

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 325, Subpart C**

**RIN: 3064-AE**

**ANNUAL STRESS TEST**

**AGENCY:** Federal Deposit Insurance Corporation.

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

**SUMMARY:** The Federal Deposit Insurance Corporation (the "Corporation" or "FDIC") requests comment on this proposed rule that revises Part 325 Subpart C of the FDIC Rules and Regulations regarding the annual stress testing requirements for state nonmember banks and state savings associations with total consolidated assets of more than \$10 billion ("covered banks"). Part 325 Subpart C, which implements section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), requires covered banks to conduct annual stress tests and report the results of such stress tests to the Corporation and the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and publicly disclose a summary of the results of the required stress tests. The FDIC proposes to modify the "as of" dates for financial data (that covered banks will use to perform their stress tests) as well as the reporting dates and public disclosure dates of the annual stress tests for both \$10 billion to \$50 billion covered banks and over \$50 billion covered banks. The revisions to Part 325 Subpart C would become effective January 1, 2016.

**DATES:** Comments should be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION].

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Agency Web site:** <http://www.FDIC.gov/regulations/laws/federal/>
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, **Federal Deposit Insurance Corporation**, 550 17th Street, NW, Washington, DC 20429.
- **Hand Delivered/Courier:** The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00a.m. and 5:00p.m.
- **E-mail:** [comments@FDIC.gov](mailto:comments@FDIC.gov).

Instructions: Comments submitted must include "FDIC" and "RIN []." Comments received will be posted without change to <http://www.FDIC.gov/regulations/laws/federal/>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ryan Sheller, (202) 412-4861, Section Chief, Large Bank Supervision, Division of Risk Management and Supervision; Mark G. Flanigan, Counsel, (202) 898-7426, Jason Fincke, Counsel, (202) 898-3659, or Grace Pyun, Senior Attorney, (202) 898-3609, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

## **I. Background.**

### **A. Part 325 Subpart C -Annual Stress Test**

Section 165(i) of the Dodd-Frank Act requires two types of stress tests. Section 165(i)(1) requires the Federal Reserve Board to conduct annual stress tests of holding companies with \$50 billion or more in total consolidated 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 total consolidated assets to conduct annual stress tests themselves ("bank-run stress tests"). Part 325 Subpart C of the FDIC Rules and Regulations (the "Annual Stress Test rule") implements Section 165(i)(2) and requires FDIC-insured state nonmember banks and FDIC-insured state-chartered savings associations with total consolidated assets of more than \$10 billion to conduct annual stress tests. Section 165(i)(2)(C) of the Dodd-Frank Act also requires the Corporation, in coordination with the Federal Reserve Board and the Federal Insurance Office, to issue consistent and comparable regulations to implement the requirements of this section. In October 2012, the FDIC, the Office of the Comptroller of the Currency (the "OCC"), and the Federal Reserve Board issued final rules implementing the company-run stress tests required by the Dodd-Frank Act.<sup>1</sup>

Part 325 Subpart C identifies two categories for covered banks: a state nonmember bank or state savings association that has average total consolidated assets (1) from \$10 billion to \$50 billion or (2) over \$50 billion? For both types of covered banks, the bank-run stress test must assess the potential impact of different scenarios<sup>3</sup> on the capital of the covered bank and certain related items over a forward-looking, nine-quarter planning horizon, taking into account all relevant exposures and activities.<sup>4</sup>

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<sup>1</sup> 77 FR 62417 (Oct. 15, 2012)(FDIC); 77 FR 61238 (October 9, 2012)(OCC); 77 FR 62396 (October 12, 2012)(Federal Reserve Board).

<sup>2</sup> 12 CFR § 325.202(d). A \$10 billion to \$50 billion covered bank is a state nonmember bank or state savings association with average total consolidated assets greater than \$10 billion but less than \$50 billion. An over \$50 billion covered bank is a state nonmember bank or state savings association with average total consolidated assets that are not less than \$50 billion.

<sup>3</sup> On an annual basis, prior to the start of the stress testing period and no later than November 15, the FDIC provides to covered banks a minimum of three economic scenarios (baseline, adverse, and severely adverse) and additional scenarios as the FDIC determines appropriate for the covered banks to use in performing their stress tests.

<sup>4</sup> In addition, certain covered banks with significant trading activities (as determined by the FDIC) may be required to include a trading and counterparty component for the scenarios used in their stress tests.

Part 325 Subpart C also provides several timeframes for the testing, reporting, and publication of the bank-run stress tests, which vary depending on the category into which the covered bank falls. Under the current rule, the stress test cycle begins October 1 of a calendar year and ends on September 30 of the following calendar year. Covered banks use financial data as of September 30 (the "as of date") of the preceding calendar year to make projections that estimate their financial position under the different stress scenarios and to report and publish the results of their annual stress test in the following calendar year. Covered banks with \$10 billion to \$50 billion in total assets must report the results of their stress tests by March 31 and publish a summary of their results between June 15 and June 30.<sup>5</sup> Over \$50 billion covered banks are required to report the results of their annual stress test by January 5 of each calendar year and publish a summary of their results between March 15 and March 31.<sup>6</sup> These testing, reporting, and publication milestones are consistent across the Federal banking agencies' annual stress testing rules.

A covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to Dodd-Frank Act annual stress test requirements is generally permitted to publish abbreviated disclosures of its annual stress test results with the parent holding company's summary and on the same timeline as the parent holding company.<sup>7</sup> The FDIC requires that specific information be included in the disclosure to reflect the changes in the covered bank's capital ratios and the reasons for those changes.

## **B. Overview of Proposed Rule**

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<sup>5</sup> 12 CFR §§ 325.204(a); 325.206(a); 325.207(a).

<sup>6</sup> 12 CFR §§ 325.204(a); 325.206(a); 325.207(a).

<sup>7</sup> 12 CFR § 325.207(b).

The FDIC review of the Dodd-Frank stress tests currently overlaps other supervisory responsibilities such as the review of resolution plans. The FDIC is also aware that the current testing and reporting dates for \$10 billion to \$50 billion and over \$50 billion covered banks occur at the beginning and end of the calendar year when there are competing regulatory and reporting deadlines that must be met. The testing, reporting, and publication cycles occur when covered banks are typically most resource-constrained. Furthermore, conducting stress testing during the last quarter of a calendar year may also make it difficult for covered banks to make timely modifications to strategic and operational plans for the following year that address any issues identified in the bank-run stress test results.

For these reasons, the FDIC is proposing to modify the dates of the stress test cycle and the corresponding reporting and publication deadlines beginning on January 1, 2016. The stress testing cycle that, under the current rule, begins on October 1, 2015, would instead begin on January 1, 2016. Under the proposed rule, covered banks would conduct bank-run stress tests using financial data as of December 31 of the preceding calendar year, which represents a 90-day shift from September 30 in the current rule. The FDIC would provide the economic scenarios to be used by covered banks in their bank-run stress tests no later than February 15 rather than November 15, as is provided under the existing rule. For those certain covered banks with significant amounts of trading activities that are required to include trading and counterparty components in their adverse and severely adverse scenarios, the FDIC will select an as of date between January 1 and March 1 of that calendar year for the data used in this component. The FDIC will communicate this date to the covered banks no later than March 1.

Under the proposed rule all \$10 billion to \$50 billion covered banks would be required to conduct and submit the results of their bank-run stress tests to the FDIC by July 31 and publish

those results during a period beginning on October 15 and ending October 31. Over \$50 billion covered banks would be required to conduct and submit the results of their bank-run stress tests to the FDIC by April 7 and publish those results during a period beginning on June 15 and ending on July 15.

Furthermore, a covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct an annual company-run stress test under applicable regulations of the Federal Reserve Board may continue to elect to conduct its stress test and report to the FDIC on the same timeline as its parent bank holding company or savings and loan holding company as it had under the existing rule. Under the proposed rule, however, an over \$50 billion covered bank that is a consolidated subsidiary of a holding company that is subject to supervisory stress tests conducted by the Federal Reserve Board under 12 CFR part 252 may publish the required summary of its bank-run stress test no earlier than the date that the Federal Reserve Board publishes the supervisory stress test results for the parent holding company, but no later than July 15. In addition, if the Federal Reserve Board publishes the supervisory stress test results of the covered bank's parent holding company prior to June 15, then the covered bank may satisfy its publication requirement either through actual publication by the covered bank or through publication by the parent holding company under § 325.207.

The proposed rule would also amend the applicability provisions in § 325.203 of the Annual Stress Test rule to reflect the changed timeline. Currently, a state nonmember bank or state savings association that becomes a covered bank must conduct its first annual stress test beginning in the next calendar year after the date the state nonmember bank or state savings association becomes a covered bank. Under the new stress testing timeline, if this applicability provision were left unchanged, a state nonmember bank or state savings association that became

a covered bank as of September 30 of a given year would be required to conduct its first stress test on January 1, three months after becoming a covered bank. The current rule provides a minimum of nine months between the date on which a state nonmember bank or state savings association becomes a covered bank and the start date of the stress testing cycle in which the covered bank must conduct its first stress test. To preserve the nine-month minimum, the proposed rule would establish a March 31 cutoff date. A state nonmember bank or state savings association that becomes a covered bank 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 state nonmember bank or state savings association that becomes a covered bank on March 31, 2015 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2016. A state nonmember bank or state savings association that becomes a covered bank 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 state nonmember bank or state savings association becomes a covered bank. For example, a state nonmember bank or state savings association that becomes a covered bank on June 30, 2015 would be required to conduct its first stress test in the stress testing cycle beginning January 1, 2017.

Table 1-Modified Annual Stress Test Timeline for \$10 Billion to \$50 Billion Covered Banks

Action Required	Current Rule	Proposed Rule
"As of Date" for Financial Data	September 30	December 31
Distribution of Scenarios for Annual Stress Tests by FDIC	By November 15	By February 15
Reporting of Annual Stress Test Results	By March 31	By July 31
Public Disclosure of Annual Stress Test Results	Between June 15 and June 30	Between October 15 and October 31

Table 2-Modified Annual Stress Test Timeline for over \$50 Billion Covered Banks

Action Required	Current Rule	Proposed Rule
"As of Date" for Financial Data	September 30	December 31

Distribution of Scenarios for Annual Stress Tests by FDIC	By November 15	By February 15
Reporting of Annual Stress Test Results	By January 5	By April 7
Public Disclosure of Annual Stress Test Results	Between March 15 and March 31	Between June 15 and July 15, <i>except no earlier than Federal Reserve Board publication of the supervisory stress test results of the covered bank's holding company</i>

## II. Request for Comments

The Corporation requests comments on all aspects of the proposed rule to revise Part 325

Subpart C, in particular:

- What, if any, specific challenges exist with respect to the proposed steps and time frames?
- Please comment on the use of the proposed: "as of date" of December 31, the July 31 reporting date, and the October 15 to October 31 publication dates for \$10 billion to \$50 billion covered banks.
- Please comment on the use of the proposed: "as of date" of December 31, the April 7 reporting date, and the June 15 to July 15 publication dates for over \$50 billion covered banks.

## III. Administrative Law Matters

### A. Paperwork Reduction Act Analysis

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) ("PRA"), the Corporation may not conduct or sponsor, and the respondent is not

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<sup>8</sup> If the Federal Reserve Board releases supervisory stress test results prior to June 15, then the covered bank may release its annual stress test results prior to June 15, but no earlier than the release of the supervisory stress test results and no later than July 15.

required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The FDIC has two stress testing information collections: the Annual Stress Test and Stress Testing Reporting Templates, 3064-0187 and -0189.

The Corporation proposes to revise 12 CFR §§ 325.202, 325.203, 325.204, 325.206, and 325.207 by modifying timelines for the testing, reporting, and disclosure of the annual stress tests for covered banks. The revisions would shift by 90 days the as of date of the financial data used to conduct bank-run stress tests for covered banks from September 30 to December 31. The proposed rule would also shift the reporting and disclosure deadlines for both \$10 billion to \$50 billion covered banks and over \$50 billion covered banks and provide for a new transition period for those covered banks that become covered under the rule. Additionally, under the proposed rule an over \$50 billion covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Federal Reserve Board may publish the required summary of its annual stress test results no earlier than the date that the Federal Reserve Board publishes the supervisory stress test results of the covered bank's parent holding company but no later than July 15. The revision of timelines in Part 325 subpart C does not revise the FDIC's two stress testing information collections of information.

## **B. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* ("RFA"), requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory

flexibility analysis of the rule and publish the analysis for comment.<sup>9</sup> The proposed rule would apply only to state nonmember banks and state savings associations with more than \$10 billion in total consolidated assets. Under regulations issued by the Small Business Administration ("SBA"), a bank or other depository institution is considered "small" if it has \$175 million or less in assets.<sup>10</sup> As of December 31, 2013, there are approximately 2,363 small state nonmember banks and state savings associations. Since the proposed rule would apply only to state nonmember banks and state savings associations with more than \$10 billion in total consolidated assets, the Corporation does not expect that the proposed rule will directly affect a substantial number of small entities. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities and therefore, a regulatory flexibility analysis under the RFA is not required.

### **C. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Corporation has sought to present the proposed rule in a simple and straightforward manner and invites comment on how to make the proposed rule easier to understand. For example:

- Is the material organized to suit your needs? If not, how could the rule be more clearly presented?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?

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<sup>9</sup> See 5 U.S.C. §§ 603, 604, and 605.

<sup>10</sup> 13 CFR 121.201.

- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Corporation incorporate to make the regulation easier to understand?

## **List of Subjects**

### **12 CFR Part 325, Subpart C**

Administrative practice and procedure, banks, banking, disclosures, Federal Deposit Insurance Corporation, reporting and recordkeeping requirements, state savings associations, stress tests.

## **Federal Deposit Insurance Corporation**

12 CFR Chapter III

### **Authority and Issuance**

For reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend subpart C to part 325 of title 12 of the Code of Federal Regulations as follows:

### **Part 325-CAPITAL MAINTENANCE**

#### **Subpart C- ANNUAL STRESS TEST**

1. Revise the authority citation for part 325, subpart C to read as follows:

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

2. Revise § 325.202 to read as follows:

**§ 325.202 Definitions.**

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(m) Stress test cycle means:

(1) Until October 1, 2015, the period beginning October 1 of a calendar year and ending on September 30 of the following calendar year, and

(2) Beginning October 1, 2015, the period beginning January 1 of a calendar year and ending on December 31 of that year.

3. Revise § 325.203 to read as follows:

**§ 325.203 Applicability.**

(b) Covered banks that become subject to stress testing requirements after October 15, 2012. (1) A state nonmember bank or state savings association that becomes a covered bank after October 15, 2012 and on or before March 31, 2014, shall conduct its first annual stress test under this subpart beginning in the next calendar year after the date the state nonmember bank or state savings association becomes a covered bank.

(2) A state nonmember bank or state savings association that becomes a covered bank after March 31, 2014 and on or before March 31, 2015, shall conduct its first annual stress test under this subpart in the stress test cycle beginning January 1, 2016.

(3) A state nonmember bank or state savings association that becomes a covered bank on or before March 31 of a given year (after December 31, 2014) shall conduct its first annual stress test under this subpart in the next calendar year after the date the state nonmember bank or state savings association becomes a covered bank. A state nonmember bank or state savings association that becomes a covered bank after March 31 of a given year (after December 31,

2014) shall conduct its first annual stress test under this subpart in the second calendar year after the date the state nonmember bank or state savings association becomes a covered bank.

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4. Revise § 325.204(a) through 325.204(c) to read as follows:

**§ 325.204 Annual stress tests required.**

(a) General requirements.

(1) \$10 billion to \$50 billion covered bank. Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must conduct a stress test on or before March 31 of each calendar year based on financial data as of September 30 of the preceding calendar year. Effective January 1, 2016, a \$10 billion to \$50 billion covered bank must conduct a stress test on or before July 31 of each calendar year based on financial data as of December 31 of the preceding calendar year.

(2) Over \$50 billion covered bank. Prior to January 1, 2016, an over \$50 billion covered bank must conduct a stress test on or before January 5 of each calendar year based on financial data as of September 30 of the preceding calendar year. Effective January 1, 2016, an over \$50 billion covered bank must conduct a stress test on or before April 7 of each calendar year based on financial data as of December 31 of the preceding calendar year.

(b) Scenarios provided by the Corporation.

In conducting the stress test under this subpart, each covered bank must use the scenarios provided the Corporation. The scenarios provided by the Corporation will reflect a minimum of three sets of economic and financial conditions, including: baseline, adverse, and severely adverse scenarios. The Corporation will provide a description of the scenarios required under this section to each covered bank no later than November 15 (for stress test cycle beginning

October 1, 2014) or February 15 (for stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of that calendar year.

(c) Significant trading activities. The Corporation may require a covered bank with significant trading activities, as determined by the Corporation, to include trading and counterparty components in its adverse and severely adverse scenarios. The trading and counterparty position data used in these components will be as of a date between October 1 and December 1 (for the stress test cycle beginning October 1, 2014) or between January 1 and March 1 (for the stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of that calendar year selected by the Corporation and communicated to the covered bank no later than December 1 (for the stress test cycle beginning October 1, 2014) or March 1 (for the stress test cycle beginning January 1, 2016, and all stress test cycles thereafter) of the calendar year.

5. Revise § 325.206(a) to read as follows:

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

(a) Report required for annual stress test results.

(1) \$10 billion to \$50 billion covered bank. Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System on or before March 31 the results of the stress test in the manner and form specified by the FDIC. Effective January 1, 2016, a \$10 billion to \$50 billion covered bank must report to the FDIC 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 FDIC.

(2) Over \$50 billion covered bank. Prior to January 1, 2016, an over \$50 billion covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before January 5, the results of the stress test in the manner and form specified by the FDIC. Effective January 1, 2016, an over \$50 billion covered bank must report to the FDIC and to the Board of Governors of the Federal Reserve System, on or before April 7, the results of the stress test in the manner and form specified by the FDIC.

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5. Revise § 325.207(a) to read as follows:

§ 325.207 **Publication** of stress test results.

(a) Publication date.

(1) \$10 billion to \$50 billion covered bank. (i) Prior to January 1, 2016, a \$10 billion to \$50 billion covered bank must publish a summary of the results of its annual stress test in the period starting June 15 and ending June 30 (for the stress test cycle beginning October 1, 2014).

(ii) Effective January 1, 2016, a \$10 billion to \$50 billion covered bank must publish a summary of the results of its annual stress test in the period starting October 15 and ending October 31 (for the stress test cycle beginning January 1, 2016 and for all stress test cycles thereafter).

(2) Over \$50 billion covered bank. (i) Prior to January 1, 2016, an over \$50 billion covered bank must publish a summary of the results of its annual stress tests in the period starting March 15 and ending March 31 (for the stress test cycle beginning October 1, 2014).

(ii) Effective January 1, 2016, an over \$50 billion covered bank must publish a summary of the results of its annual stress tests in the period starting June 15 and ending July 15 (for the stress test cycle beginning January 1 2016, and for all stress test cycles thereafter) provided:

(A) Unless the Corporation determines otherwise, if the over \$50 billion covered bank is a consolidated subsidiary of a bank holding company or savings and loan holding company subject to supervisory stress tests conducted by the Board of Governors of the Federal Reserve System under 12 CFR part 252, then, within the June 15 to July 15 period, such covered bank may not publish the required summary of its 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.

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