

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:** Proposed rule.

SUMMARY: The Department of the Treasury is issuing a proposed rule to implement Section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203 or “Dodd-Frank Act”), which directs the Department 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 proposed rule outlines the key elements of Treasury’s assessment program, which will collect semiannual assessment fees from these companies beginning on July 20, 2012.

DATES: *Comment due date:* March 5, 2012.

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. Background**

Section 155 of the Dodd-Frank Act 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 more; and

(B) nonbank financial companies supervised by the Board pursuant to section 113 of the Dodd-Frank Act.

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.

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 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.²

¹ Under 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].”

² 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

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

II. This Proposed Rule

Under this proposed rule, Treasury has developed 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 and expenses submitted by the FDIC. The aggregate of these estimated expenses would provide the basis for an assessment that the Treasury would allocate to individual companies by means of a semiannual assessment fee calculated from a schedule 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.

This proposed rule outlines 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

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 U.S. government will shield them from losses in the event of failure.

3. To respond to emerging threats to the stability of the U.S. financial system.

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 is seeking comments on all aspects of this proposed rulemaking.

Determination of Assessed Companies

The assessment of fees for the companies described in Section 155 of the Dodd-Frank Act requires that the Treasury determine those companies that would be subject to the assessment, referred to for the purpose of this rule as the assessed companies. As described in more detail below, Treasury will work closely with the Board, to determine the population of assessed companies and the basis for fee assessments.

The determination date is the date at which assessed companies are identified. Prior to each assessment period, on the determination date, the Treasury would determine the pool of assessed companies. The determination date for the initial assessment period is anticipated to be December 31, 2011, and the initial assessment period would include part of fiscal year 2012 (July 20, 2012 to September 30, 2012) and the first half of fiscal year 2013 (October 1, 2012 to March 31, 2013). The determination date for the second assessment period, which would include the second half of fiscal year 2013 (April 1, 2013 to September 30, 2013), is anticipated to be December 31, 2012. Thereafter, the determination dates are anticipated to be the June 30 immediately preceding the first assessment period (October 1 to March 31) and the December 31 immediately preceding the second assessment period (April 1 to September 30). A company will be defined as an assessed company for an assessment period if, on the respective determination date, the company is:

- A bank holding company (other than a foreign banking organization), as defined in section 2 of the Bank Holding Company Act of 1956, that has \$50 billion or more in total consolidated assets, as determined based on 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;
- A foreign banking organization that has \$50 billion or more in total consolidated assets, as determined based on the average of total assets at

end of 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) submissions;³ or

- A nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act, as determined by the Council.

The Treasury, in consultation with the Board, considered using only the most recent financial report filed by each bank holding company or foreign banking organization to determine whether the company has total consolidated assets of \$50 billion or more. However, the Treasury was concerned that relying solely on the financial report of the most recent quarter would not always allow sufficient lead time for the company and the Treasury to prepare for a company's inclusion as an assessed company for an upcoming assessment period. For example, as a company grows and approaches the \$50 billion threshold, financial reports of previous quarters may reflect total consolidated assets of slightly less than \$50 billion. As the determination date approaches, the Treasury—and to some extent the company—may not be able to determine whether the financial report for the quarter immediately preceding the determination date, when filed, would report total consolidated assets of \$50 billion or more. By using an average of total consolidated assets of the four most recent quarters, the Treasury and the company should have ample time to prepare for the company's inclusion in the pool.⁴

The Treasury would also apply the following provisions in determining which companies would be assessed companies, based upon the most recent data and information filed with or furnished to the relevant regulator.

- 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 would be the top-tier, regulated holding company.

- 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 would be designated as an assessed company.⁵

- 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), such as may be true for companies that recently converted to a bank holding company, the Treasury would 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.

- 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 Treasury would use comparable financial information that the Treasury may require from the company for this determination.

- Any company that the Treasury determines is an assessed company on the determination date would be an assessed company for the entire assessment period and would be subject to the full assessment fee for that assessment period, regardless of any changes (e.g., structural or financial) that occur during the assessment period that would otherwise affect the financial company's status as an assessed company.

- All organizational information regarding the company that would be used by the Treasury for the purpose of determining whether a company is an assessed company, including information with respect to whether a company has control over a U.S. bank, must have been filed with or furnished to the relevant regulator on or before the determination date, and the effective date of the information must have been on or before the determination date.

³ 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-7Q.

⁴ For the December 31 determination date, the most recent four quarters would be reported as of September 30, June 30, and March 31 of the current year, and December 31 of the prior year. For the June 30 determination date, the most recent four quarters would be reported as of March 31 of the current year, and December 31, September 30, and June 30 of the prior year.

⁵ A company has control over a bank or company if the company has (a) ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities of the bank or company, directly or indirectly or acting through one or more other persons; (b) control in any manner over the election of a majority of the directors or trustees of the bank or company; or (c) the Treasury determines the company exercises, directly or indirectly, a controlling influence over the management or policies of the bank or company. See 12 U.S.C. 1841(a)(2).

Determination of the Assessment Basis

For each assessment period, the OFR would calculate an assessment basis reflecting an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the OFR and the Council as defined in the Dodd-Frank Act.

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 expenses⁶ for the OFR and FSOC, as well as covered FDIC expenses. The OFR and Council each produce an annual budget, and would

independently estimate the budgetary needs appropriate to carry out their responsibilities under the Dodd-Frank Act.⁷ The assessment basis would be the combined total of these budgets, with adjustments made as necessary to the second semiannual assessment to meet necessary expenses.⁸

SAMPLE ASSESSMENT BASIS CALCULATION

6 Months of budgeted operating expenses (OFR & FSOC)	+	12 Months capital expenses (OFR & FSOC)	+	FDIC Payment	-	Projected unused resources at end of last assessment period	=	Assessment basis
Column A		Column B		Column C		Column D		Column E
\$A	+	\$B	+	\$C	-	\$D	=	\$E

For the initial assessment, the assessment basis will cover operating expenses and capital expenses for the period from July 21, 2012 to September 30, 2012, covered FDIC expenses for the period from July 21, 2012 to September

30, 2013, and the first six months of operating expenses for the OFR and the FSOC for FY 2013. To smooth the transition in funding the Financial Research Fund, this assessment will be set to cover budgeted capital

expenditures for only the first seven months of FY 2013 (in addition to the period from July 21, 2012 to September 30, 2012). Replenishment to the full 12-month level for capital expenditures will begin with the second assessment.

SAMPLE INITIAL ASSESSMENT BASIS CALCULATION

Budgeted operating expenses for 7/21/2012-3/31/2013 (OFR & FSOC)	+	Capital expenses for 7/21/2012-4/30/2013 (OFR & FSOC)	+	FDIC Payment in FY 2013	=	Initial assessment basis
Column A		Column B		Column C		Column D
\$A	+	\$B	+	\$C	=	\$D

Allocating the Assessment Basis to Assessed Companies

The following principles inform the Treasury's proposed implementation of Section 155:

- 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.⁹

In evaluating how best to implement the Dodd-Frank Act, the Treasury believes that there is significant benefit to adopting a standard that is transparent, well-understood by market participants, and reasonably estimable. A number of different assessment

schedules for assessing companies were considered, taking into account the considerations described in Section 115 of the Dodd-Frank Act. Ultimately, the Treasury concluded, in balancing the principles above, that it would be reasonable to allocate the assessment basis among assessed companies by means of an assessment fee that is based on the asset size of each assessed company.

Under the proposed rule, the Treasury would allocate the assessment basis to each assessed company in the following manner:

- An assessment fee rate would determine the semiannual assessment fee collected from each assessed company, based on the company's total assessable assets.

• Total assessable assets of each assessed company would be determined by the Treasury on the determination date, as described below.

- For a bank holding company (other than a foreign banking organization), total assessable assets would be equal to total consolidated assets, as reported on the bank holding company's most recent FR Y-9C;

For a foreign banking organization, total assessable assets would be equal to the company's total assets of combined U.S. operations, as determined by the Treasury, based on the combined total assets of the foreign banking organization's U.S. subsidiaries as reported on the foreign banking organization's most recent financial reports.¹⁰ The applicable financial

⁶ Capital expenses follow the OMB Circular A-11 definition of capital assets which include occupancy and information technology costs. Operating expenses exclude capital expenses.

⁷ These budgets are published annually as part of the President's budget submission. The OFR budget is determined by the Director in consultation with the Chair of the Council. The Council budget is determined and approved by the Council.

⁸ Any change from the previously approved budget for the OFR must be approved by the Director in consultation with the Chair of the FSOC; any change in the budget for the FSOC must be approved by the FSOC.

⁹ Section 115(a)(2)(A) describes the factors that the Council should consider in making recommendations regarding enhanced prudential standards, it reads: "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."

¹⁰ Total assets of combined U.S. operations would be comprised of the foreign banking organization's

reports of foreign banking organizations used to determine the company's total assets of combined U.S. operations would include the following reports, as applicable:

- FR Y-9C, Parent Company Only Financial Statements for Large Bank Holding Companies (FR Y-9LP), or Parent Company Only Financial Statements for Small Bank Holding Companies (FR Y-9SP) for assets of bank holding companies,
- Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) for assets of U.S. branches and agencies of foreign banks,
- Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031) for assets of commercial banks and trust companies not reported in the consolidated assets of a bank holding company,
- Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) for assets of commercial banks and trust companies not reported in the consolidated assets of a bank holding company,
- Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b) for assets of Edge and agreement corporations not reported in the consolidated assets of a bank holding company,
- Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y-7N/FR Y-7NS) for nonbank assets not held under a U.S. bank holding company,
- FOCUS Report, Part II (SEC1695) and FOCUS Report Part IIa (SEC1696) for Broker/Dealer assets not reported in the consolidated assets of a bank holding company;
- For a nonbank financial company required to be supervised by the Board under section 113 of the Dodd-Frank Act, assessable assets would be calculated on the basis of reported total consolidated assets, if the nonbank financial company is a U.S. company, or on the basis of the company's total assets of combined U.S. operations, if the nonbank financial company is a foreign company;¹¹

U.S. entities, including any bank holding companies on a consolidated basis, as well as any U.S. entities held outside of a bank holding company, including branches and agencies, broker/dealers, commercial banks or savings associations, Edge or agreement corporations, and any nonbank entities, but excluding any offshore branches.

¹¹To date, the Council has not made a determination regarding the applicability of Board supervision under section 113 for a nonbank financial company. As the Council begins to make determinations regarding nonbank financial companies under section 113, Treasury will review the methodology for determining the assessment fee

○ In situations where a company does not file, or has not filed, the applicable reports referenced above or in situations where a company uses a financial reporting methodology other than U.S. GAAP to report on its U.S. operations, the Treasury would use other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings or any comparable financial information, that the Treasury may require from the company to determine the company's total assessable assets.

- Assessed companies would include:
 - U.S. bank holding companies having total consolidated assets of \$50 billion or more;
 - Foreign banking organizations having total consolidated U.S. assets of \$50 billion or more; and
 - Nonbank financial companies supervised by the Board pursuant to Section 113 of the Dodd-Frank Act.
 - Eligible foreign banking organizations with \$50 billion in total consolidated world-wide assets, but less than \$50 billion in total assessable assets, would not be charged.

Confirmation Statement and Notice of FRF Fees

A Notice of FRF Fees ("Notice of Fees") would be published prior to each assessment period. The Notice of Fees would incorporate an assessment fee schedule providing the rate that would be used to calculate the semiannual assessment fee for each assessed company.

Under the approach outlined in this proposed rule, the semiannual fee that an individual company would be assessed would likely vary, at least somewhat, from one assessment period to the next. A company's assessment fee would depend on the assessment basis for each period, the number of assessed companies that the Treasury determines for the period, and the relative asset size of each company within that pool of assessed companies. To determine the rate for calculating each company's semiannual assessment fee, the Treasury would first need to determine the pool of assessed companies and those companies' total assessable assets. The rate would be modified each assessment period to produce assessment fees that, when aggregated for all assessed companies, would equal the assessment basis for the respective assessment period.

Because of the role of the pool of assessed companies in determining the rate used for the assessment fee

for these companies to determine if any changes in approach are needed.

schedule, companies identified as assessed companies will have an opportunity to contest Treasury's determination. Each company that the Treasury determines is an assessed company for the assessment period would be sent a confirmation statement about two weeks after the determination date, but no later than 30 calendar days prior to the first day of an assessment period. The confirmation statement would confirm that the company had been determined by the Treasury to be an assessed company and would state the total assessable assets that the Treasury determined would be used for calculating the company's semiannual assessment. Companies may contest Treasury's determination of the company as an assessed company or the Treasury's determination of the company's total assessable assets by providing an appeal to the Treasury. Treasury must receive such notice within 14 calendar days of the date of the confirmation statement to be considered.

To contest any aspect of the confirmation statement, the company would be required to submit to the Treasury a written request for redetermination that would need to include all the pertinent facts that would be necessary for the Treasury to consider in a redetermination. If the Treasury does not receive a written request for redetermination from a company within 14 calendar days of the date of the confirmation statement, the company would be invoiced, and subsequently charged, for the semiannual assessment fee calculated from the company's total assessable assets reflected in the confirmation statement. If the Treasury receives a written request for redetermination from a company within the 14 calendar day period, the Treasury would consider the company's request and respond with the results of a redetermination no later than 14 calendar days, if the Treasury concludes that a redetermination is warranted.

After the determination date, should a company restate its submission of any financial report described in this rule in a manner that either materially increases or decreases the company's total consolidated assets or total assessable assets, the Treasury would not adjust its determination of a company as an assessed company, its determination of the company's total assessable assets, or the resulting semiannual assessment fee for the assessment period. Since this proposed rule is designed to allocate the transfers to the Treasury necessary to support the duties of the FSOC and the OFR during

each period, changes to one company's assessment for a particular period would necessitate a change in all the other companies' assessments so that the aggregate of all assessment fees equaled 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 does reserve the right to correct an assessment to a company if the original assessment is found to have been made based upon materially misrepresented or misstated information.

Treasury would publish the Notice of Fees about one month prior to the

payment date for the assessment period, once the Treasury has assured its determination of the pool of assessed companies for the assessment period.

For the initial assessment period including the end of fiscal year 2012 (July 20, 2012 to September 30, 2012) and first half of fiscal year 2013 (October 1, 2012 to March 31, 2013), the corresponding confirmation statement would be sent to the assessed companies on the day the final rule is published and Treasury will work with the companies to verify the total assessable assets to be used for calculating the company's assessment. The corresponding Notice of Fees would be published about one month prior to the first payment, which would be due on the date the rule becomes in effect.

Assessment Fee Rate

An assessment fee rate published prior to each assessment period would

determine the semiannual assessment fee that the Treasury would collect from each assessed company based on their total assessable assets as of the determination date.

- The Treasury would publish the assessment fee rate for each assessment period as part of the Notice of Fees.
- To determine the assessment fee, a company's total assessable assets would be multiplied by the assessment fee rate. The resulting product would be the amount of the semiannual assessment fee for that company.

For example, if the assessment basis was \$10, and total assessable assets were \$1,000, the assessment fee rate would be one percent. Because of the anticipated year-to-year variability in the budget need of OFR and FSOC, the assessment fee rate may change over time.

SAMPLE ASSESSMENT FEE SCHEDULE

Total assessable assets	x	Rate	=	Semiannual assessment fee
Column A		Column B		Column C
\$A	x	B	=	\$C

Billing & Collection of Assessment Fees

Prior to each assessment period, after determining the pool of assessed companies and publishing an assessment fee rate, the Treasury would

calculate the assessment fee for each assessed company, send an electronic billing notification to each assessed company, and, on the payment date, initiate a direct debit to each company's

account through www.pay.gov to collect the assessment fee.

The table below shows proposed 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 ..	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).	December 31	About two weeks after the determination date.	March 15 (or prior business day).
2nd semiannual Assessment (October–March).	June 30	September 15 (or prior business day).

* No later than 30 days prior to the first day of an assessment period.

** Rate published in the Notice of Fees.

The first time a company is determined an assessed company, Treasury will send, in conjunction with the confirmation statement, instructions on how to establish an account with www.pay.gov for direct debits. As part of these instructions, each assessed company would be required to designate a deposit account and authorize the Treasury to initiate an electronic debit transaction from that account to satisfy the assessment fee by

completing the FRF Assessment Fee Agreement Form ("agreement form"). The agreement form asks for contact information for the account holder, including the appropriate account (ABA) routing number. The agreement form should be completed by the date indicated in the instructions, which would be about two weeks after the confirmation statement is issued and, thereafter, maintained for all subsequent assessment periods for which the

company would be subject to assessment. The agreement form authorizing an electronic debit transaction would remain in effect for all subsequent assessments unless the assessed company or account holder submits a modified agreement form to the Treasury. For the initial assessment period including the end of fiscal year 2012 (July 20, 2012 to September 30, 2012) and first half of fiscal year 2013 (October 1, 2012 to March 31, 2013), the

agreement form would be sent in conjunction with the confirmation statement on the day the final rule is published and Treasury will work with the companies to complete the agreement form.

Fourteen calendar days prior to the payment date, the Treasury will issue an electronic billing notification, and on the payment date, through www.pay.gov, would initiate an electronic debit transaction for each assessed company.

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 proposed rule on small entities. Section 605(b) allows an agency to prepare a certification in lieu of an IRFA if the proposed rule will not have a significant economic impact on a substantial number of small entities. Pursuant to 5 USC 605(b), it is hereby certified that this proposed 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 proposed rule will not apply to small entities and a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

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 filling out the form and submitting it to the Treasury Department would take approximately fifteen minutes. The aggregate paper work burden is estimated at 12.5 hours. We note that this represents a conservative estimate

of administrative burden, 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.

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d).

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to oir_submission@omb.eop.gov. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by March 5, 2012.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

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 proposed 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 proposed rule only U.S.-based assets from 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 met the criteria 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.¹²

¹² 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

3. Baseline

The Dodd-Frank Act requires establishment of the FSOC, the OFR, and the FDIC's orderly liquidation facility. 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. 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.

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

assure that the corresponding assessment fees charged to these companies would be appropriate.

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 proposed 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.

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).¹³ 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 proposed 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.

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 \$600.¹⁴ We note that this represents a conservative estimate of costs as some of these companies may have already

¹³ Semiannual assessments will be set to maintain FRF balance at 12 months of budgeted capital expenses and 6 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), 7 months of budgeted capital expenses and 6 months of budgeted operating expenses for FY 2013.

¹⁴ 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).

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 all eligible bank holding companies, as opposed to just those with \$50 billion in assessable assets. We discuss these alternative approaches below.

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 are based on charges against risk-weighted assets and include additional charges for a mandatory capital conservation buffer and a discretionary countercyclical buffer. The risk-based charges incorporate capital tiers, leverage, credit valuation adjustments, and other factors. In the U.S., 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 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 charged 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 by definition systemically important, and the activities of the FSOC, the OFR, and the FDIC’s orderly liquidation facility 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 proposal 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.

6. Request for Comments

Treasury is seeking comments on all aspects of this proposed rulemaking. Treasury is specifically seeking comment on the following issues:

1. Does the proposed rule provide sufficient time if an assessed company requests redetermination?

2. Does the method for determining the allocation of assessments provide companies with a reasonable ability to estimate or anticipate the assessment?

3. Is the method proposed for consolidation in the case where more

than one top-tier bank holding company has a legal authority of control appropriate?

4. Is the evaluation of alternative approaches considered (in Section III.C.5) appropriate? Please provide specific information and data to support your comment.

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, Treasury proposes to amend Title 31, Chapter I of the Code of Federal Regulations by adding a new part 150 as set forth below.

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 Capital and Asset Information for the Top-tier Consolidated Foreign Banking Organization submissions, or most recent annual submission, 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 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, June 30 of the prior calendar year.

(3) For any semiannual assessment period ending on September 30 of a given calendar year, December 31 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, total consolidated assets, as reported on the bank holding company's most recent FR Y-9C;

(2) For any other bank holding company that has \$50 billion or more in total consolidated assets, the company's total assets of combined U.S. operations, based on the combined total assets of the foreign banking organization's U.S. subsidiaries as reported on the foreign banking organization's most recent financial reports; or

(3) For a nonbank financial company supervised by the Board under section 113 of the Dodd-Frank Act, either total consolidated assets, if the company is a U.S. company, or total assets of combined U.S. operations, 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;

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

(5) Reasonable implementation expenses of the Corporation for the period beginning July 21, 2012 and ending September 30, 2013 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) Reasonable implementation expenses of the Federal Deposit Insurance Corporation for the applicable assessment period 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 the thirtieth calendar day prior to the first day of a semiannual assessment period (or, in the case of the initial assessment period, the effective 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) 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 14 calendar days and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 14 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 previous business day.

Dated: December 22, 2011.

Cyrus Amir-Mokri,

*Assistant Secretary for Financial Institutions,
Department of the Treasury.*

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