule and make minor revisions pursuant to the comments.

DATES: *Effective date for final rule:* July 20, 2012. *Effective date for interim final rule:* Sections 150.2, 150.3(b), 150.5, and 150.6(a) and (b), which relate to nonbank financial companies, are effective on July 20, 2012. *Comment due date:* September 18, 2012. Comments are invited on §§ 150.2, 150.3(b)(4), 150.5, and 150.6(a) and (b), which relate to nonbank financial companies.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>, or by mail (if hard copy, preferably an original and two copies) to: The Treasury Department, Attn: Financial Research Fund Assessment Comments, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on www.regulations.gov. In general comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Jonathan Sokobin: (202) 927-8172.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. Need for Regulatory Action

Section 155 of the Dodd-Frank Act, Public Law 111–203 (July 21, 2010), directs the Secretary of the Treasury to establish by regulation, and with the approval of the Council, an assessment schedule to collect assessments from certain companies equal to the total expenses of the Office beginning on July 20, 2012. Section 155 describes these companies as:

(A) Bank holding companies having total consolidated assets of \$50 billion or greater; and

(B) Nonbank financial companies supervised by the Board.

Under Section 118 of the Dodd-Frank Act, the expenses of the Council are considered expenses of, and are paid by, the OFR. In addition, under Section 210 implementation expenses associated with the FDIC's orderly liquidation authorities are treated as expenses of the Council,¹ and the FDIC is directed to periodically submit requests for reimbursement to the Council Chair. The total expenses for the OFR thereby include the combined expenses of the OFR, the Council, and certain expenses of the FDIC. All of these expenses are paid out of the Financial Research Fund (FRF), a fund managed by the Department of the Treasury for this sole purpose.

The Council was established by the Dodd-Frank Act to coordinate across agencies in monitoring risks and emerging threats to U.S. financial stability. The OFR was established within the Treasury Department by the Dodd-Frank Act to serve the Council, its member agencies, and the public by improving the quality, transparency, and accessibility of financial data and information, by conducting and sponsoring research related to financial stability, and by promoting best practices in risk management.

2. Legal Authority

The authority for this regulation is Section 155(d) of the Dodd-Frank Act, which directs the Secretary of the Treasury to establish an assessment schedule by regulation, including the assessment base and rates, with the approval of the Council.

¹ Under Title II, Section 210(n)(10)(C) of the Dodd-Frank Act the term implementation expenses “(i) means costs incurred by [the FDIC] beginning on the date of enactment of this Act, as part of its efforts to implement [Title II] that do not relate to a particular covered financial company; and (ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the [FDIC] consistent with carrying out [Title II].”

B. Summary of the Major Provisions of This Regulatory Action

This final rule and interim final rule direct (a) how the Treasury will determine which companies will be subject to an assessment fee, (b) how the Treasury will estimate the total expenses that are necessary to carry out the activities to be covered by the assessment, (c) how the Treasury will determine the assessment fee for each of these companies, and (d) how the Treasury will bill and collect the assessment fee from these companies. The final rule applies to bank holding companies and foreign banking organizations; the interim final rule applies to nonbank financial companies. The comment period for the interim final rule is 120 days.

Bank holding companies that have eligible assets of \$50 billion or more will be subject to assessments, where eligible assets are calculated as the average of a company's total consolidated assets for the four quarters preceding the determination date. Foreign banking organizations that have eligible assets of \$50 billion or more will be subject to assessments, where eligible assets are calculated as the average of the company's total assets of combined U.S. operations for the four quarters preceding the determination date. (For foreign banking organizations that only report to the Federal Reserve annually, eligible assets are calculated as the average of the company's total assets of combined U.S. operations for the two years preceding the determination date.) All nonbank financial companies supervised by the Board will be subject to assessments.

For each assessment period, the Department will calculate an assessment basis that is sufficient to replenish the FRF to a level equivalent to the sum of the operating expenses of the OFR and the Council for the assessment period, the capital expenses for the OFR and the Council for the 12-month period beginning on the first day of the assessment period, and an amount necessary to reimburse reasonable implementation expenses of the FDIC orderly liquidation authorities. For the initial assessment covering July 21, 2012 to March 31, 2013, the assessment basis will be calculated as the sum of the operating expenses for the OFR and the Council during this time period, the capital expenses for the OFR and the Council for July 21, 2012 to April 30, 2013, and the amount necessary to reimburse reasonable implementation expenses of the FDIC orderly liquidation authorities.

Assessments for each company will be calculated as the product of a company's eligible assets and a fee rate, where the fee rate is set to replenish the FRF to the levels defined in the preceding paragraph. Fee rates will be published roughly one month prior to collections, with billing at least 14 days prior to collections. Collections will be managed through *www.pay.gov*, and will generally occur on March 15 and September 15. Determination dates will generally be November 30 and May 31 of each year. The determination date for the initial assessment will be December 31, 2011.

C. Costs and Benefits

The assessment and collection of fees described in this rule represent an economic transfer from assessed companies to the government, for purposes of providing the benefits associated with coordinated identification and monitoring of risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to the U.S. financial system. As such, the assessments do not represent an economic cost. However, the allocation of the assessment may have distributional impacts. Treasury estimates that approximately 50 companies will be determined as eligible for the initial assessment, and in addition the estimated cost for each company of filling out the forms and submitting payment to the Treasury Department will be \$600.

II. Background

Section 155 of the Dodd-Frank Act, Public Law 111–203 (July 21, 2010), directs the Secretary of the Treasury to establish by regulation, and with the approval of the Council, an assessment schedule to collect assessments from certain companies equal to the total expenses of the Office beginning on July 20, 2012. Section 155 describes these companies as:

(A) Bank holding companies having total consolidated assets of \$50 billion or greater; and

(B) Nonbank financial companies supervised by the Board.

Under Section 118 of the Dodd-Frank Act, the expenses of the Council are considered expenses of, and are paid by, the OFR. In addition, under Section 210 implementation expenses associated with the FDIC's orderly liquidation authorities are treated as expenses of the Council,² and the FDIC is directed to

² Under Title II, Section 210(n)(10)(C) of the Dodd-Frank Act the term implementation expenses “(i) means costs incurred by [the FDIC] beginning on the date of enactment of this Act, as part of its

periodically submit requests for reimbursement to the Council Chair. The total expenses for the OFR thereby include the combined expenses of the OFR, the Council, and certain expenses of the FDIC. All of these expenses are paid out of the Financial Research Fund (FRF), a fund managed by the Department of the Treasury.

The Council was established by the Dodd-Frank Act to coordinate across agencies in monitoring risks and emerging threats to U.S. financial stability. The Council is chaired by the Secretary of the Treasury and brings together all federal financial regulators, an independent member with insurance expertise appointed by the President, and certain state regulators. Under the Dodd-Frank Act, the Council is tasked with identifying and monitoring risks to U.S. financial stability, promoting market discipline, and responding to emerging threats to the U.S. financial system.³

The OFR was established within the Treasury Department by the Dodd-Frank Act to serve the Council, its member agencies, and the public by improving the quality, transparency, and accessibility of financial data and information, by conducting and sponsoring research related to financial stability, and by promoting best practices in risk management. Among the OFR's key tasks are:

- Measuring and analyzing factors affecting financial stability and helping FSOC member agencies to develop policies to promote it;
- Collecting needed financial data, and promoting their integrity, accuracy, and transparency for the benefit of market participants, regulators, and research communities;
- Reporting to the Congress and the public on the OFR's assessment of significant financial market developments and potential threats to financial stability; and

efforts to implement [Title II] that do not relate to a particular covered financial company; and (ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the [FDIC] consistent with carrying out [Title II]."

³ As outlined in Section 112 of the Dodd-Frank Act, the Council is tasked with the following:

1. To identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace.

2. To promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure.

3. To respond to emerging threats to the stability of the United States financial system.

- Collaborating with foreign policymakers and regulators, multilateral organizations, and industry to establish global standards for data and analysis of policies that promote financial stability.

On January 3, 2012, the Treasury published a proposed rule (77 FR 35) to establish procedures to estimate, bill, and collect, on an ongoing basis beginning on July 20, 2012, the total budgeted expenses of the OFR, including those estimated separately by the Council for the Council's expenses, and expenses submitted by the FDIC.⁴ As described in the proposed rule, the aggregate of these estimated expenses would provide the basis for an assessment that the Treasury would collect through a semiannual fee on individual companies based on each company's total consolidated assets. For a foreign company, the assessment fee would be based on the total consolidated assets of the foreign company's combined U.S. operations.

The proposed rule outlined how the Treasury's assessment fee program would be administered, including (a) how the Treasury would determine which companies will be subject to an assessment fee, (b) how the Treasury would estimate the total expenses that are necessary to carry out the activities to be covered by the assessment, (c) how the Treasury would determine the assessment fee for each of these companies, and (d) how the Treasury would bill and collect the assessment fee from these companies. Treasury sought comments on all aspects of the proposed rulemaking. See 77 FR 35 for a complete discussion of the proposal.

III. This Final Rule and Interim Final Rule

The final rule is adopted essentially as proposed for bank holding companies and foreign banking organizations, with an adjustment to the timeframe for assessment collections. The rule for nonbank financial companies is issued as an interim final rule, reflecting the Treasury's intent to evaluate the assessment schedule for nonbank financial companies as the Council implements its authority to determine companies for enhanced supervision by the Board.⁵ In response to comments received, several technical and

⁴ As proposed, the assessment basis would be determined so as to replenish the FRF at the start of each assessment period to a level equivalent to six months of budgeted operating expenses and twelve months of capital expenses for the OFR and FSOC, as well as covered FDIC expenses.

⁵ "Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies", 77 FR 21637.

administrative changes were made to clarify these rules, which are discussed below.

The Treasury received 12 comment letters on the proposed rule. Six comment letters were from associations that represent financial institutions (including one joint letter sent by five associations); two comment letters were from insurance companies; two comment letters were from individuals; one comment letter was from an association that represents financial professionals; and one comment letter was from a public interest group. For the reasons that follow, the Treasury has determined to adopt this rule and interim final rule as follows.

Comments and the Treasury's Responses

Comments were received in the following broad categories:

- Assessment methodology
 - Use of total consolidated assets to calculate total assessable assets
 - Other assessment methodology comments
 - Assessments on nonbank financial companies
 - Assessment basis and administration
 - Assessment timeframe
 - Term definitions
 - Comments of general support

Assessment Methodology

Use of Total Consolidated Assets To Calculate Total Assessable Assets

Six of the comment letters from associations that represent financial institutions and insurance companies were critical of the proposed use of total consolidated assets to allocate the assessment basis to assessed companies. The letters argued that total consolidated assets alone was an insufficient representation of the risk factors outlined in Section 115(a)(2)(A) of the Dodd-Frank Act as referenced in Section 155(d) of the Act, and would not be sufficient to differentiate risk levels between companies for purposes of assessments. Two comment letters suggested alternative assessment approaches. One commenter suggested that the methodology be based on the six-category framework used to evaluate the potential for a nonbank financial company to pose a threat to U.S. financial stability, as outlined in the Council's rule on determination of nonbank financial companies for heightened supervision by the Board. Another commenter suggested that it be based on the risk-adjusted assessment schedule used by the FDIC to collect deposit insurance premiums from banks

and thrifts. Two of the comment letters, while expressing the concerns described above, also noted that using total consolidated assets to calculate assessable assets was simple, clear and transparent.

One comment letter supported the proposal to base calculation of total assessable assets for foreign banking organizations on assets of combined U.S. operations and to only assess those companies with more than \$50 billion in total assessable assets. The comment letter noted that these two features of the rule will facilitate administration of assessments and are consistent with the statutory requirement that the assessment schedule take into account differences among assessed companies, based on the considerations set forth in Section 115.

The Treasury's proposed implementation of Section 155⁶ was guided by the following principles:

- The assessment structure should be simple and transparent; and
- Allocation among companies should take into account differences among such companies, based on the considerations for establishing the prudential standards under Section 115 of the Dodd-Frank Act as required by the Act.

As stated in the Preamble to the Notice of Public Rulemaking, the Treasury believes there is significant benefit to adopting a standard that is transparent, well-understood by market participants, and reasonably estimable. Commenters suggested that this transparency and predictability was particularly important for foreign entities assessed. As discussed in the proposed rule, a number of different assessment schedules for assessing companies were considered, based on the two principles outlined above. After

evaluating these different assessment schedules, the Treasury proposed to allocate the assessment basis among assessed companies based on the total consolidated assets of each company. The Treasury, after considering the comments, continues to believe that relying on the total consolidated assets of each assessed company to allocate assessments on a percentage basis is consistent with its legislative mandate and represents the best approach to take into account differences among companies based on the considerations in Section 115 while keeping the assessment structure simple and transparent. Applying each Section 115 factor with respect to each assessed firm could well require individualized subjective determinations, which would be impracticable as well as opaque, and would not be consistent with the statutory requirement to create an "assessment schedule, including the assessment base and rates."⁷ Similarly, the Treasury considered relying on an established ratings system, such as the CAMELS system employed by the FDIC, as suggested by one commenter. The Treasury deemed such an approach as inappropriate for the following reasons: first, the methodology to produce the CAMELS ratings is non-public, the ratings are confidential supervisory information,⁸ and the rating system was developed for U.S. depository institutions. Second, the broad rankings provided by such a system (CAMELS ratings range from one to five) would require subjective translation by the Treasury into assessment levels, introducing complexity and opacity. The Treasury considered other methods to calculate assessments based on risk-weighted assets, but these proved unsatisfactory for similar reasons. After considering all of the Section 115 factors, the Treasury has determined that an assessment schedule based on total consolidated assets best achieves the statutory purpose.

As discussed further below, the rule has been modified to include a final rule applicable to bank holding companies and foreign banking organizations, and an interim final rule applicable to those entities that are identified by the Council's rulemaking for determination of nonbank financial companies for heightened supervision by the Board.

Other Assessment Methodology Comments

Two comment letters (the joint associations' letter and a second letter

written by two authors of the joint letter) suggested that the Board continue providing funds to the FRF after July 21, 2012. Even if this suggestion could be reconciled with the statutory requirement that "[b]eginning 2 years after the date of enactment," the Treasury shall "collect assessments equal to the total expenses of the Office,"⁹ the imposition of additional requirements on the Board of Governors would be beyond the Treasury's authority under Section 155(d) and outside the scope of this rulemaking.¹⁰

One comment letter suggested that since the Council and the OFR will likely be investing a significantly larger proportion of their resources researching and monitoring nonbank financial companies as opposed to bank holding companies, the assessment methodology should charge nonbank financial companies proportionately higher assessments. The letter further suggested creation of a credit system whereby previously assessed bank holding companies and nonbank financial companies would pay lower assessment rates when new companies are assessed. The Treasury notes that the Dodd-Frank Act requires that the Council and the OFR monitor the financial system and respond to threats to U.S. financial stability across the system. Mitigating current and potential future threats to financial stability provides benefits for financial market participants, including bank holding companies, foreign banking organizations, and nonbank financial companies. Likewise, previously assessed companies, as well as newly assessed companies, are beneficiaries of these activities to mitigate threats to financial stability. For these reasons, the Treasury believes that a consistent allocation irrespective of sequence of inclusion in the assessment pool or institution type is appropriate.

One comment letter suggested including language in the rule prohibiting banking institutions from passing OFR assessments through to retail or commercial customers in the form of fees or higher interest rates. The Treasury has considered this concern, but believes such a requirement would be difficult and costly to administer, and it is questionable whether such an

⁶ Section 155(d) of the Act reads:

PERMANENT SELF-FUNDING.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of \$50,000,000,000 or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under Section 115, to collect assessments equal to the total expenses of the Office.

Section 115(a)(2) of the Act reads, in part:

RECOMMENDED APPLICATION OF REQUIRED STANDARDS.—In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate.

⁷ Dodd-Frank Act, Title I, Section 155(d).

⁸ CAMELS ratings are confidential supervisory information per 12 CFR 309.5(g)(8), 309.6, 327.4(d).

⁹ Dodd-Frank Act, Title I, Section 155(d).

¹⁰ The comment letter from the public interest group stated that OFR, the Council and implementation expenses of the FDIC should be paid solely through the FRF assessment base after July 21, 2012, as intended by the Dodd-Frank Act, and should not be paid by the Board, as suggested in the two comment letters noted above. The Treasury agrees with this comment, which is consistent with the proposed and final rules.

approach would be permitted by the law.

One comment letter suggested that FDIC expenses associated with its orderly liquidation authorities should be well-defined to avoid shifting costs to OFR that should be borne by the FDIC. The Council and the FDIC have established guidelines for these expenses to ensure that only appropriate expenses are covered by the FRF.

Some commenters raised issues related to budget process, strategy and the creation of an advisory committee that are outside the scope of this rulemaking. Materials relevant to these issues may be found in the OFR's Strategic Framework for FY2012–FY2014 published on March 15, 2012¹¹ and in the notice of interest to establish a Financial Research Advisory Committee published in the **Federal Register** on March 22, 2012.¹²

Assessments on Nonbank Financial Companies

Seven of the comment letters, including those from associations that represent financial institutions and insurance companies, expressed concerns about using unadjusted total consolidated assets to allocate the assessment basis among nonbank financial companies. Three comment letters (from an insurance company and two associations) suggested that insurance separate accounts be excluded from total consolidated assets for purposes of assessments. One association suggested that private equity managed accounts be excluded from total consolidated assets for purposes of assessments. Another association suggested that all nonbank financial companies' non-financial assets be excluded from total consolidated assets for purposes of assessments.

In addition, several comment letters suggested alternative methods to assess nonbank financial companies or suggested that the Treasury delay its final rulemaking until after the Council has made determinations regarding nonbank financial companies for heightened supervision by the Board. One comment letter from an insurer suggested differentiating industries into classes based on their primary business activity and developing class-specific assessments based on Section 155 criteria. Two comment letters suggested delaying rulemaking for nonbank financial companies altogether until

after the Council has made determinations of nonbank financial companies for heightened supervision by the Board. Two additional comment letters supported the intent to re-evaluate the assessment schedule for nonbank financial companies after the Council's rule on determination of nonbank financial companies is finalized and the Council has begun making determinations. One comment letter emphasized that assessments should be reasonably and fairly allocated across bank holding companies and nonbank financial companies. One comment letter requested clarification on how non-public nonbank financial companies would be treated under the rule and the manner in which information from these companies would need to be reported to the Treasury for purposes of assessments.

After reviewing these comments, the Treasury has decided to issue a final rule for bank holding companies and foreign banking organizations, and an interim final rule for nonbank financial companies. The comment period for the interim final rule for nonbank financial companies will be open for 120 days after the publication date of these rules, with possible extension. After the comment period, the Treasury will review the assessments schedule for nonbank financial companies and make adjustments to the nonbank financial company rule as necessary.

The bank holding company and foreign banking organization final rule and nonbank financial company interim final rule both rely on total consolidated assets to calculate assessable assets. The Treasury agrees that, to the extent practicable, the composition of total consolidated assets used to calculate assessable assets for nonbank financial companies, bank holding companies, and foreign banking organizations should be comparable. As the Council implements its authority to determine nonbank financial companies for heightened supervision by the Board, the Treasury will evaluate substantive accounting differences between total consolidated assets as reported by nonbank financial companies supervised by the Board, bank holding companies, and foreign banking organizations and review the need to make adjustments to its definition of total consolidated assets for nonbank financial companies.

Through its interim final rule, the Treasury continues to seek and consider comment on whether the methodology adopted here for determining the amount of the assessment for nonbank financial companies is appropriate and

what alternative methodologies might be more appropriate. The Treasury also specifically seeks comments on the question of whether a single methodology for determining the amount of the assessment for nonbank financial companies is appropriate and, if not, what an appropriate framework for differentiating between nonbank financial companies might be.

Assessment Basis and Administration

The Treasury received comments on the assessment basis and assessment administration from two commenters.

One comment letter suggested that collecting 12 months of capital expenses, as opposed to six months of capital expenses, would result in an unnecessarily large amount of unused resources. Given the variability of timing for large-scale capital expenditures and the importance of avoiding unnecessary interruptions in budgeted investments, the Treasury believes it is necessary for each assessment to replenish the FRF to a total of 12 months of capital expenditures. The final rule and interim final rule retain the provision for each assessment to replenish the FRF to a level equivalent to six months of operating and 12 months of capital expenses for the FSOC and OFR.

One commenter noted that the initial assessment basis will include operating expenses through March 31, 2013, capital expenses for the OFR and the Council through April 30, 2013, and the FDIC's implementation expenses through September 30, 2013. To clarify these dates, the first assessment in July 2012 is transitional and includes operating expenses for the remainder of fiscal year 2012 (July 21, 2012 to September 30, 2012), the first six months of fiscal year 2013 (October 1, 2012 to March 31, 2013) and an amount necessary to reimburse reasonable implementation expenses of the FDIC, as provided under section 210(n)(10) of the Dodd-Frank Act. Rather than collect 12 months of capital expenses in the initial assessment, as a smoothing measure the initial assessment includes capital expenses for the remainder of FY2012 (July 21, 2012 to September 30, 2012) plus the first seven months of FY2013 capital expenses (covering October 1, 2012 to April 30, 2013), for a total of approximately nine months of capital expenses. The second assessment will bring capital funding in the FRF up to the full 12-month level contemplated in the rule.

One comment letter expressed concern that the reports used to calculate a foreign banking organization's U.S.-based assets in the

¹¹ The FY2012–FY2014 Strategic Framework for the OFR, which includes information on the OFR's budget process, can be found at: <http://www.treasury.gov/initiatives/wsr/ofr/Documents/OFRStrategicFramework.pdf>.

¹² 77 FR 16894.

proposed rule do not report assets on a consolidated basis, so that referencing data from multiple reports could result in double-counting. The commenter requested greater clarity on what line items will be used from each report to determine total assessable assets for foreign banking organizations and suggested that the confirmation statement sent to foreign banking organizations include a list of financial report line items used to calculate assessable assets. Treasury will make every effort to avoid double counting, consulting with the Board and the affected firms as necessary. Any questions can be addressed through the appeals process.

Assessment Timeframe

Under the proposed rule, semiannual determination dates for a typical year would be December 31 and June 30. Confirmation statements to assessed companies would be sent out approximately two weeks after the determination date (and no later than 30 days prior to the first day of the assessment period); publication of the Notice of Fees would be about one month prior to the payment date; and billing would occur at least 14 calendar

days prior to the payment date. Two comment letters noted that this time schedule for assessment collections allowed too little time for assessed companies to prepare appeals to assessments and too little time for companies with less liquid portfolios to arrange payments. Ambiguities in the dates for issuance of confirmation statements and publication of the Notice of Fees were also noted in the letters. The commenters proposed extending the time between issuance of the confirmation statement and billing date to allow more time for appeals and payment arrangements.

The Treasury has considered these comments and is persuaded that an adjustment, as described below, is appropriate. In this final rule and interim final rule, the determination dates for a typical year are moved back one month (to November 30 and May 31); confirmation statements will be sent out 15 calendar days after the determination date (December 15 and June 15); written appeals requesting a redetermination would need to be provided by January 15 or July 15 (under the guidelines outlined in the NPRM); publication of the Notice of Fees will be on February 15 and August

15; and billing will be on March 1 and September 1 for payment on March 15 and September 15. (See table below.) If the Treasury receives a written request for redetermination from a company by these dates, the Treasury will consider the company's request and respond with the results of a redetermination within 21 calendar days, if the Treasury concludes that a redetermination is warranted. If one of the dates referenced falls on a holiday or weekend, aside from the Billing Date, the effective date will be the next business day. (For the Billing Date, if the date referenced falls on a holiday or weekend, the effective date will be the first preceding business day.) The initial determination date, confirmation statement date, publication of Notice of Fees, billing date, and payment date are as outlined in the NPRM. These changes to the rule will provide assessed companies additional time to prepare appeals and make payment arrangements, as well as permit the Treasury additional time to calculate assessments, administer the billing process, and receive payments, as suggested in the comment letters. The table below shows dates of the assessment billing and collection process:

Assessment period	Determination date	Confirmation statement date	Publication of notice of fees *	Billing date	Payment date
Initial Assessment (July 2012 to March 2013).	December 31, 2011	7 calendar days after final rule publication date.	About one month prior to payment date.	14 calendar days prior to payment date.	July 20, 2012.
1st semiannual Assessment (April–September).	November 30	December 15 (or next business day).	February 15 (or next business day).	March 1 (or prior business day).	March 15 (or next business day).
2nd semiannual Assessment (October–March).	May 31	June 15 (or next business day).	August 15 (or next business day).	September 1 (or prior business day).	September 15 (or next business day).

* Rate published in the Notice of Fees.

Term Definitions

Several comment letters suggested clarifications to term definitions in the rule.

One comment letter requested clarification on the conditions and procedure under which a company would cease to be an assessed company. Another comment letter stated that companies that cease to be assessable companies between the initial determination date and start of the initial assessment period should not be assessed.

Under the definitions provided in this rule, companies meeting the following conditions will not be determined to be assessable companies on the determination date:

- For bank holding companies as defined in Section 2 of the Bank

Holding Company Act of 1956, the average total consolidated assets (Schedule HC—Consolidated Balance Sheet), as reported on the bank holding company's four most recent Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) submissions, is below \$50 billion;

- For foreign banking organizations, the average of total assets at the end of a period (Part 1—Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization), as reported on the foreign banking organization's four most recent Capital and Asset Information for the Top-tier Consolidated Foreign Banking

Organization (FR Y–7Q; OMB no. 7100–0125), is below \$50 billion;¹³

- For nonbank financial companies, the company is not determined by the Council to be required to be supervised by the Board under Section 113 of the Dodd-Frank Act.

Companies that are determined to be assessable companies on the determination date for an assessment period will be assessed for that assessment period according to the rule. The assessment schedule is structured so that the sum of assessments on individual companies equals the sum

¹³ For those foreign banking organizations that file the FR Y–7Q annually instead of quarterly, the company's total consolidated assets would be determined based on the average of total assets at end of period as reported on the foreign banking organization's two most recent FR Y–7Qs.

total necessary to support the duties of the Council and the OFR during each period plus implementation expenses associated with the FDIC's orderly liquidation authorities. Changes to one company's assessment for a particular period would necessitate a change in all other companies' assessments so that the aggregate of all assessment fees equals the assessment basis for the period. The Treasury believes that the burden and uncertainty that such changes would bring are too high to warrant attempting to delineate a process to allow changes to the information used by the Treasury to make its determinations, or adjust the company's semiannual fee determined by the published assessment fee schedule. The Treasury believes this burden and uncertainty would be issues for the initial assessment period as they are for subsequent assessment periods.

One comment letter requested the rule include a list of financial reports that will be used to calculate total assessable assets for foreign banking organizations. While the list of financial reports that the Treasury anticipates it will use to calculate total assessable assets for foreign banking organizations are listed in the Preamble of the NPRM, it is possible that reporting requirements for foreign banking organizations will change over time and the list of reports will need to be adjusted. The rule does not include specific reference to these reports to allow for the possibility of these changes. The Treasury will provide a list of reports used to calculate assessments to any assessed company, and will also maintain a list of reports used to calculate assessments on its Web site for reference in advance of the assessment period.

One comment letter requested that the definition of total assessable assets for foreign banking organizations be clarified to include U.S. branches and agencies in addition to subsidiaries. The definition of total assessable assets for foreign banking organizations in Section 150.2 has been modified to provide this clarity.

One comment letter requested that the rule provide clarity that total assessable assets for foreign banking organizations will be calculated as the average of the four most recent FR Y7-Q total assets at end of period for quarterly filers and the average of the two most recent annual FR Y7-Q total assets at end of period for annual filers. (This distinction was provided in the Preamble of the NPRM but not the text of the rule.) For reasons noted above, the Treasury has not included a list of reference reports in the final rule, but language was added to the rule clarifying that the average of

four quarters of data will be used to calculate assessments for quarterly filers and the average of two years of annual data will be used to calculate assessments for annual filers.

One comment letter requested that the definition of "bank holding company" and "foreign banking organization" be clarified so that foreign banking organizations are limited to international banks that are subject to the Bank Holding Company Act of 1956 pursuant to Section 8(a) of the International Banking Act of 1978. The letter suggested modifying the definition of "bank holding company" to specify U.S.-domiciled bank holding companies and modify the definition of "foreign banking organization" to incorporate by reference the definition of that term in Section 211.21(o) of the Board's Regulation K. The letter also suggested revising paragraphs (1) and (2) of the definition of total assessable assets to reflect these revisions. The final rule clarifies these definitions accordingly.

One comment letter suggested that the final rule clarify that only total assets of combined U.S. operations of U.S. companies with foreign affiliates would be assessable. The Dodd-Frank Act is silent on this point. However, the Dodd-Frank Act requires that the Council and the OFR monitor the financial system and respond to threats to U.S. financial stability across the system. Mitigating current and potential future threats to financial stability provides particular benefits for companies that conduct a majority of their business in U.S. markets. Treasury also notes that a significant disruption to foreign operations could impact the parent company, and where the parent company is a U.S. entity, it may have consequences for U.S. financial stability. The rule consequently retains calculation of total assessable assets for U.S.-based companies based on global total consolidated assets.

Comments of General Support

The two letters from individuals expressed general support for the rule. One comment letter expressed support for assessing financial institutions to fund the Office. One comment letter expressed support for the permanent self-funding provisions reflected in the rule and the mission of the Office.

III. Procedural Requirements

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) to determine the economic impact of the rule on small

entities. Section 605(b) allows an agency to prepare a certification in lieu of an IRFA if the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The size standard for determining whether a bank holding company or a nonbank financial company is small is \$7 million in average annual receipts. Under Section 155 of the Dodd-Frank Act, only bank holding companies with more than \$50 billion in total consolidated assets or nonbank financial companies regulated by the Federal Reserve will be subject to assessment. As such, this rule will not apply to small entities and a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

On a one-time basis, assessed entities would be required to set up a bank account for fund transfers and provide the required information to the Treasury Department on a form. The form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. The Treasury Department estimates that approximately 50 companies¹⁴ may be affected, and that completing and submitting the form would take approximately fifteen minutes. The aggregate paper work burden is estimated at 12.5 hours.

On a semi-annual basis, assessed companies will have the opportunity to review the confirmation statement and assessment bill. The rules do not require the companies to conduct the review, but it does permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d) and assigned control number 1505-0245. An agency may not conduct or sponsor an a person is not required to respond to

¹⁴ The Treasury estimates that approximately 50 bank holding companies and foreign banking organizations will be assessed in the initial assessment. The number of eligible bank holding companies and foreign banking organizations could increase or decrease over time. The number of assessed companies could also increase if the Council determines nonbank financial companies for heightened supervision by the Board.

a collection of information unless it displays a valid OMB control number.

The information collections are included in § 150.6.

C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

It has been determined that this regulation is a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563, in that this rule would have an annual effect on the economy of \$100 million or more. Accordingly, this rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Assessment prepared by Treasury for this regulation is provided below.

1. Description of Need for the Regulatory Action

Section 155 of the Dodd-Frank Act directs the Board to provide funding sufficient to cover the expenses of the OFR and FSOC during the two-year period following enactment. (The Dodd-Frank Act was enacted on July 21, 2010.) To provide funding after July 21, 2012, Section 155(d) of the Dodd-Frank Act directs the Secretary of the Treasury to establish by regulation, and with the approval of the FSOC, an assessment schedule for bank holding companies with total consolidated assets of \$50 billion or greater and nonbank financial companies supervised by the Board.

2. Provision—Affected Population

Section 155(d) of the Dodd-Frank Act defines the population of assessed companies as bank holding companies with total consolidated assets of \$50 billion or greater and nonbank financial companies supervised by the Board.

Under this definition, U.S. bank holding companies and foreign banking organizations with \$50 billion or more in total worldwide consolidated assets and nonbank financial companies supervised by the Board qualify for assessment. However, under the rule only U.S.-based assets of foreign banking organizations would be used to calculate their assessments. Foreign banking organizations with less than \$50 billion in U.S.-based assets would not be assessed. Based on information provided by the Board, we estimate that forty-eight bank holding companies qualified as assessed companies as of June 30, 2011.

Nonbank financial companies determined by the FSOC to require heightened supervision under Title I would be assessed on the basis of their total consolidated assets for U.S. entities and on the basis of total consolidated assets of U.S. operations for foreign

entities, similar to bank holding companies. All such nonbank financial companies would be assessed, regardless of their level of total consolidated assets.¹⁵

3. Baseline

The Dodd-Frank Act established the FSOC and the OFR, and vested the FDIC with orderly liquidation authorities. Prior to passage of the Act, these entities and authorities did not exist. Expenses associated with these activities are directed by the Dodd-Frank Act to be funded by the Board for a two-year period to end on July 21, 2012. After July 21, 2012, the Dodd-Frank Act requires the Secretary of the Treasury establish an assessment schedule by regulation, with approval by the Council, to collect funds necessary to cover these expenses. There is no provision in the Dodd-Frank Act for the FSOC or the OFR to receive appropriated funds. Section 152(e) of the Dodd-Frank Act allows departments or agencies of government to provide funds, facilities, staff, and other support services to the OFR as the OFR may determine advisable. Section 152(e) and Section 111(j) allow for employees of the Federal Government to be detailed to the OFR and the FSOC, respectively, without reimbursement. Funding through departments or agencies of government would not be sufficient to perform all of the functions of the FSOC, the OFR, and the FDIC required by the Act. Agencies funded by appropriations would be restricted in the amount of funding support they could provide to the FSOC or the OFR. Agencies not funded by appropriations would be restricted in the amount of funding support they could provide for activities outside their primary mandate. Restrictions on the availability of funds or lack of predictability of funding would make it difficult to maintain consistent program activities, and complete analysis required to identify possible threats to financial stability. The implementation of this rule is not expected to have a discernible effect on the structure of the financial sector.

¹⁵ To date, the Council has not made a determination regarding the applicability of Board supervision under section 113 for a nonbank financial company. Moreover, it is unclear as to what type of nonbank financial companies the Council may consider for a determination. For these reasons, as the Council begins to make determinations regarding nonbank financial companies under section 113, the Treasury's methodology for determining the assessment fee for these companies would be reviewed and, as needed, revised through the rulemaking process to assure that the assessment fees charged to these companies would be appropriate.

4. Assessment of Total Fees Collected

It is anticipated that the annual assessments for the FRF will exceed \$100 million, making the rule a significant regulatory action as defined in Executive Order 12866.

The assessment and collection of fees described in this rule represent an economic transfer from assessed companies to the government, for purposes of providing the benefits described above. As such, the assessments do not represent an economic cost for purposes of this analysis. However, the allocation of the assessment may have distributional impacts.

There is a wide range of possible assessment schedules which could be used to collect funds for the OFR and the FSOC. For example, the schedule could be structured to charge eligible companies a similar fee, it could include tiered fees and rates, or it could include assessments for all eligible companies as opposed to just entities with \$50 billion in U.S.-based assets (i.e., including foreign banking organizations with more than \$50 billion in worldwide assets but less than \$50 billion in U.S.-based assets). Having a simple, more transparent assessment schedule reduces costs for government and for assessed companies by making assessments easier to calculate, budget for, and manage administratively. Executive Order 12866 specifically requires that agencies "design its regulations in the most cost-effective manner to achieve the regulatory objective."

The selection of the assessment schedule was governed by two guiding principles:

- The assessment structure should be simple and transparent; and
- Allocation should take into account differences among such companies, based on the considerations for establishing the prudential standards under section 115 of the Dodd-Frank Act as required by the Act.

Under Section 155 of the Act, the assessment schedule is required to take into account criteria for establishing prudential standards for supervision and regulation of large bank holding companies and nonbank financial companies as described in Section 115 of the Act. The criteria in Section 115 include: "Capital structure, riskiness, complexity, financial activities (including the financial activities of subsidiaries), size, and any other risk-related factors that the Council deems appropriate." Selection of total consolidated assets as the basis for assessments was intended to take into

account the criteria identified in Section 115, while providing a more transparent and administratively cost effective metric. Using other risk-related metrics as a base for calculation could dramatically increase the cost of calculating assessments, as well as reduce a company's ability to project their assessment level. As of June 30, 2011, companies meeting the criteria for assessment had \$18.7 trillion in total consolidated assets.

Under the assessment structure, each assessed company's eligible assets would be multiplied by an assessment fee rate to determine their assessment amount. (Eligible assets would be total worldwide consolidated assets for U.S.-based bank holding companies and designated U.S.-based nonbank financial companies, and total U.S.-based assets for foreign banking organizations and foreign designated nonbank financial companies.) Assessments would be made semiannually, generally based on an average of the company's last four quarters of total consolidated assets.

For example, based on data on assessable assets as of June 30, 2011, for every \$100 million collected the range of assessments would be \$280,000 for the smallest assessed company (with just over \$50 billion in assets) to \$12.5 million for the largest assessed company (with approximately \$2.3 trillion in assets).¹⁶ Assessments on the ten largest assessed companies would provide roughly two-thirds of the total assessed amount.

Based on currently available data, no assessed company will have less than \$50 billion in assets; thus no small businesses are directly affected by the regulation. Under the structure of the rule, the only assessed companies that could have less than \$50 billion in assets would be nonbank financial companies subject to enhanced prudential supervision by the Board. While no such determinations have yet been made, Treasury believes that the FSOC will not make such a determination for any nonbank financial company that is a small business. It is not anticipated that the regulation will unduly interfere with state, local, and tribal governments in the exercise of their governmental functions.

¹⁶ Semiannual assessments will be set to maintain FRF balance at 12 months of budgeted capital expenses and six months of budgeted operating expenses. The initial assessment basis would be equivalent to the budgeted expenses for the end of fiscal year 2012 (July 20, 2012 to September 30, 2012), seven months of budgeted capital expenses and six months of budgeted operating expenses for FY 2013.

We estimate that there are certain direct costs associated with complying with these rules. On a one-time basis, assessed entities would be required to set up a bank account for fund transfers and provide the required information to the Treasury Department through an information collection form. The information collection form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. We estimate that approximately 50 companies could be affected, and that the cost associated with filling out the form and submitting it to the Treasury Department is approximately \$600.¹⁷ We note that this represents a conservative estimate of costs as some of these companies may have already established an account for payments or collections to the U.S. government.

On a semi-annual basis, assessed companies will have the opportunity to review the confirmation statement and assessment bill. The rules do not require the companies to conduct the review, but it does permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

5. Alternative Approaches Considered

We have noted that there are many possible assessment structures which could be employed to collect assessments. As part of the rulemaking process, Treasury contemplated a variety of structures for determining how assessments would be allocated. Particularly, Treasury considered alternate approaches with regard to the complexity of the method of assessment. In addition, Treasury considered alternative approaches with the following features: (1) Approaches designed to charge assessed companies at a similar fee level, distributing collections more evenly; (2) approaches designed to charge different rates for different levels of total consolidated assets, creating a "tiered" structure of rates; and (3) approaches designed to charge eligible bank holding companies and foreign banking organizations against world-wide assets, as opposed to charging foreign banking organizations against U.S.-based assets. We discuss these alternative approaches below.

¹⁷ The cost of this activity is calculated by multiplying the 50 companies by the time it takes to complete the form (15 minutes) by an approximate hourly wage of \$48 (assuming an annual salary of \$100,000).

a. Complexity of Approach

In evaluating methodologies for determining individual company assessments, the Treasury notes that there has been a variety of assessment approaches employed by other federal and international agencies which incorporate measures of risk that are similar to the considerations mentioned in Section 115 of the Dodd-Frank Act. For example, Basel III capital adequacy standards set minimum capital requirements based on risk-weighted assets and also provide a mandatory capital conservation buffer and a discretionary countercyclical buffer. The risk-based calculations incorporate capital tiers, leverage, credit valuation adjustments, and other factors. As required by the Dodd-Frank Act, the FDIC recently revised how banks are charged deposit insurance assessments. With some minor exceptions, the FDIC assessment base is total consolidated assets minus tangible equity.

In the U.S., the FDIC uses the CAMELS system to assign risk ranking to its regulated banks. As suggested by commenters, the Treasury considered using CAMELS as a classification system for assigning relative assessments, but deemed the approach inappropriate as the methodology used to produce CAMELS ratings is non-public, the ratings are confidential supervisory information, and the rating system was developed to apply to U.S. depository institutions. The system also provides broad rankings (ranging from one to five) which would require subjective translation into assessment levels.

In each of these cases, and in other related determinations, the complexity of the assessment methodology is tied to the goal of the charge. For instance, the Dodd-Frank Act requires the Board to collect assessments designed to cover the costs of heightened regulation and supervision of large bank holding companies, large savings and loan holding companies, and nonbank financial companies supervised by the Board.

In evaluating these arrangements, Treasury notes that complexity in the assessment design increases the administrative burden to assessed companies, including planning for those assessments, and decreases transparency to the public. Treasury does not believe that the benefits of a complex methodology justify their increased costs in the context of this rulemaking.

b. Charging Companies Fees at a Similar Level

Section 155 of the Dodd-Frank Act requires that the assessment schedule take into account criteria for establishing prudential standards for supervision and regulation of large bank holding companies and nonbank financial companies as described in Section 115 of the Act. The criteria in Section 115 include: “capital structure, riskiness, complexity, financial activities (including the financial activities of subsidiaries), size, and any other risk-related factors that the Council deems appropriate.” The option of charging companies at a similar level was rejected as it would appear to contradict the intent of the Act for the schedule to charge larger, more complex and riskier firms higher fees. On the basis of size alone, we estimate that the largest eligible companies have over 40 times the assessable assets of smallest companies.

c. Charging Fees Under a Tiered Rate Structure

A number of regulators rely on tiered assessment schedules to collect fees. The Office of the Comptroller of the Currency uses a tiered assessment structure to collect fees associated with regulating and supervising national banks. The Office of Thrift Supervision used a tiered structure to collect fees to regulate and supervise thrifts. The main benefit of a tiered structure is that it allows fees to be charged at different rates to different companies. For example, supervision may benefit from economies of scale, meaning that the additional resources required for supervision do not grow dollar for dollar with the size of the entity. Alternatively, larger companies may pose risks that are disproportionately larger than their asset size, requiring even more resources for supervision than do smaller companies. A tiered approach could accommodate such differences by allowing different fee rates to be charges against assessed assets by tier.

Consideration was given to establishing such a structure for FRF assessments. The primary benefit would have been greater flexibility in determining the relative amounts assessed on larger companies versus smaller companies. However, these benefits were balanced against an interest for assessment fees to be reasonably estimable and simpler to calculate, reducing administrative costs both for assessed companies and the Treasury, improving transparency, and allowing companies to better anticipate

assessment amounts. Given that all assessed companies are large (generally with over \$50 billion in assets) and systemically important, and the activities of the FSOC, the OFR, and implementation expenses of the FDIC correspond to all of them, the relative benefits of a tiered structure over a fixed rate structure were unclear.

d. Charging All Eligible Bank Holding Companies

Based on the definition of “bank holding company” in Title I of the Dodd-Frank Act, assessments can be made against any foreign banking organizations with \$50 billion or more in total consolidated assets. Since many of these eligible foreign banking companies have a relatively small percentage of their operations in the United States, there is limited basis for assessing these companies. Consideration was given to charging a small fee, so that all eligible companies would be charged, but the additional costs associated with administering the fee and cost of compliance by these companies outweighed the perceived benefits of this choice. The final determination was to charge foreign banking organizations with \$50 billion or more in total U.S.-based assets and U.S. based bank holding companies with \$50 billion or more in total consolidated assets.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a “major rule” as defined by 5 U.S.C. 804(2) and will be effective 60 days after publication.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Treasury believes that the regulatory impact analysis provides the analysis required by the Unfunded Mandates Reform Act.

F. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA) generally requires public notice and comment procedures before promulgation of regulations. See 5 U.S.C. 553(b). The Treasury published a notice of proposed rulemaking requesting comment on the proposed rule on January 3, 2012. The Treasury is finalizing the rule as it relates to bank holding companies without an opportunity for additional comment.

The comments that relate to nonbank financial companies have been considered but have not been fully addressed in this interim rule because the Department believes the rulemaking would benefit from additional public comment prior to establishing it as a final rule.

The Department believes, however, that good cause exists under 5 U.S.C. 553(b) to effectuate the rule as it relates to nonbank financial companies on an interim basis. As discussed in this preamble, nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act are subject to assessments. To date, no nonbank financial company has been subject to the section 113 supervision. Once designated by the Council and subject to Board supervision, a nonbank financial company will also be subject to assessments under the Dodd-Frank Act. In order to be consistent with the requirements of section 155 of the Act in assessing designated nonbank financial companies, the Treasury finds that it would be impracticable and contrary to the public interest to delay implementation of the rule pending further public comment. To implement the rule only as it relates to bank holding companies would impose an increased burden on bank holding companies and prevent the collection from designated nonbank financial companies of the assessments required to be imposed by statute. Accordingly, the Treasury is effectuating the rule as it relates to nonbank financial companies, but also invites public comment on portions of §§ 150.2, 150.3, 150.4, 150.5, and 150.6 as they relate to nonbank financial companies.

List of Subjects in 31 CFR Part 150

Bank holding companies, Nonbank financial companies, Financial research fund.

For the reasons set forth in the preamble, the Treasury amends Title 31, Chapter I of the Code of Federal Regulations by adding part 150 to read as follows:

PART 150—FINANCIAL RESEARCH FUND

Sec.

- 150.1 Scope.
- 150.2 Definitions.
- 150.3 Determination of assessed companies.
- 150.4 Calculation of assessment basis.
- 150.5 Calculation of assessments.
- 150.6 Notice and payment of assessments.

Authority: 12 U.S.C. 5345; 31 U.S.C. 321.

§ 150.1 Scope.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 5345.

§ 150.2 Definitions.

As used in this part:

Assessed company means:

- (1) A bank holding company that has \$50 billion or more in total consolidated assets, based on the average of total consolidated assets as reported on the bank holding company's four most recent quarterly Consolidated Financial Statements for Bank Holding Companies (or, in the case of a foreign banking organization, based on the average of total assets at end of period as reported on such company's four most recent quarterly Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization submissions if filed quarterly, or two most recent annual submissions if filed annually, as appropriate); or
- (2) A nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act.

Assessment basis means, for a given assessment period, an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the Office and the Council as set out in the Dodd-Frank Act (including an amount necessary to reimburse reasonable implementation expenses of the Corporation that shall be treated as expenses of the Council pursuant to section 210(n)(10) of the Dodd-Frank).

Assessment fee rate, with regard to a particular assessment period, means the rate published by the Department for the calculation of assessment fees for that period.

Assessment payment date means:

- (1) For the initial assessment period, July 20, 2012;
- (2) For any semiannual assessment period ending on March 31 of a given calendar year, September 15 of the prior calendar year; and
- (3) For any semiannual assessment period ending on September 30 of a given calendar year, March 15 of the same year.

Assessment period means any of:

- (1) The initial assessment period; or
- (2) Any semiannual assessment period.

Bank holding company means:

- (1) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

(2) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Corporation means the Federal Deposit Insurance Corporation.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act.

Department means the Department of the Treasury.

Determination date means:

- (1) For the initial assessment period, December 31, 2011.
- (2) For any semiannual assessment period ending on March 31 of a given calendar year, May 31 of the prior calendar year.
- (3) For any semiannual assessment period ending on September 30 of a given calendar year, November 30 of the prior calendar year.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign banking organization means a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

Initial assessment period means the period of time beginning on July 20, 2012 and ending on March 31, 2013.

Office means the Office of Financial Research established by section 152 of the Dodd-Frank Act.

Semiannual assessment period means:

- (1) Any period of time beginning after the initial assessment period on October 1 and ending on March 31 of the following calendar year; or

- (2) Any period of time beginning after the initial assessment period on April 1 and ending on September 30 of the same calendar year.

Total assessable assets means:

- (1) For a bank holding company other than a foreign banking organization, the average of total consolidated assets for the four quarters preceding the determination date, as reported on the bank holding company's four most recent FR Y-9C filings;

- (2) For any other bank holding company that has \$50 billion or more in total consolidated assets, the average of the company's total assets of combined U.S. operations for the four quarters preceding the determination date, based

on the combined total assets of the foreign banking organization's U.S. branches, agencies, and subsidiaries as reported on the foreign banking organization's four most recent quarterly financial reports, or, if the company only files financial reports annually, the average of the company's total assets of combined U.S. operations for the two years preceding the determination date, based on the combined total assets of the foreign banking organization's U.S. branches, agencies, and subsidiaries as reported on the foreign banking organization's two most recent annual financial reports; or

- (3) For a nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act, either the average of total consolidated assets for the four quarters preceding the determination date, if the company is a U.S. company, or the average of total assets of combined U.S. operations for the four quarters preceding the determination date, if the company is a foreign company.

§ 150.3 Determination of assessed companies.

(a) The determination that a bank holding company or a nonbank financial company is an assessed company will be made by the Department.

(b) The Department will apply the following principles in determining whether a company is an assessed company:

- (1) For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company shall be the top-tier, regulated holding company.

(2) In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier regulated holding companies shall be designated as an assessed company.

(3) In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y-7Q or successor form), such as may be true for companies that recently converted to a bank holding company, the Department will use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.

(4) In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. GAAP to report on its

U.S. operations, the Department will use, at its discretion, any comparable financial information that the Department may require from the company for this determination.

(c) Any company that the Department determines is an assessed company on a given determination date will be an assessed company for the entire assessment period related to such determination date, and will be subject to the full assessment fee for that assessment period, regardless of any changes in the company's assets or other attributes that occur after the determination date.

§ 150.4 Calculation of assessment basis.

(a) For the initial assessment period, the Department will calculate the assessment basis such that it is equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the period beginning July 21, 2012 and ending March 31, 2013;

(2) Budgeted operating expenses for the Council for the period beginning July 21, 2012 and ending March 31, 2013;

(3) Capital expenses for the Office for the period beginning July 21, 2012 and ending April 30, 2013; and

(4) Capital expenses for the Council for the period beginning July 21, 2012 and ending April 30, 2013; and

(5) An amount necessary to reimburse reasonable implementation expenses of the Federal Deposit Insurance Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

(b) For each subsequent assessment period, the Department will calculate an assessment basis that shall be sufficient to replenish the Financial Research Fund to a level equivalent to the sum of:

(1) Budgeted operating expenses for the Office for the applicable assessment period;

(2) Budgeted operating expenses for the Council for the applicable assessment period;

(3) Budgeted capital expenses for the Office for the 12-month period beginning on the first day of the applicable assessment period;

(4) Budgeted capital expenses for the Council for the 12-month period beginning on the first day of the applicable assessment period; and

(5) An amount necessary to reimburse reasonable implementation expenses of the Federal Deposit Insurance Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

§ 150.5 Calculation of assessments.

(a) For each assessed company, the Department will calculate the total assessable assets in accordance with the definition in § 150.2.

(b) The Department will allocate the assessment basis to the assessed companies in the following manner:

(1) Based on the sum of all assessed companies' total assessable assets, the Department will calculate the assessment fee rate necessary to collect the assessment basis for the applicable assessment period.

(2) The assessment payable by an assessed company for each assessment period shall be equal to the assessment fee rate for that assessment period multiplied by the total assessable assets of such assessed company.

(3) Foreign banking organizations with less than \$50 billion in total assessable assets shall not be assessed.

§ 150.6 Notice and payment of assessments.

(a) No later than fifteen calendar days after the determination date (or, in the case of the initial assessment period, no later than seven days after the publication date of this rule), the Department will send to each assessed company a statement that:

(1) Confirms that such company has been determined by the Department to be an assessed company; and

(2) States the total assessable assets that the Department has determined will be used for calculating the company's assessment.

(b) If a company that is required to make an assessment payment for a given semiannual assessment period believes that the statement referred to in paragraph (a) of this section contains an error, the company may provide the Department with a written request for a revised statement. Such request must be received by the Department via email within one month and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 21 calendar days of receipt thereof.

(c) No later than the 14 calendar days prior to the payment date for a given assessment period, the Department will send an electronic billing notification to each assessed company, containing the final assessment that is required to be paid by such assessed company.

(d) For the purpose of making the payments described in § 150.5, each assessed company shall designate a deposit account for direct debit by the Department through *www.pay.gov* or successor Web site. No later than the later of 30 days prior to the payment date for an assessment period, or the effective date of this rule, each such company shall provide notice to the Department of the account designated, including all information and

authorizations required by the Department for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the company designates a different account for assessment debit by the Department, in which case the requirements of the preceding sentence apply.

(e) Each assessed company shall take all actions necessary to allow the Department to debit assessments from such company's designated deposit account. Each such company shall, prior to each assessment payment date, ensure that funds in an amount at least equal to the amount on the relevant electronic billing notification are available in the designated deposit account for debit by the Department. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. The Department will cause the amount stated in the applicable electronic billing notification to be directly debited on the appropriate payment date from the deposit account so designated.

(f) In the event that, for a given assessment period, an assessed company materially misstates or misrepresents any information that is used by the Department in calculating that company's total assessable assets, the Department may at any time recalculate the assessment payable by that company for that assessment period, and the assessed company shall take all actions necessary to allow the Department to immediately debit any additional payable amounts from such assessed company's designated deposit account.

(g) If a due date under this section falls on a date that is not a business day, the applicable date shall be the next business day.

Dated: May 14, 2012.

Mary Miller,

*Under Secretary for Domestic Finance,
Department of the Treasury.*

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0937]

Drawbridge Operation Regulation; Black River, La Crosse, WI

AGENCY: Coast Guard, DHS.