FDIC
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990 Division of Insurance and Research

10/8/2015

MEMORANDUM TO: The Board of Directors

FROM: Diane Ellis *Diane Ellis*
Director, Division of Insurance and Research

SUBJECT: Implementing the Dodd-Frank Requirement to Increase the Reserve Ratio from 1.15 Percent to 1.35 Percent

SUMMARY AND RECOMMENDATION

Staff recommends that the FDIC Board of Directors (the Board) authorize publication of the attached notice of proposed rulemaking (NPR or proposal) with a 60-day comment period. The NPR would implement three provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act): (1) raising the minimum reserve ratio for the Deposit Insurance Fund (DIF or fund) to 1.35 percent (from the former minimum of 1.15 percent); (2) requiring that the DIF reserve ratio reach 1.35 percent by September 30, 2020; and (3) requiring that, in setting assessments, the FDIC "offset the effect of [the increase in the minimum reserve ratio from 1.15 percent to 1.35 percent] on insured depository institutions with total consolidated assets of less than $10,000,000,000."

To implement these requirements, the NPR would, in accordance with the FDIC's authority in section 7 of the Federal Deposit Insurance Act (FDI Act), impose a surcharge on the quarterly assessments of insured depository institutions with total consolidated assets of $10 billion or more. The surcharges would begin the calendar quarter after the reserve ratio of the DIF first reaches or exceeds 1.15 percent – the same time that lower regular quarterly deposit insurance assessment (regular assessment) rates take effect under current regulations – or the quarter in which a final rule takes effect, whichever occurs later, and would continue through the quarter that the reserve ratio first reaches or exceeds 1.35 percent. The surcharge would equal an annual rate of 4.5 basis points applied to the institution's assessment base (with certain adjustments described below). Staff expects that these surcharges would commence in 2016 and that they should be sufficient to raise the reserve ratio to 1.35 percent in approximately eight quarters; i.e., before the end of 2018.

If, contrary to staff's expectations, the reserve ratio does not reach 1.35 percent by December 31, 2018 (provided it is at least 1.15 percent), the NPR would impose a shortfall assessment on insured depository institutions with total consolidated assets of $10 billion or more on March 31, 2019.

Concur:

Charles Yi
General Counsel

Because the Dodd-Frank Act requires that the FDIC offset the effect of the increase in the reserve ratio from 1.15 percent to 1.35 percent on insured depository institutions with total consolidated assets of less than $10 billion, the NPR would provide assessment credits to these institutions for the portion of their regular assessments that contributed to growth in the reserve ratio between 1.15 percent and 1.35 percent. The FDIC would apply the credits each quarter that the reserve ratio is at least 1.40 percent.

DISCUSSION

Policy Objectives

The FDIC maintains a DIF in order to assure its capacity to meet its obligations as insurer of deposits and receiver of failed banks.[1] The FDIC considers the adequacy of the DIF in terms of the reserve ratio, which is equal to the DIF balance divided by estimated insured deposits. A higher minimum reserve ratio reduces the risk that losses from bank failures during a downturn will exhaust the DIF and reduces the risk of large, procyclical increases in deposit insurance assessments to maintain a positive DIF balance.

In staff's view, the Dodd-Frank Act requirement to raise the reserve ratio to the minimum of 1.35 percent by September 30, 2020 reflects the importance of building the DIF in a timely manner to withstand future economic shocks. Increasing the reserve ratio faster reduces the likelihood of procyclical assessments, a key policy goal of the FDIC that is supported in the academic literature and acknowledged by banks.[2] In meeting the requirements of the Dodd-Frank Act, staff considered the tradeoff between building the DIF sooner rather than later and the potential cost of higher additional assessments for banks with $10 billion or more in assets.

Both the Dodd-Frank Act and the FDI Act grant the FDIC broad authority to implement the requirement to achieve the 1.35 percent minimum reserve ratio. In particular, under the Dodd-Frank Act, the FDIC is authorized to take such steps as may be necessary for the reserve ratio to reach 1.35 percent by September 30, 2020. Furthermore, under the FDIC's assessment authority in the FDI Act, the FDIC may impose special assessments in an amount determined to be necessary for any purpose that the FDIC may deem necessary. In developing this proposal, staff considered a number of alternatives that are described in the preamble to the NPR.

The purpose of the NPR is to meet the Dodd-Frank Act requirements in a manner that appropriately balances several considerations, including the goal of reaching the minimum reserve ratio reasonably promptly in order to strengthen the fund and reduce the risk of pro-cyclical assessments, the goal of maintaining stable and predictable assessments for banks over

[1] As used in this memorandum, the term "bank" has the same meaning as "insured depository institution" as defined in section 3 of the FDI Act.

[2] In 2011, the FDIC Board of Directors adopted a comprehensive, long-range management plan for the DIF that is designed to reduce procyclicality in the deposit insurance assessment system. Input from bank executives and industry trade group representatives favored steady, predictable assessments and found high assessment rates during crises objectionable. In addition, economic literature points to the role of regulatory policy in minimizing procyclical effects. See, e.g., 75 Fed. Reg. 66272; George G. Pennacchi, 2004. "Risk-Based Capital Standards, Deposit Insurance and Procyclicality," FDIC Center for Financial Research Working Paper No. 2004-05.

time, and the projected effects on bank capital and earnings. The proposed primary mechanism described below for meeting the statutory requirements – surcharges on regular assessments – would ensure that the reserve ratio reaches 1.35 percent without inordinate delay (in 2018) and would ensure that assessments are allocated equitably among banks responsible for the cost of these requirements.

Background

The Dodd-Frank Act gave the FDIC greater discretion to manage the DIF than it had previously, including greater discretion in setting the target reserve ratio, or designated reserve ratio (DRR), which the FDIC must set annually. The FDIC Board has set a 2 percent DRR for each year starting with 2011.[3] The Board has viewed the 2 percent DRR as a long-term goal.

By statute, the FDIC operates under a Restoration Plan while the reserve ratio remains below 1.35 percent. The Restoration Plan, originally adopted in 2008 and subsequently revised, is designed to ensure that the reserve ratio will reach 1.35 percent by September 30, 2020.

In February 2011, the FDIC adopted a final rule that, among other things, contained a schedule of deposit insurance assessment rates that apply to the regular assessments that banks pay. The FDIC noted when it adopted these rates that, because of the requirement making banks with $10 billion or more in assets responsible for increasing the reserve ratio from 1.15 percent to 1.35 percent, "assessment rates applicable to all insured depository institutions need only be set high enough to reach 1.15 percent" before the statutory deadline of September 30, 2020. The February 2011 final rule left to a later date the method for assessing banks with $10 billion or more in assets for the amount needed to reach 1.35 percent.[4]

In the February 2011 final rule, the FDIC also adopted a schedule of lower regular assessment rates that will go into effect once the reserve ratio of the DIF reaches 1.15 percent.[5] These lower regular assessment rates will apply to all banks' regular assessments. Regular assessments paid under the schedule of lower rates are intended to raise the reserve ratio gradually to the long-term goal of 2 percent.

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[3] A DRR of 2 percent was based on a historical analysis as well as on the statutory factors that the FDIC must consider when setting the DRR. In its historical analysis, the FDIC analyzed historical fund losses and used simulated income data from 1950 to 2010 to determine how high the reserve ratio would have to have been before the onset of the two banking crises that occurred during this period to maintain a positive fund balance and stable assessment rates.

[4] The Restoration Plan originally stated that the FDIC would pursue rulemaking on the offset in 2011, but in 2011 the Board decided to postpone rulemaking until a later date.

[5] The FDIC adopted this schedule of lower assessment rates following its historical analysis of the long-term assessment rates that would be needed to ensure that the DIF would remain positive without raising assessment rates even during a banking crisis of the magnitude of the two banking crises of the past 30 years. On June 16, 2015, the Board adopted a notice of proposed rulemaking that would revise the risk-based pricing methodology for established small institutions and would go into effect when the reserve ratio reaches or exceeds 1.15 percent, but would leave the overall range of rates and the assessment revenue expected to be generated unchanged.

In staff's most recent semiannual update of the DIF's loss and income projections in October 2015, staff projects that, under the current assessment rate schedule, the DIF reserve ratio is most likely to reach 1.15 percent in the first quarter of 2016, but may reach that level as early as the fourth quarter of this year.

Description of the Proposal

<u>Surcharges</u>

To implement the requirements of the Dodd-Frank Act and pursuant to the FDIC's authority in section 7 of the FDI Act, the NPR would add a surcharge to the regular assessments of banks with $10 billion or more in assets. The surcharge would begin the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent or the quarter in which a final rule becomes effective, whichever occurs later, and would continue until the reserve ratio first reaches or exceeds 1.35 percent, but no later than the fourth quarter of 2018.[6] The NPR provides that the FDIC would notify those banks that would be subject to the surcharge in any quarter and the amount of such surcharge within the timeframe that applies to notification of regular assessment amounts.[7]

The NPR proposes an annual surcharge rate of 4.5 basis points, which staff expects will be sufficient to raise the reserve ratio from 1.15 percent to 1.35 percent in 8 quarters, before the end of 2018.

Banks Subject to the Surcharge

Under the NPR, the banks subject to the surcharge (large banks) would be determined each quarter based on whether the bank was a "large institution" or "highly complex institution" for purposes of that quarter's regular assessments; however, an insured branch of a foreign bank whose assets as reported in its most recent most recent quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks equaled or exceeded $10 billion would also be a large bank.[8]

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[6] Thus, for example, if the reserve ratio reaches 1.15 percent on March 31, 2016 and a final rule does not become effective until the third quarter of 2016, surcharges would begin effective July 1, 2016.

[7] As with regular assessments, surcharges would be collected one quarter in arrears, based on the bank's previous quarter data and would be due the last day of the quarter. Thus, for example, if the surcharge were in effect for the first quarter of 2017, the FDIC would notify the banks that they are subject to the surcharge and the amount each bank's surcharge obligation no later than June 15, 2017, 15 days before the first quarter 2017 surcharge payment due date of June 30, 2017 date (and the payment due date for first quarter 2017 regular assessments).

[8] A large bank would also include a "small institution" as defined for purposes of regular assessments if, while surcharges were in effect, the small institution was the surviving institution or resulting institution in a merger or consolidation with a large bank or if the small institution acquired all or substantially all of the assets or assumed all or substantially all of the deposits of a large bank.

Banks' Assessment Bases for the Surcharge

Pursuant to the broad authorities under the Dodd-Frank Act and the FDI Act, including the authority to determine the assessment amount, which includes defining an appropriate assessment base for the surcharge (the surcharge base), each large bank's surcharge base for any given quarter would equal its regular assessment base for that quarter with certain adjustments.[9] The first adjustment would add the regular assessment bases for that quarter of any affiliated banks that are not large banks (affiliated small banks).[10] The second adjustment would deduct $10 billion from the resulting amount to produce the surcharge base. In a banking organization that includes more than one large bank, however, the affiliated small banks' regular assessment bases and the $10 billion deduction would be apportioned among all large banks in the banking organization in proportion to each large bank's regular assessment base for that quarter.

Adding the assessment bases of affiliated small banks to those of their large bank affiliates would serve two purposes. First, it would prevent large banks from reducing their surcharges (and shifting costs to other large banks) either by transferring assets and liabilities to existing or new affiliated small banks or by growing the businesses of affiliated small banks instead of the large bank.[11] Second, it would ensure that banking organizations of similar size (in terms of aggregate assessment bases) pay a similar surcharge. In other words, a banking organization with a large bank and one or more affiliated small banks would not have an advantage over a similarly sized banking organization that includes only a large bank but no affiliated small banks. For example, a banking organization that includes a large bank with $45 billion regular assessment base would pay the same as a banking organization that includes a large bank with a $35 billion regular assessment base and two affiliated small banks each with $5 billion regular assessment bases. In this example, the large bank in each organization would pay a surcharge based on a $35 billion assessment base (after deducting $10 billion from the $45 billion total in regular assessment bases).

Although the regular assessment bases of affiliated small banks would be added to those of the large banks for purposes of determining the surcharge base for large banks, only large banks would be assessed the quarterly surcharge and, as described below, all small banks, including small banks affiliated with large banks, would be entitled to credits for the portion of their assessments that contributed to the increase in the reserve ratio from 1.15 percent to 1.35 percent.

Deducting $10 billion from each large bank's assessment base for the surcharge would avoid a "cliff effect" for banks near the $10 billion asset threshold, thereby ensuring equitable treatment. Otherwise, a bank with just over $10 billion in assets would pay significant surcharges, while a bank with $9.9 billion in assets would pay none. The $10 billion reduction

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[9] With the exception of special provisions for custodial banks and bankers banks, the assessment base for regular assessments is average consolidated total assets minus average Tier 1 capital.

[10] As of June 30, 2015, 19 banking organizations had both large and small banks.

[11] Some large banks, however, may be able to shift the burden of the surcharge by transferring assets and liabilities to a nonbank affiliate, or by shrinking or limiting growth.

reduces incentives for banks to limit their growth to stay below $10 billion in assets, or to reduce their size to below $10 billion in assets, solely to avoid surcharges.

Like the proposed treatment of affiliated small banks, allocating the $10 billion deduction among large banks in a single banking organization that includes more than one large bank would ensure that banking organizations of a similar size (in terms of assessment bases) pay a similar surcharge. For example, a banking organization with multiple large banks would not have an advantage over other similarly sized banking organizations that have only one large bank because, instead of deducting $10 billion from each large bank in the organization, the deduction would be apportioned among the multiple affiliated large banks.

Shortfall Assessment

Staff expects that the proposed surcharges combined with regular assessments would raise the reserve ratio to 1.35 percent before December 31, 2018. It is possible, however, that unforeseen events could result in higher DIF losses or faster insured deposit growth than expected, or that banks may take steps to reduce or avoid quarterly surcharges. While not anticipated, these events or actions could prevent the reserve ratio from reaching 1.35 percent by the end of 2018. In this case, provided that the reserve ratio is at least 1.15 percent, the NPR would impose a shortfall assessment on large banks on March 31, 2019 and collect it on June 30, 2019. The aggregate amount of the shortfall assessment would equal 1.35 percent of estimated insured deposits on December 31, 2018 minus the actual fund balance on that date.

If a shortfall assessment were needed, the NPR would impose it on any bank that was a large bank in any quarter during the period that surcharges are in effect (the surcharge period). Each large bank's share of any shortfall assessment would be proportional to the average of its surcharge bases (the average surcharge base) during the surcharge period.

If a bank of any size acquired – through merger or consolidation or acquisition of all or substantially all of the acquired bank's assets – a large bank that had paid surcharges for one or more quarters, the acquiring bank would be subject to a shortfall assessment and its average surcharge base would be increased by the average surcharge base of the acquired bank.[12]

A large bank's share of the total shortfall assessment would equal its average surcharge base divided by the sum of the average surcharge bases of all large banks subject to the shortfall assessment.

[12] With respect to surcharges and shares of any shortfall assessment, a surviving or resulting bank in a merger or consolidation would include any bank that acquires all or substantially all of another bank's assets or assumes all or substantially all of another bank's deposits.

Credits for Small Banks[13]

Under the proposal, while the reserve ratio remains between 1.15 percent and 1.35 percent, some portion of the deposit insurance assessments paid by small banks would contribute to increasing the reserve ratio. To meet the Dodd-Frank Act requirement to offset the effect on small banks of raising the reserve ratio from 1.15 percent to 1.35 percent, staff proposes providing assessment credits (credits) to these banks for the portion of their assessments that contribute to the increase from 1.15 percent to 1.35 percent. For purposes of awarding credits, a small bank would be a bank that was not a large bank in a quarter within the "credit calculation period."[14] The "credit calculation period" covers the period beginning the quarter after the reserve ratio first reaches or exceeds 1.15 percent through the quarter that the reserve ratio first reaches or exceeds 1.35 percent (or December 31, 2018, if the reserve ratio has not reached 1.35 percent by then). The "credit calculation period" covers the period beginning the quarter after the reserve ratio first reaches or exceeds 1.15 percent through the quarter that the reserve ratio first reaches or exceeds 1.35 percent (or December 31, 2018, if the reserve ratio has not reached 1.35 percent by then). Small bank affiliates of large banks would be small banks for purposes of this definition. The NPR would apply credits to reduce future regular assessments.

Aggregate Amount of Credits

To determine the aggregate amount of credits awarded small banks, the NPR proposes that the FDIC would first calculate 0.2 percent of estimated insured deposits (the difference between 1.35 percent and 1.15 percent) on the date that the reserve ratio first reaches or exceeds 1.35 percent.[15] The amount that small banks contributed to this increase in the DIF through regular assessments – and the resulting aggregate amount of credits to be awarded small banks – would equal the small banks' portion of all large and small bank regular assessments during the credit calculation period times an amount equal to the increase in the DIF calculated above less surcharges.

Staff projects that the aggregate amount of credits would be approximately $900 million, but the actual amount of credits may differ.

[13] Large banks would receive no refund or credit if surcharges brought the reserve ratio above 1.35 percent. Thus, for example, if the reserve ratio were at 1.34 percent at the end of September 2018 and were at 1.37 percent at the end of 2018, large banks would receive no refund or credit for the two basis points in the reserve ratio above 1.35 percent. Similarly, large banks would receive no refund or credit if a shortfall assessment brought the reserve ratio above 1.35 percent.

[14] Small banks would not be entitled to any credits for the quarter in which a shortfall was assessed because large banks would be responsible for the entire remaining amount needed to raise the reserve ratio to 1.35 percent.

[15] If the reserve ratio had not reached 1.35 percent by December 31, 2018, the amount calculated would be the increase in the DIF needed to raise the DIF reserve ratio from 1.15 percent to the actual reserve ratio on December 31, 2018; that amount equals the difference between the reserve ratio on that date and 1.15 percent times estimated insured deposits on that date.

Individual Small Banks' Credits

The NPR would award credits to any bank that was a small bank at any time during the credit calculation period. An individual small bank's share of the aggregate credit (a small bank's credit share) would be proportional to its credit base, which would be defined as the average of its regular assessment bases during the credit calculation period.[16, 17]

By making a small bank's credit share proportional to its credit base rather than, for example, its actual assessments paid, the proposal reduces the chances that a riskier bank assessed at higher than average rates would receive credits for these higher rates, thus reducing the incentive for banks to take on higher risk.

Successors

If any bank acquired a bank with credits through merger or consolidation after the DIF reserve ratio reached 1.35 percent, the acquiring bank would acquire the credits of the acquired small bank. Other than through merger or consolidation, credits would not be transferrable. Credits held by a bank that failed or ceased being an insured depository institution would expire.

Use of Credits

After the reserve ratio reaches 1.40 percent (and provided that it remains at or above 1.40 percent), the NPR proposes that the FDIC would automatically apply a small bank's credits to reduce its regular deposit insurance assessment by 2 basis points (annual rate) times its regular assessment base, to the extent that the small bank had sufficient credits remaining to do so. If a small bank's deposit insurance assessment rate were less than 2 basis points (annual rate), the credit would be used to fully offset the bank's quarterly deposit insurance assessment, but the assessment could never be less than zero.[18]

Under the FDI Act, the Board is required to adopt a restoration plan if the reserve ratio falls below 1.35 percent. Allowing credit use only when the reserve ratio is at or above 1.40 percent would provide a cushion for the DIF to remain above 1.35 percent in the event of rapid growth in insured deposits or an unanticipated spike in bank failures, and therefore would reduce the likelihood of triggering the need for a restoration plan.

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[16] When determining the credit base, a small bank's assessment base would be deemed to equal zero for any quarter in which it was a large bank.

[17] Call Report amendments after the payment date for the final quarter of the surcharge period would not affect an institution's credit share.

[18] Staff expects that few small banks will have credits remaining after 12 quarters of credit use. Any remaining credits after 12 quarters of credit use would be used to fully offset a bank's entire deposit insurance assessments in future quarters until credits were exhausted, as long as the reserve ratio exceeded 1.40 percent.

Notices of Credits, Requests for Review and Appeals

The NPR also contains provisions providing for notification to small banks of their credits amounts, and for banks to request review and appeal their credits amounts.

Capital and Earnings Analysis

The FDIC estimates that it would collect approximately $10 billion in surcharges and award approximately $900 million in credits to small banks, although actual amounts could vary from these estimates. The FDIC projects that a shortfall assessment would be unnecessary. For almost all large banks, the effective surcharge annual rate measured against large banks' regular assessment base would be less than the nominal surcharge rate of 4.5 basis points because of the $10 billion deduction. Staff projects that the net effect of the lower assessment rates going into effect when the reserve ratio reaches 1.15 percent and the imposition of the surcharge would result in lower assessments for nearly a third of all large banks.

Consistent with section 7(b)(2)(B) of the FDI Act, staff estimated the effects of a surcharge on the equity capital and earnings of large banks as of June 30, 2015. As of that date, there were 108 large banks.

The analysis revealed no significant capital effects from the surcharge. All large institutions would continue to maintain a 4 percent leverage ratio, at a minimum, both before and after the imposition of the surcharge.

The annual surcharge would also represent only a small percentage of bank earnings for most large banks. On average, the annual surcharge would represent about 2.4 percent of large banks' pre-tax earnings before extraordinary items. The annual surcharge would represent more than 5 percent of annual income for less than 10 percent of large banks and the maximum it would represent at any single bank would be about 9 percent of annual earnings.[19]

Evaluation of the Proposal

In 2011, when the FDIC adopted the lower assessment rate schedule that will go into effect when the reserve ratio reaches 1.15 percent, the FDIC projected that the reserve ratio would reach 1.15 percent at the end of 2018, not long before the statutory deadline for the reserve ratio to reach 1.35 percent. Staff now projects that the reserve ratio is most likely to reach 1.15 percent in the first quarter of 2016, but may reach that level as early as the fourth quarter of this year, leaving additional time for the reserve ratio to reach the statutory target.

In all likelihood, under the proposal, the reserve ratio will reach 1.35 percent not later than the end of 2018. Reaching the statutory target reasonably quickly and in advance of the statutory deadline has benefits. First, it would strengthen the fund so that it could better

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[19] Two large banks were excluded from the analysis. One is an insured branch of a foreign bank and does not report income in its Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The other reported negative income for the 12 months ending June 30, 2015.

withstand an unanticipated spike in losses from bank failures or the failure of one or more large banks.

Second, it would reduce the risk of the banking industry facing unexpected, large assessment rate increases in the future. Once the reserve ratio reaches 1.35 percent, the September 30, 2020 deadline will have been met and will no longer apply. If the reserve ratio later falls below 1.35 percent, even if that occurs before September 30, 2020, the FDIC would have a minimum of eight years to return the reserve ratio to 1.35 percent, reducing the likelihood of a large increase in assessment rates. In contrast, if a spike in losses occurs before the reserve ratio reaches 1.35 percent, the Dodd-Frank Act deadline would remain in place, which could require that the banking industry – including banks with less than $10 billion in assets, if the reserve ratio fell below 1.15 percent – pay for the increase in the reserve ratio within a relatively short time. The proposal, therefore, reduces the risk of higher assessments imposed at a time when the industry might not be as healthy and prosperous and can least afford to pay.

In addition, large banks would account for future surcharges as quarterly expenses, as they do for regular assessments, effectively spreading the cost of the requirement over approximately eight quarters.

Alternatives Considered

In developing this proposal, staff considered, and the NPR discusses, a number of alternatives. One alternative, which would raise the reserve ratio to 1.35 percent more quickly, would be to forego surcharges and impose a one-time assessment, similar to a shortfall assessment, on large banks at the end of the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent. A second alternative would delay the reserve ratio's reaching 1.35 percent until near the statutory deadline by imposing no surcharges, and, if regular assessments do not otherwise raise the reserve ratio to 1.35 percent, by imposing a shortfall assessment shortly before the statutory deadline. Other alternatives discussed are essentially variations of certain aspects of the surcharge proposal.

In staff's view, as described above, the proposal using surcharges appropriately balances several considerations, including the goal of reaching the statutory minimum reserve ratio reasonably promptly in order to strengthen the fund and reduce the risk of pro-cyclical assessments, the goal of maintaining stable and predictable assessments for banks over time, and the projected effects on bank capital and earnings.

Implementation of the Proposed Rule

Staff proposes that a final rule would become effective on the first day of the calendar quarter that begins 30 or more days after publication of a final rule.

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