**Authority:** 12 U.S.C. 1814–1817, 1819–1920, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. In § 345.12:

■ a. Republish the introductory text of paragraph (g);

■ b. Remove the word "or" at the end of paragraph (g)(3);

■ c. Remove the period at the end of paragraph (g)(4)(iii)(B) and add "; or" in its place; and

■ d. Add a new paragraph (g)(5).

The republication and addition read as follows:

**§ 345.12 Definitions.**

* * * * *

(g) *Community development* means:

* * * * *

(5) Loans, investments, and services that—

(i) Support, enable or facilitate projects or activities that meet the "eligible uses" criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or areas outside the bank's assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

* * * * *

**Department of the Treasury**

*Office of Thrift Supervision*

**12 CFR Chapter V**

■ For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations as follows:

## PART 563e—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 563e continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. In § 563e.12:

■ a. Republish the introductory text of paragraph (g);

■ b. Remove the word "or" at the end of paragraph (g)(3);

■ c. Remove the period at the end of paragraph (g)(4)(iii)(B) and add "; or" in its place; and

■ d. Add a new paragraph (g)(5).

The republication and addition read as follows:

**§ 563e.12 Definitions.**

* * * * *

(g) *Community development* means:

* * * * *

(5) Loans, investments, and services that—

(i) Support, enable or facilitate projects or activities that meet the "eligible uses" criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the savings association's assessment area(s) or areas outside the savings association's assessment area(s) provided the savings association has adequately addressed the community development needs of its assessment area(s).

* * * * *

Dated: December 8, 2010.

**John Walsh,**

*Acting Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, December 13, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

Dated at Washington, DC, this 14th day of December 2010.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

Dated: December 9, 2010.

By the Office of Thrift Supervision.

**John E. Bowman,**

*Acting Director.*

[FR Doc. 2010–31818 Filed 12–17–10; 8:45 am]

**BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Part 327**

**RIN 3064–AD69**

## Designated Reserve Ratio

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** To implement a comprehensive, long-range management plan for the Deposit Insurance Fund (DIF or fund), the FDIC is amending its regulations to set the designated reserve ratio (DRR) at 2 percent.

**DATED:** *Effective Date:* January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Munsell St. Clair, Chief, Banking and Regulatory Policy Section, (202) 898–8967, Christopher Bellotto, Counsel, (202) 898–3801, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Governing Statutes*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which was enacted on July 21, 2010, gave the FDIC much greater discretion to manage the DIF, including where to set the DRR. Among other things, Dodd-Frank: (1) Raises the minimum DRR, which the FDIC is required to set each year, to 1.35 percent (from the former minimum of 1.15 percent) and removes the upper limit on the DRR (which was formerly capped at 1.5 percent) and consequently on the size of the fund; [1] (2) requires that the fund reserve ratio reach 1.35 percent by September 30, 2020 (rather than 1.15 percent by the end of 2016, as formerly required); [2] (3) requires that, in setting assessments, the FDIC "offset the effect of [requiring that the reserve ratio reach 1.35 percent by September 30, 2020 rather than 1.15 percent by the end of 2016] on insured depository institutions with total consolidated assets of less than $10,000,000,000"; [3] (4) eliminates the requirement that the FDIC provide dividends from the fund when the reserve ratio is between 1.35 percent and 1.5 percent; [4] and (5) continues the FDIC's authority to declare dividends when the reserve ratio at the end of a

[1] Public Law 111–203, sec. 334(a), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(b)(3)(B)).

[2] Public Law 111–203, sec. 334(d), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(nt)).

[3] Public Law 111–203, sec. 334(e), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(nt)).

[4] Public Law 111–203, sec. 332(d), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(e)).

calendar year is at least 1.5 percent, but grants the FDIC sole discretion in determining whether to suspend or limit the declaration or payment of dividends.[5]

The Federal Deposit Insurance Act (FDI Act) continues to require that the FDIC's Board of Directors consider the appropriate level for the DRR annually and, if changing the DRR, engage in notice-and-comment rulemaking before the beginning of the calendar year.[6]

*B. Notice of Proposed Rulemaking on Assessment Dividends, Assessment Rates and the Designated Reserve Ratio*

In October 2010, the FDIC adopted a Notice of Proposed Rulemaking on Assessment Dividends, Assessment Rates and the Designated Reserve Ratio setting out a comprehensive, long-range management plan for the DIF that was designed to: (1) Reduce the pro-cyclicality in the existing risk-based assessment system by allowing moderate, steady assessment rates throughout economic and credit cycles; and (2) maintain a positive fund balance even during a banking crisis by setting an appropriate target fund size and a strategy for assessment rates and dividends (the October NPR).[7]

During an economic and banking downturn, insured institutions can least afford to pay high deposit insurance assessment rates. Moreover, high assessment rates during a downturn reduce the amount that banks can lend when the economy most needs new lending. For these reasons, it is important to reduce pro-cyclicality in the assessment system and allow moderate, steady assessment rates throughout economic and credit cycles. At a September 24, 2010 roundtable organized by the FDIC, bank executives and industry trade group representatives uniformly favored steady, predictable assessments and found high assessment rates during crises objectionable.[8]

It is also important that the fund not decline to a level that could risk undermining public confidence in Federal deposit insurance. Furthermore, although the FDIC has significant authority to borrow from the Treasury to cover losses when the fund balance approaches zero, the FDIC views the Treasury line of credit as available to cover unforeseen losses, not as a source of financing projected losses.

Setting the DRR at 2 percent is an integral part of the FDIC's comprehensive, long-range management plan for the DIF. A fund that is sufficiently large is a necessary precondition to maintaining a positive fund balance during a banking crisis and allowing for long-term, steady assessment rates.

In developing the long-range management plan, the FDIC analyzed historical fund losses and used simulated income data from 1950 to the present to determine how high the reserve ratio would have had to be before the onset of the two banking crises that occurred during this period to maintain a positive fund balance and stable assessment rates. The analysis, which was detailed in the October NPR, concluded that moderate, long-term average industry assessment rates, combined with an appropriate dividend or assessment rate reduction policy, would have been sufficient to prevent the fund from becoming negative during the crises. The FDIC also found that the fund reserve ratio would have had to exceed 2 percent before the onset of the crises to achieve these results.[9]

Based on this analysis and the statutory factors that the FDIC must consider when setting the DRR, the FDIC proposed setting the DRR at 2 percent. The FDIC noted that it views the proposed 2 percent DRR as both a long-term goal and the *minimum* level needed to withstand a future crisis of the magnitude of past crises. Because analysis shows that a reserve ratio higher than 2 percent increases the chance that the fund will remain positive during such a crisis, the FDIC does not view the 2 percent DRR as a cap on the size of the fund.

In the October NPR, pursuant to its analysis and its statutory authority to set risk-based assessments, the FDIC also proposed assessment rate schedules. The FDIC proposed that a moderate assessment rate schedule based on the long-term average rate needed to maintain a positive fund balance take effect when the fund reserve ratio exceeds 1.15 percent.[10] This schedule would be lower than the current schedule. In addition, to increase the probability that the fund reserve ratio will reach a level sufficient to withstand a future crisis, the FDIC, based on its authority to suspend or limit dividends, proposed suspending dividends when the fund reserve ratio exceeds 1.5 percent.[11] In lieu of dividends, and pursuant to its authority to set risk-based assessments, the FDIC proposed to adopt progressively lower assessment rate schedules when the reserve ratio exceeds 2 percent and 2.5 percent. These lower assessment rate schedules would serve much the same function as dividends, but would provide more stable and predictable assessment rates.

*C. Notice of Proposed Rulemaking on the Assessment Base, Assessment Rate Adjustments and Assessment Rates*

In a notice of proposed rulemaking adopted by the FDIC on November 9, 2010 (the Assessment Base NPR), the FDIC proposed to amend the definition of an institution's deposit insurance assessment base consistent with Dodd-Frank, modify the unsecured debt adjustment and the brokered deposit adjustment in light of the changes to the assessment base, add an adjustment for long-term debt held by an insured depository institution where the debt is issued by another insured depository institution, and eliminate the secured liability adjustment. The Assessment Base NPR also proposed revisions to the deposit insurance assessment rate schedules, including the rate schedules proposed in the October NPR, in light of the changes to the assessment base.

*D. Update of Historical Analysis of Loss, Income and Reserve Ratios*

The analysis set out in the October NPR sought to determine what assessment rates would have been needed to maintain a positive fund

[5] Public Law 111–203, sec. 332, 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(e)(2)(B)).

[6] In setting the DRR for any year, the FDIC must consider the following factors:

(1) The risk of losses to the DIF in the current and future years, including historic experience and potential and estimated losses from insured depository institutions.

(2) Economic conditions generally affecting insured depository institutions so as to allow the DRR to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as the Board determines to be appropriate.

(3) That sharp swings in assessment rates for insured depository institutions should be prevented.

(4) Other factors as the FDIC's Board may deem appropriate, consistent with the requirements of the Reform Act.

12 U.S.C. 1817(b)(3)(B).

[7] 75 FR 66262 (Oct. 27, 2010). Pursuant to the comprehensive plan, the FDIC also adopted a new Restoration Plan to ensure that the DIF reserve ratio reaches 1.35 percent by September 30, 2020, as required by Dodd-Frank. 75 FR 66293 (Oct. 27, 2010).

[8] The proceedings of the roundtable can be viewed in their entirety at: *http://www.vodium.com/MediapodLibrary/index.asp?library=pn100472_fdic_RoundTable.*

[9] The historical analysis contained in the October NPR is constructively included.

[10] Under section 7 of the FDI Act, the FDIC has authority to set assessments in such amounts as it determines to be necessary or appropriate. In setting assessments, the FDIC must consider certain enumerated factors, including the operating expenses of the DIF, the estimated case resolution expenses and income of the DIF, and the projected effects of assessments on the capital and earnings of insured depository institutions.

[11] 12 U.S.C. 1817(e)(2), as amended by sec. 332 of the Dodd-Frank Act.

balance during the last two crises. This analysis used an assessment base derived from domestic deposits to calculate the assessment income. Dodd-Frank, however, required the FDIC to change the assessment base to average consolidated total assets minus average tangible equity. The FDIC therefore has undertaken additional analysis to determine how the results of the original analysis would change had the new assessment base been in place from 1950 to 2010. Due to the larger assessment base resulting from Dodd-Frank, the constant nominal assessment rate required to maintain a positive fund balance from 1950 to 2010 is 5.29 basis points (compared with 8.47 basis points using a domestic-deposit-related assessment base). (*See* Chart 1.)

The assessment base resulting from Dodd-Frank, had it been applied to prior years, would have been larger than the domestic-deposit-related assessment base, and the rates of growth of the two assessment bases would have differed both over time and from each other. At any given time, therefore, applying a constant nominal rate of 8.47 basis points to the domestic-deposit-related assessment base would not necessarily yield exactly the same revenue as applying 5.29 basis points to the Dodd-Frank assessment base.

Despite these differences, the new analysis applying a 5.29 basis point assessment rate to the Dodd-Frank assessment base results in peak reserve ratios prior to the two crises similar to those seen when applying an 8.47 basis point assessment rate to a domestic-deposit-related assessment base.[12] (*See* Chart 2.) Both analyses show that the fund reserve ratio would have needed to be approximately 2 percent or more before the onset of the crises to maintain both a positive fund balance and stable assessment rates, assuming, in lieu of dividends, that the long-term industry average nominal assessment rate would be reduced by 25 percent when the reserve ratio reached 2 percent, and by 50 percent when the reserve ratio reached 2.5 percent.[13] Eliminating dividends and reducing rates successfully limits rate volatility whichever assessment base is used.

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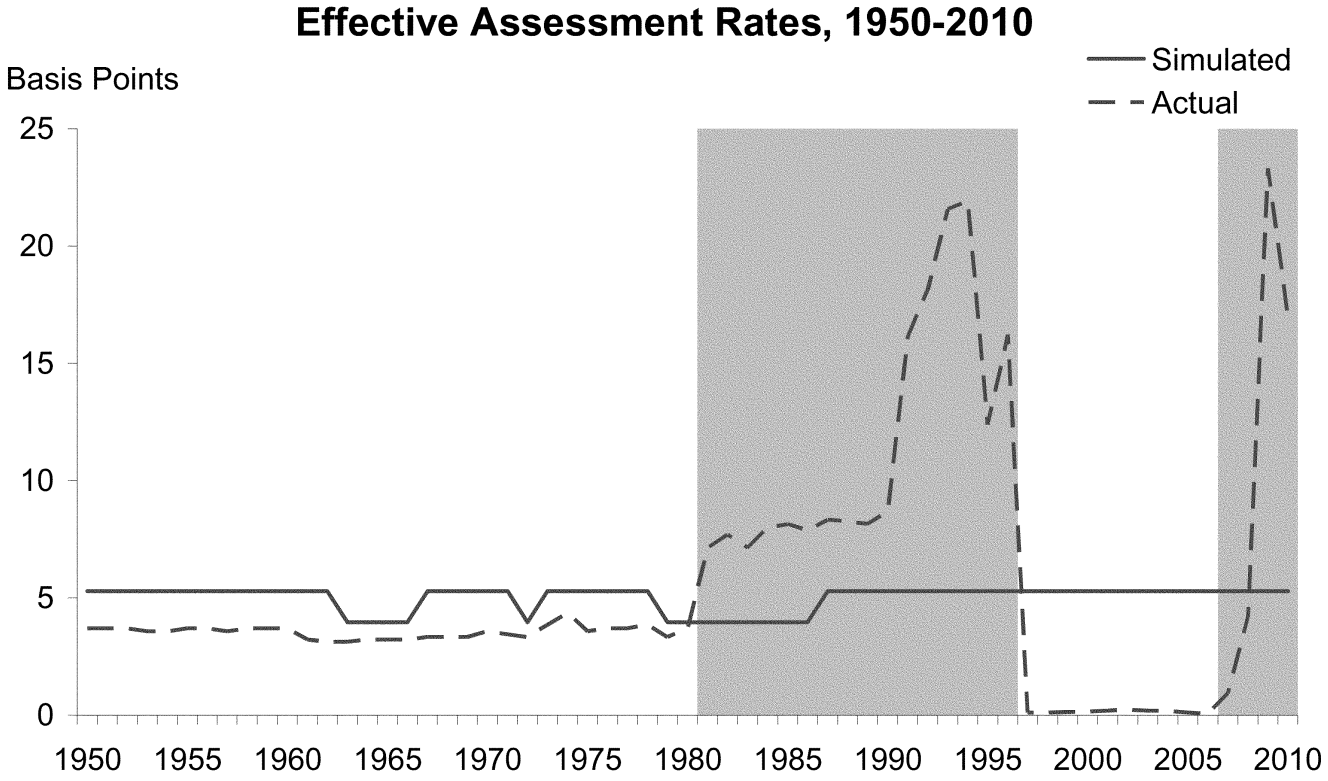
Chart 1



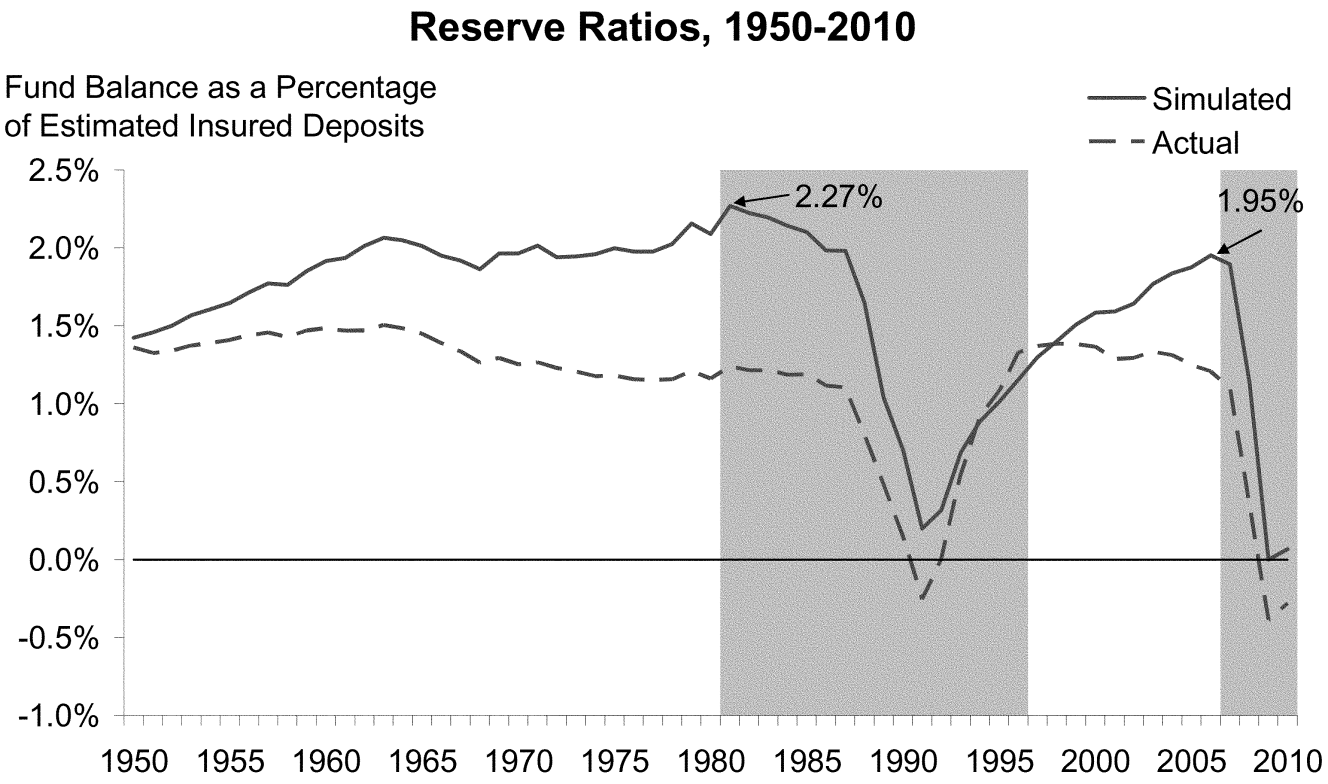

Source: FDIC, data through June 30, 2010.

Note: Effective assessment rate reduced by 25 percent when reserve ratio reaches 2 percent and 50 percent when reserve ratio reaches 2.5 percent, with 5.29 basis point average nominal assessment rate using new assessment base. Shaded areas denote periods of crisis and associated high assessment rates.

[12] Using the domestic-deposit-related assessment base, reserve ratios would have peaked at 2.31 percent and 2.01 percent before the two crises. (*See* Chart G in the October NPR.) Using the Dodd-Frank assessment base, reserve ratios would have peaked at 2.27 percent and 1.95 percent before the two crises.

[13] Dodd-Frank provides that the assessment base be changed to average consolidated total assets minus average tangible equity. *See* Public Law 111–203, sec. 331. For this simulation, from 1990 to 2010, the assessment base equals year-end total industry assets minus Tier 1 capital. For earlier years (before the Tier 1 capital measure existed) it equals year-end total industry assets minus total equity. Other than as noted, the methodology used in the additional analysis was the same as that used in the October NPR.

Chart 2




Source: FDIC, data through June 30, 2010.
Note: Effective assessment rate reduced by 25 percent when reserve ratio reaches 2 percent and 50 percent when reserve ratio reaches 2.5 percent, with 5.29 basis point average nominal assessment rate using new assessment base. Shaded areas denote periods of crisis and associated high assessment rates.

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## II. Comments Received

The FDIC sought comments on every aspect of the proposed rule. The FDIC received 4 comments related to setting the DRR, which are discussed in section IV below.

## III. The Final Rule

### *A. Scope*

The FDIC is finalizing only the portion of the October NPR related to setting the DRR. The FDIC will consider including the remaining subject matter of the October NPR in a future final rule.

### *B. DRR*

As discussed above, Dodd-Frank eliminates the previous requirement to set the DRR within a range of 1.15 percent to 1.50 percent, directs the FDIC to set the DRR at a minimum of 1.35 percent (or the comparable percentage of the assessment base as amended by Dodd-Frank) and eliminates the maximum limitation on the DRR.[14] Dodd-Frank retains the requirement that the FDIC designate and publish a DRR before the beginning of each calendar year.[15]

Also, as discussed above, Dodd-Frank retains the requirement that the FDIC set and publish a DRR annually.[16] The FDIC must set the DRR in accordance with its analysis of the following statutory factors: Risk of losses to the DIF; economic conditions generally affecting insured depository institutions; preventing sharp swings in assessment rates; and any other factors that the FDIC may determine to be appropriate and consistent with these factors.[17] The analysis that follows considers each statutory factor, including one "other factor": Maintaining the DIF at a level that can withstand substantial losses, consistent with the FDIC's comprehensive, long-term fund management plan.

Based upon the following analysis of the statutory factors that the FDIC must consider when setting the DRR, the historical analysis contained in the October NPR, and the updated analysis described above, the FDIC has concluded that the DRR should be set at 2 percent.[18] As the updated historical analysis above demonstrates, the recommended DRR is the minimum reserve ratio needed to withstand a future banking crisis. A 2 percent reserve ratio prior to past crises would

[14] Public Law 111–203, sec. 334(a), 124 Stat. 1376, 1539 (to be codified at 12 U.S.C. 1817(b)(3)(B)).

[15] 12 U.S.C. 1817(b)(3)(A).

[16] 12 U.S.C. 1817(b)(3).

[17] The statutory factors that the FDIC must consider are set out in a footnote above. The FDIC considered these factors when it approved the October NPR. While the analysis of the factors has been updated, the FDIC's conclusion remains the same.

[18] The 2 percent DRR is expressed as a percentage of estimated insured deposits. Dodd-Frank requires the FDIC to also make available the DRR using the new assessment base definition. The FDIC does not have all the information necessary to calculate the new assessment base; however, the FDIC estimates that as of September 30, 2010, a DRR of 2 percent of estimated insured deposits would have been approximately equivalent to a DRR of 0.9 percent of the new assessment base.

barely have prevented the fund from becoming negative while maintaining steady assessment rates. A larger fund would have allowed the FDIC to have maintained a positive balance and the fund would have remained positive even had losses been higher. Consequently, the FDIC views the 2 percent DRR as a long-range, *minimum* target.

Analysis of Statutory Factors

Risk of Losses to the DIF

During 2009 and 2010, losses to the DIF have been high. As of September 30, 2010, both the fund balance and the reserve ratio continue to be negative after reserving for probable losses from anticipated bank failures. During the current downturn, the fund balance has fallen below zero for the second time in the history of the FDIC.[19] The FDIC projects that, over the period 2010 through 2014, the fund could incur approximately $50 billion in failure-resolution costs. The FDIC projects that most of these costs will occur in 2010 and 2011.

In the FDIC's view, the high losses experienced by the DIF during the crisis of the 1980s and early 1990s and during the current economic crisis (and the potential for high risk of loss to the DIF over the course of future economic cycles) suggest that the FDIC should, as a long-range, minimum goal and in conjunction with the proposed dividend and assessment rate policy, set a DRR at a level that would have maintained a zero or greater fund balance during both crises so that the DIF will be better able to handle losses during periods of severe industry stress.

Economic Conditions Affecting FDIC-Insured Institutions

Concerns of a double-dip recession have receded and the U.S. economic recovery remains on track. Consensus forecasts call for the economy to expand by about 2.0 percent in the second half of 2010 and 2.5 percent in 2011. Consumer spending is growing gradually, but remains constrained by high unemployment and modest income growth. Business spending on equipment and software is rising, and corporate profits are near pre-recession levels.

The economic recovery is still exposed to downside risks—such as high unemployment and weak real estate markets—that create a challenging operating environment for insured depository institutions. The housing sector showed signs of stabilization after the expiration of Federal tax credits, but recent concerns over banks' foreclosure processes have introduced a new obstacle to the housing market recovery. Commercial real estate loan portfolios remain under pressure as unemployment dampens business and consumer demand. Even as credit markets have begun to recover amid low interest rates, bank lending activity remains constrained by weak loan demand and banks' reduced tolerance for risk. Industry-wide, loans outstanding fell slightly in the third quarter.

As of September 30, there were 860 insured depository institutions on the problem list, representing 11 percent of all insured depository institutions. Through November 26, 149 insured depository institutions have failed this year, exceeding the 140 failures that occurred in 2009; however, the total assets of failed institutions remain well below last year's total.

Consistent with the economic recovery, the financial performance of insured depository institutions has shown recent signs of improvement. The industry reported three straight profitable quarters in 2010. The industry's aggregate net income was $14.5 billion in third quarter 2010, up dramatically from just $2.0 billion a year ago. More than 80 percent of insured depository institutions were profitable in the quarter, and almost two-thirds reported year-over-year earnings growth. While insured depository institutions continue to experience significant credit distress, loan losses and delinquencies may have peaked.

Although these short-term economic conditions can inform the FDIC's decision on the DRR, they become less relevant in setting the DRR when, as now, the DIF is negative. In this context, the FDIC believes that the DRR should be viewed in a longer-term perspective. Twice within the past 30 years, serious economic dislocations have resulted in a significant deterioration in the condition of many insured depository institutions and in a consequent large number of insured depository institution failures at high costs to the DIF. In the FDIC's view, the DRR should, therefore, be viewed as a minimum goal needed to achieve a reserve ratio that can withstand these periodic economic downturns and their attendant insured depository institution failures. Taking these longer-term economic realities into account, a prudent and consistent policy would set the DRR at a minimum of 2 percent, since that is the lowest level that would have prevented a negative fund balance at any time since 1950.

Preventing Sharp Swings in Assessment Rates

Current law directs the FDIC to consider preventing sharp swings in assessment rates for insured depository institutions. Setting the DRR at 2 percent as a minimum goal rather than a final target would signal that the FDIC plans for the DIF to grow in good times so that funds are available to handle multiple bank failures in bad times. This plan would help prevent sharp fluctuations in deposit insurance premiums over the course of the business cycle. In particular, it would help reduce the risk of large rate increases during crises, when insured depository institutions can least afford an increase.

Maintaining the DIF at a Level That Can Withstand Substantial Losses

The FDIC has considered one additional factor when setting the DRR: Viewing the DRR as a minimum goal that will allow the fund to grow sufficiently large in good times that the likelihood of the DIF remaining positive during bad times increases, consistent with the FDIC's comprehensive, long-term fund management plan. Having adequate funds available when entering a financial crisis should reduce the likelihood that the FDIC would need to increase assessment rates, levy special assessments on the industry or borrow from the U.S. Treasury.

Balancing the Statutory Factors

In the FDIC's view, the best way to balance all of the statutory factors (including the "other factor" identified above of maintaining the DIF at a level that can withstand the substantial losses associated with a financial crisis) is to set the DRR at 2 percent.

## IV. Summary of Comments

The FDIC requested comments on all aspects of the proposed rule. This section discusses comments related to setting the DRR, including the historical analysis of losses. Comments on other subjects of the October NPR will be considered in the context of formulating a final rule on those subjects.

One trade group specifically endorsed setting the DRR at 2 percent. It stated that it agreed with the FDIC's goal of seeking to maintain a positive fund balance during an economic downturn. The trade group further stated that the FDIC's proposal "would reduce the pro-cyclicality in the existing system and achieve moderate, steady assessment rates through economic and credit

[19] The FDIC first reported a negative fund balance in the early 1990s during the last banking crisis.

cycles while also maintaining a positive DIF balance during an economic downturn or even a banking crisis."

Three other trade groups, however, suggested that a DRR of 2 percent would be excessive. Two trade groups focused on recent changes in law, including the reforms contained in Dodd-Frank, which, they argued, lower the probability of an institution's failure and the FDIC's loss given failure.[20] The commenters argued that Dodd-Frank and Basel III make the likelihood of another crisis small and should allow the FDIC to weather another economic downturn with less funding. Therefore, the commenters argued, the potential exists for the FDIC to collect a large reserve that would grow without limit and remain in the DIF for an extended period of time. The commenters argued that these funds would best be used in the banking system where they could be lent to help fuel the economy.

The FDIC believes the proposed DRR complements Dodd-Frank and Basel III; all three make the financial sector more resilient, reduce the likelihood of future crises or their systemic damage should they occur, and make financial regulation more counter-cyclical. While the FDIC hopes that these reforms will make financial crises less likely and the FDIC's losses smaller, it would be imprudent for the FDIC to assume that banking crises are a thing of the past. The current crisis occurred despite extensive legislative changes to the banking and regulatory system that were made in response to the crisis of the late 1980s and early 1990s. The FDIC's analysis shows that the reserve ratio would need to be at least 2 percent to survive a crisis similar to the last two crises. Given the FDIC's goal of avoiding pro-cyclical assessments, the FDIC does not believe that this level of reserves is excessive.

Historically, the reserve ratio has never even reached 2 percent. Given the proposed rate reductions once the reserve ratio reaches 2 percent and 2.5 percent, combined with the near certainty that higher than average losses will occur at some time in the future, the FDIC has limited how much the fund can grow. This graduated approach to curbing fund growth is consistent with Congress's removal of the hard cap on the fund's size.

A fund reserve ratio in excess of 2 percent would not inappropriately curb credit availability. As described in the proposed rule, the FDIC estimates that the reserve ratio will not reach 2 percent for about 17 years; that estimate assumes a long period of economic expansion after the current recession ends. After a lengthy expansion, the greater risk to the banking industry and the economy is overextension of credit, not insufficient credit.

A trade group argued that the FDIC's historical analysis ignores the overreserving for contingent fund losses that occurred in 1990, which, had it not occurred, would have meant that the reserve ratio would not have needed to be 2.31 percent to maintain a positive fund. The trade group also noted that there may have been overreserving for contingent fund losses when the reserve ratio reached its low point earlier this year.

The historical analysis in the October NPR used reported contingent loss reserves, which were created in accordance with GAAP. That these reserves were not (and may not be) perfect predictors of loss merely reflects the uncertainty inherent in predicting the future. In other ways, the historical analysis in the October NPR used extremely conservative loss assumptions. The analysis excluded the great majority of losses from thrift failures during the crisis of the late 1980s and early 1990s. The analysis also excluded losses that would have occurred but for extraordinary government assistance during the recent crisis. Moreover, the analysis sought to determine the reserve ratio needed before a crisis to keep the fund from becoming negative. Public confidence in the strength of the fund increases when the fund has a significant positive balance (rather than simply not being negative).

A trade group also argued that the FDIC's analysis ignored the large amount of interest income that would be generated by a fund with a reserve ratio of 2 percent, and that this would be particularly significant during periods of stability and low losses to the fund. In fact, however, the FDIC's analysis did not ignore interest income. The analysis simulated fund growth by combining assessment income and investment income earned based on historical interest rates. The analysis covered periods of stability and low losses as well as crisis periods accompanied by high losses. It covered periods of high interest rates as well as low rates. The simulated fund also covered an extended period during which the fund reached or exceeded a reserve ratio of 2 percent. (*See* Chart 2 above.) This period was not accompanied by exponential fund growth, and fund growth was limited by the use of assessment rate reductions. Had such a high reserve ratio been uninterrupted for the entire 60-year period, the fund might gradually have reached a size not warranted by historical experience, but, historically, periods of stability are not the norm—rather they are interrupted by periods of high losses when the fund's growth decreases significantly.

Two trade groups were concerned that a large fund would become a target for funding activities unrelated to protecting insured deposits. This argument has been raised periodically over many years as a justification to keep assessments low and the fund size small. However, there is little evidence that this is a serious risk. The FDIC has consistently argued against legislative or other proposals that would expand the use of the fund beyond insured depositor protection.

Two trade groups also noted that the National Credit Union Share Insurance Fund (NCUSIF) reserve ratio is limited by statute to 1.5 percent and argued that a higher DIF reserve ratio could exacerbate competitive imbalances. The presence or absence of a cap on fund size is but one of several statutory differences between FDIC-insured institutions and Federally insured credit unions. The FDIC has proposed lower assessment rates that would go into effect when the reserve ratio reaches 1.15 percent. The FDIC believes that these assessment rates are sufficiently moderate that any competitive effect is likely to be small. Moreover, this difference is likely to be more than offset by the lower assessment rates that the FDIC should be able to maintain during a downturn. In 2010, for example, credit unions paid on average slightly less than 26 basis points of insured shares. Since almost all credit union deposits are insured, insured shares are analogous to domestic deposits as an assessment base.[21] In comparison, the FDIC estimates that, in 2010, banks and thrifts will have paid an average assessment rate of slightly less than 18 basis points on a domestic-deposit-related assessment base. Under the assessment rates that the FDIC proposed in the October NPR, banks and thrifts would pay much lower average assessment rates during a future crisis similar in magnitude to the current one. The proposed system is less pro-cyclical than both the existing system and the NCUSIF system, which is a positive

[20] One commenter suggested setting the DRR at 1.5 percent at most, and that the FDIC determine whether any additional increases beyond that point are necessary based on a contemporaneous evaluation of the facts and circumstances.

[21] The average rate in the text includes premiums paid to the National Credit Union Share Insurance Fund and assessments paid to the Temporary Corporate Credit Union Stabilization Fund.

feature when considered across a complete business cycle.

## V. Regulatory Analysis and Procedure

### *A. Administrative Procedure Act*

The final rule setting the DRR at 2 percent will become effective on January 1, 2011. The Administrative Procedure Act (APA) provides that: "The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * (3) as otherwise provided for by the agency for good cause found and published with the rule."[22] The FDIC has determined that good cause exists for waiving the customary 30-day delayed effective date. The FDI Act requires that, "[b]efore the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated" and that "[a]ny change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment."[23] The FDIC will have fulfilled its statutory obligations in setting a DRR upon publication of this final rule in the **Federal Register** or on the FDIC's Web site before January 1, 2011; accordingly, the inclusion of a particular effective date is incidental to this rulemaking. Nevertheless, in the interests of consistency and to avoid any uncertainty or confusion regarding the applicability of the new DRR, the FDIC is invoking the good cause exception so that the final rule setting the DRR at 2 percent will become effective on January 1, 2011.

Dodd-Frank, which became law on July 21, 2010, raised the minimum DRR from 1.15 percent to 1.35 percent, which required the FDIC to change the DRR. In determining the appropriate DRR, the FDIC has conducted the historical analyses described in this rulemaking and in the October NPR. The FDIC has also considered the increase in the DRR in the context of other comprehensive changes made by Dodd-Frank. Although the FDIC moved expeditiously to determine an appropriate DRR, began the rulemaking process as soon as possible, and provided for a comment period of 30 days (as opposed to a comment period of 45 or 60 days) when issuing the October NPR, insufficient time remained to adopt a final rule more than 30 days before January 1, 2011.

As stated above, the FDIC is required to designate and publish the DRR before the beginning of each calendar year; a regulatory effective date is incidental to such designation and publication. The DRR does not, by itself, either by statute or regulation, serve as a trigger in assessment rate determinations, recapitalization of the fund, or declaration of dividends. Further, the DRR imposes no obligations and provides no benefits, and consequently no entity is prejudiced, inconvenienced or benefitted by the January 1, 2011 effective date; rather, the FDIC is establishing the effective date as January 1, 2011 to avoid any possible uncertainty or confusion.

For the foregoing reasons, the FDIC finds that good cause exists to justify a January 1, 2011 effective date for the DRR final rule.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), each Federal agency must prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule,[24] or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[25] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of the RFA.[26] As of September 30, 2010, of the 7,770 insured commercial banks and savings associations, there were 4,229 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.,* institutions with $175 million or less in assets).

Setting the DRR at 2 percent will not have a significant economic impact on a substantial number of small insured depository institutions. Nevertheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis on the small business impact of the final rule.

The DRR has no legal effect on small business entities for purposes of the RFA. The DRR is a minimum target only, and although Dodd-Frank sets a minimum DRR of 1.35 percent of estimated insured deposits, the FDIC has the discretion to set the DRR above that level as it chooses. The DRR does not drive the needs of the Deposit Insurance Fund: the FDIC's total assessment needs are driven by statutory requirements and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. Neither the FDI Act nor the amendments under Dodd-Frank establish a statutory role for the DRR as a trigger, whether for assessment rate determination, recapitalization of the fund, or dividends. Nor does setting the DRR at 2 percent alter the distribution of assessments among insured depository institutions. Accordingly, the final rule setting the DRR at 2 percent of estimated insured deposits has no significant economic impact on small entities for purposes of the RFA.

### *C. Small Business Regulatory Enforcement Fairness Act*

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

### *D. Paperwork Reduction Act*

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 *et seq.*) are contained in the final rule.

### *E. Solicitation of Comments on Use of Plain Language*

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand. No comments addressing this issue were received.

### *F. The Treasury and General Government Appropriation Act, 1999—Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

### List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

[22] 5 U.S.C. 553(b)(3).

[23] 12 U.S.C. 1817(b)(3)(A).

[24] 5 U.S.C. 604.

[25] *See* 5 U.S.C. 605(b).

[26] *See* 5 U.S.C. 601.

## PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 is revised to read as follows:

**Authority:** 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 2. Revise § 327.4(g) to read as follows:

**§ 327.4 Assessment rates.**

* * * * *

(g) *Designated Reserve Ratio.* The designated reserve ratio for the Deposit Insurance Fund is 2 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of December 2010.

**Valerie J. Best,**

*Assistant Executive Secretary, Federal Deposit Insurance Corporation.*

[FR Doc. 2010–31829 Filed 12–17–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2010–0921; Airspace Docket No. 10–ASO–33]**

## Amendment and Revocation of Class E Airspace; Vero Beach, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E surface airspace, and airspace extending upward from 700 feet above the surface, and removes Class E airspace designated as an extension to Class D surface area at Vero Beach Municipal Airport, Vero Beach, FL. The Vero Beach Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for the airport. This action also updates the geographic coordinates of the St. Lucie County International Airport to aid in the navigation of our National Airspace System.

**DATES:** Effective 0901 UTC, March 10, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

**SUPPLEMENTARY INFORMATION:**

### History

On October 26, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend and remove Class E airspace at Vero Beach, FL (75 FR 65581) Docket No. FAA–2010–0921. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. During the comment period the FAA received a request from the National Aeronautical Navigation Services to update the geographic coordinates of the St. Lucie County International Airport, Fort Pierce, FL. This action makes the adjustment.

Class E airspace designated as surface areas, Class E airspace areas designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6002, 6004, and 6005, respectively, of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part amends Class E airspace designated as surface area to remove any reference to the decommissioned Vero Beach NDB at Vero Beach Municipal Airport, Vero Beach, FL. This action also adds additional controlled airspace extending upward from 700 feet above the surface to accommodate new Standard Instrument Approach Procedures (SIAPs) at the airport, and removes Class E airspace designated as an extension to Class D surface area for Vero Beach Municipal Airport. Also, this action will update the geographic coordinates of the St. Lucie County International Airport, Fort Pierce, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Vero Beach Municipal Airport, Vero Beach, FL, and corrects geographic coordinates for St. Lucie County International Airport, Fort Pierce, FL.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

*Paragraph 6002 Class E airspace designated as surface areas.*

* * * * *

**ASO FL E2 Vero Beach, FL [AMENDED]**

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N., long. 80°25′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2 mile radius of the Vero Beach