part of the Bank Secrecy Act compliance program required under this section.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 3064–0087)

[52 FR 2860, Jan. 27, 1987, as amended at 53 FR 17917, May 19, 1988; 63 FR 17075, Apr. 8, 1998; 68 FR 25112, May 9, 2003]

PART 327—ASSESSMENTS

Subpart A—In General

Sec.

Subpart B—Implementation of One-Time Assessment Credit

Subpart C—Implementation of Dividend Requirements

AUTHORITY: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Pub. L. 109–171, 120 Stat. 9–21, and Sec. 3, Pub. L. 109–173, 119 Stat. 3605.

SOURCE: 54 FR 51374, Dec. 15, 1989, unless otherwise noted.

Subpart A—In General

SOURCE: Sections 327.1 through 327.8 appear at 71 FR 69277, Nov. 30, 2006, unless otherwise noted.

§ 327.1 Purpose and scope.

(a) *Scope.* This part 327 applies to any insured depository institution, including any insured branch of a foreign bank.

(b) *Purpose.* (1) Except as specified in paragraph (b)(2) of this section, this part 327 sets forth the rules for:

(i) The time and manner of filing certified statements by insured depository institutions;

(ii) The time and manner of payment of assessments by such institutions;

(iii) The payment of assessments by depository institutions whose insured status has terminated;

(iv) The classification of depository institutions for risk; and

(v) The processes for review of assessments.

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in subpart B part 347 of this chapter.

§ 327.2 Certified statements.

(a) *Required.* (1) The certified statement shall also be known as the quarterly certified statement invoice. Each insured depository institution shall file and certify its quarterly certified statement invoice in the manner and form set forth in this section.

(2) The quarterly certified statement invoice shall reflect the institution's risk assignment, assessment base, assessment computation, and assessment amount, for each quarterly assessment period.

(b) *Availability and access.* (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business Web site FDIC*connect* a quarterly certified statement invoice each assessment period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via FDIC*connect*, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices. A quarterly certified statement invoice delivered by any alternative means will be treated as if it had been downloaded from FDIC*connect*.

(3) Institutions that do not have Internet access may request a renewable one-year exemption from the requirement that quarterly certified statement invoices be accessed through FDIC*connect*. Any exemption request must be submitted in writing to the Manager of the Assessments Section.

(4) Each assessment period, the FDIC will provide courtesy e-mail notification to insured depository institutions indicating that new quarterly certified statement invoices are available and may be accessed on FDIC*connect*. E-mail notification will be sent to all individuals with FDIC*connect* access to quarterly certified statement invoices.

(5) E-mail notification may be used by the FDIC to communicate with insured depository institutions regarding quarterly certified statement invoices and other assessment-related matters.

(c) *Review by institution*. The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution*. If the appropriate officer of the insured depository institution agrees that, to the best of his or her knowledge and belief, the information shown on the quarterly certified statement invoice is true, correct, and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the quarterly certified statement invoice and shall retain it in the institution's files for three years as specified in section 7(b)(4) of the Federal Deposit Insurance Act.

(e) *Amendment by institution*. If the appropriate officer of the insured depository institution determines that, to the best of his or her knowledge and belief, the information shown on the quarterly certified statement invoice is not true, correct, and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the quarterly certified statement invoice, and may:

(1) Amend its report of condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the applicable payment date specified in § 327.3(b)(2).

(f) *Certification*. Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its reports of condition, or other similar reports, filed with the institution's primary federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that invoice shall be deemed true, correct, complete, and certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation*. (1) The timely filing of an amended report of condition or other similar report under paragraph (e)(1) of this section, or the timely filing of an amended quarterly certified statement invoice under paragraph (e)(2), that will result in a change to deposit insurance assessments owed or paid by an insured depository institution, shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(f).

(2) The assessment rate on the quarterly certified statement invoice shall be amended only if it is inconsistent with the assessment risk assignment(s) provided to the institution by the Corporation for the assessment period in question pursuant to § 327.4(a). Agreement with the assessment rate shall not be deemed to constitute agreement with the assessment risk assignment. An institution may request review of an assessment risk assignment it believes to be incorrect pursuant to § 327.4(c).

§ 327.3 Payment of assessments.

(a) *Required*—(1) *In general*. Except as provided in paragraph (b) of this section, each insured depository institution shall pay to the Corporation for each assessment period an assessment determined in accordance with this part 327.

(2) *Notice of designated deposit account*. For the purpose of making such payments, each insured depository institution shall designate a deposit account for direct debit by the Corporation. No later than 30 days prior to the next payment date specified in paragraph (b)(2) of this section, each institution shall provide notice to the Corporation via FDIC*connect* of the account designated, including all information and authorizations needed by the Corporation for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the institution designates a different account for assessment debit by the Corporation, in which case the requirements of the preceding sentence apply.

(3) *Transition Rule for Financing Corporation (FICO) Payments*. Quarterly FICO payments shall be collected by the FDIC without interruption during the assessment system transitional period in 2007. All insured depository institutions shall make scheduled quarterly FICO payments on January 2, 2007 (unless prepaid on December 30, 2006), and March 30, 2007, based upon, respectively, their September 30, 2006, and December 31, 2006 reported assessment bases, which shall be the final assessment bases calculated pursuant to 12 CFR 327.5(a) and (b) (2006). Simultaneous collection of deposit insurance assessments and FICO assessments will resume in June of 2007, based on the March 31, 2007 reported assessment base.

(b) *Assessment payment*—(1) *Quarterly certified statement invoice*. Starting with the first assessment period of 2007, no later than 15 days prior to the payment date specified in paragraph (b)(2) of this section, the Corporation will provide to each insured depository institution a quarterly certified statement invoice showing the amount of the assessment payment due from the institution for the prior quarter (net of credits or dividends, if any), and the computation of that amount. Subject to paragraph (e) of this section, the invoiced amount on the quarterly certified statement invoice shall be the product of the following: the assessment base of the institution for the prior quarter computed in accordance with § 327.5 multiplied by the institution's rate for that prior quarter as assigned to the institution pursuant to §§ 327.4(a) and 327.9.

(2) *Quarterly payment date and manner*. The Corporation will cause the amount stated in the applicable quarterly certified statement invoice to be directly debited on the appropriate payment date from the deposit account designated by the insured depository institution for that purpose, as follows:

(i) In the case of the assessment payment for the quarter that begins on January 1, the payment date is the following June 30;

(ii) In the case of the assessment payment for the quarter that begins on April 1, the payment date is the following September 30;

(iii) In the case of the assessment payment for the quarter that begins on July 1, the payment date is the following December 30; and

(iv) In the case of the assessment payment for the quarter that begins on October 1, the payment date is the following March 30.

(c) *Necessary action, sufficient funding by institution*. Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account. Each insured depository institution shall, prior to each payment date indicated in paragraph (b)(2) of this section, ensure that funds in an amount at least equal to the amount on the quarterly certified statement invoice are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. Penalties for failure to timely pay assessments are provided for at 12 CFR 308.132(c)(3)(v).

(d) *Business days.* If a payment date specified in paragraph (b)(2) falls on a date that is not a business day, the applicable date shall be the previous business day.

(e) *Payment adjustments in succeeding quarters.* Quarterly certified statement invoices provided by the Corporation may reflect adjustments, initiated by the Corporation or an institution, resulting from such factors as amendments to prior quarterly reports of condition, retroactive revision of the institution's assessment risk assignment, and revision of the Corporation's assessment computations for prior quarters.

(f) *Request for revision of computation of quarterly assessment payment*—(1) *In general.* An institution may submit a written request for revision of the computation of the institution's quarterly assessment payment as shown on the quarterly certified statement invoice in the following circumstances:

(i) The institution disagrees with the computation of the assessment base as stated on the quarterly certified statement invoice;

(ii) The institution determines that the rate applied by the Corporation is inconsistent with the assessment risk assignment(s) provided to the institution in writing by the Corporation for the assessment period for which the payment is due; or

(iii) The institution believes that the quarterly certified statement invoice does not fully or accurately reflect adjustments provided for in paragraph (e) of this section.

(2) *Inapplicability.* This paragraph (f) is not applicable to requests for review of an institution's assessment risk assignment, which are covered by § 327.4(c) of this part.

(3) *Requirements.* Any such request for revision must be submitted within 90 days from the date the computation being challenged appears on the institution's quarterly certified statement invoice. The request for revision shall be submitted to the Manager of the Assessments Section and shall provide documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for revision will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the DOF Director (or designee) shall promptly notify the institution in writing of his or her determination of whether revision is warranted. If the institution requesting revision disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

(g) *Quarterly certified statement invoice unavailable.* Any institution whose quarterly certified statement invoice is unavailable on FDIC*connect* by the fifteenth day of the month in which the payment is due shall promptly notify the Corporation. Failure to provide prompt notice to the Corporation shall not affect the institution's obligation to make full and timely assessment payment. Unless otherwise directed by the Corporation, the institution shall preliminarily pay the amount shown on its quarterly certified statement invoice for the preceding assessment period, subject to subsequent correction.

§ 327.4 Assessment rates.

(a) *Assessment risk assignment.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.9, each insured depository institution will be provided an assessment risk assignment. Notice of an institution's current assessment risk assignment will be provided to the institution with each quarterly certified statement invoice. Adjusted assessment risk assignments for prior periods may also be provided by the Corporation. Notice of the procedures applicable to reviews will be included with the notice of assessment risk assignment provided pursuant to paragraph (a) of this section.

(b) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk assignment in the notice provided to the institution pursuant to paragraph (a) of this section. Timely payment is required notwithstanding any request for review filed pursuant to paragraph (c) of this section. Assessment risk assignments remain in effect for future assessment periods until changed. If the risk assignment in the notice is subsequently changed, any excess assessment paid by the institution will be credited by the Corporation, with interest, and any additional assessment owed shall be paid by the institution, with interest, in the next assessment payment after such subsequent assignment or change. Interest payable under this paragraph shall be determined in accordance with § 327.7.

(c) *Requests for review.* An institution that believes any assessment risk assignment provided by the Corporation pursuant to paragraph (a) of this section is incorrect and seeks to change it must submit a written request for review of that risk assignment. An institution cannot request review through this process of the CAMELS ratings assigned by its primary federal regulator; each federal regulator has established procedures for that purpose. An institution may also request review of a determination by the FDIC to assess the institution as a large or a small institution (12 CFR 327.9(d)(6)) or a determination by the FDIC that the institution is a new institution (12 CFR 327.9(d)(7)). Any request for review must be submitted within 90 days from the date the assessment risk assignment being challenged pursuant to paragraph (a) of this section appears on the institution's quarterly certified statement invoice. The request shall be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC, and shall include documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Supervision and Consumer Protection (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether a change is warranted. If the institution requesting review disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

(d) *Disclosure restrictions.* The portion of an assessment risk assignment provided to an institution by the Corporation pursuant to paragraph (a) of this section that reflects any supervisory evaluation or confidential information is deemed to be exempt information within the scope of § 309.5(g)(8) of this chapter and, accordingly, is governed by the disclosure restrictions set out at § 309.6 of this chapter.

(e) *Limited use of assessment risk assignment.* Any assessment risk assignment provided to a depository institution under this part 327 is for purposes of implementing and operating the FDIC's risk-based assessment system. Unless permitted by the Corporation or otherwise required by law, no institution may state in any advertisement or promotional material, or in any other public place or manner, the assessment risk assignment provided to it pursuant to this part.

(f) *Effective date for changes to risk assignment.* (1) Changes to an insured institution's risk assignment resulting from a supervisory ratings change become effective as of the date of written notification to the institution by its primary federal regulator or state authority of its supervisory rating (even when the CAMELS component ratings have not been disclosed to the institution), if the FDIC, after taking into account other information that could affect the rating, agrees with the rating. If the FDIC does not agree, changes to an insured institution's risk assignment become effective as of the date that the FDIC determines that a change in the supervisory rating is warranted.

(2) Changes to an insured institution's risk assignment resulting from a change in a long-term debt issuer rating become effective as of the date the change is announced by the rating agency.

(g) *Designated reserve ratio.* The designated reserve ratio for the Deposit Insurance Fund is 1.25 percent.

[71 FR 69277, 69326, Nov. 30, 2006]

§ 327.5 Assessment base.

(a) *Quarter-end balances and average daily balances.* An insured depository institution shall determine its assessment base using quarter-end balances until changes in the quarterly report of condition allow it to report average daily deposit balances on the quarterly report of condition, after which—

(1) An institution that becomes newly insured after the first report of condition allowing for average daily balances shall have its assessment base determined using average daily balances;

(2) An insured depository institution (other than one covered in paragraph (a)(1) of this section) reporting assets of $1 billion or more on the first report of condition allowing for average daily balances, shall within one year after so reporting have its assessment base determined using average daily balances;

(3) An insured depository institution (other than one covered in paragraph (a)(1) of this section) that was insured prior to the first report of condition allowing for average daily balances, reporting less than $1 billion in assets on the first report of condition allowing for average daily balances—

(i) May continue to have its assessment base determined using quarter end balances; or

(ii) May opt permanently to have its assessment base determined using average daily balances after notice to the Corporation, but

(iii) Shall have its assessment rate determined using average daily balances for any quarter beginning six months after the institution reported that its assets equaled or exceeded $1 billion for two consecutive quarters and thereafter; and

(4) In any event, an insured depository institution that files its report of condition on a consolidated basis by including a subsidiary bank(s) or savings association(s) shall report its assessment base on an unconsolidated basis.

(b) *Computation of assessment base.* Whether computed on a quarter-end balance or an average daily balance, the assessment base for any insured institution that is required to file a quarterly report of condition shall be computed by:

(1) Adding all deposit liabilities as defined in section 3(*l*) of the Federal Deposit Insurance Act, to include deposits that are held in any insured branches of the institution that are located in the territories and possessions of the United States, but does not include unposted credits and is not reduced by unposted debits; and

(2) Subtracting the following allowable exclusions, in the case of any institution that maintains such records as will readily permit verification of the correctness of its assessment base—

(i) Any demand deposit balance due from or cash item in the process of collection due from any depository institution (not including a private depository institution, a foreign depository institution, a foreign office of another U.S. depository institution, or a U.S. branch of a foreign depository institution) up to the total of the amount of deposit balances due to and cash items in the process of collection due to such depository institution that are included in paragraph (b)(1) of this section;

(ii) Any outstanding drafts (including advices and authorization to charge deposit institution's balance in another bank) drawn in the regular course of business;

(iii) Any pass-through reserve balances;

(iv) Liabilities arising from a depository institution investment contract that are not treated as insured deposits under section 11(a)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(5)); and

(v) Deposits accumulated for the payment of personal loans, which represent actual loan payments received by the depository institution from borrowers and accumulated by the depository institution in hypothecated deposit accounts for payment of the loans at maturity. Time and savings deposits that are pledged as collateral to secure loans are not ''deposits accumulated for the payment of personal loans.''

(c) *Newly insured institutions.* A newly insured institution shall pay an assessment for the assessment period during which it became an insured institution.

§ 327.6 Terminating transfers; other terminations of insurance.

(a) *Terminating institution's final two quarterly certified statement invoices.* If a terminating institution does not file a report of condition for the quarter prior to the quarter in which the terminating transfer occurs, its assessment base for the quarterly certified statement invoice or invoices for which it failed to file a report of condition shall be deemed to be its assessment base for the last quarter for which the institution filed a report of condition. The acquiring institution in a terminating transfer is liable for paying the final invoices of the terminating institution. The terminating institution's assessment for the quarter prior to the quarter in which the terminating transfer occurs shall be calculated at the terminating institution's rate.

(b) *Assessment for quarter in which the terminating transfer occurs*—(1) *Acquirer using Average Daily Balances.* If an acquiring institution's assessment base is computed using average daily balances pursuant to § 327.5, the terminating institution's assessment for the quarter in which the terminating transfer occurs shall be reduced by the percentage of the quarter remaining after the terminating transfer and calculated at the acquiring institution's rate.

(2) *Acquirer using Quarter-end Balances.* If an acquiring institution's assessment base is computed as a quarter-end balance pursuant to § 327.5, its assessment for the quarter in which the terminating transfer occurs shall be the acquiring institution's quarter-end balance calculated at the acquiring institution's assessment rate, and the terminating institution shall not be assessed separately for that quarter.

(c) *Other terminations.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution—

(1) *Payment of assessments; quarterly certified statement invoices.* The terminating depository institution shall continue to file and certify its quarterly certified statement invoice and pay assessments for the assessment period its deposits are insured. Such terminating institution shall not be required to certify its quarterly certified statement invoice and pay further assessments after it has paid in full its deposit liabilities and the assessment to the Corporation required to be paid for the assessment period in which its deposit liabilities are paid in full, and after it, under applicable law, goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments.

(2) *Payment of deposits; certification to Corporation.* When the deposit liabilities of the depository institution have been paid in full, the depository institution shall certify to the Corporation that the deposit liabilities have been paid in full and give the date of the final payment. When the depository institution has unclaimed deposits, the certification shall further state the amount of the unclaimed deposits and the disposition made of the funds to be held to meet the claims. For assessment purposes, the following will be considered as payment of the unclaimed deposits:

(i) The transfer of cash funds in an amount sufficient to pay the unclaimed and unpaid deposits to the public official authorized by law to receive the same; or

(ii) If no law provides for the transfer of funds to a public official, the transfer of cash funds or compensatory assets to an insured depository institution in an amount sufficient to pay the unclaimed and unpaid deposits in consideration for the assumption of the deposit obligations by the insured depository institution.

(3) *Notice to depositors.* (i) The terminating depository institution shall give sufficient advance notice of the intended transfer to the owners of the unclaimed deposits to enable the depositors to obtain their deposits prior to the transfer. The notice shall be mailed to each depositor and shall be published in a local newspaper of general circulation. The notice shall advise the depositors of the liquidation of the depository institution, request them to call for and accept payment of their deposits, and state the disposition to be made of their deposits if they fail to promptly claim the deposits.

(ii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(i) of this section, a certified copy of the public official's receipt issued for the funds shall be furnished to the Corporation.

(iii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (b)(2)(ii) of this section, an affidavit of the publication and of the mailing of the notice to the depositors, together with a copy of the notice and a certified copy of the contract of assumption, shall be furnished to the Corporation.

(4) *Notice to Corporation.* The terminating depository institution shall advise the Corporation of the date on which it goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments and the method whereby the termination has been effected.

(d) *Resumption of insured status before insurance of deposits ceases.* If a depository institution whose insured status has been terminated is permitted by the Corporation to continue or resume its status as an insured depository institution before the insurance of its deposits has ceased, the institution will be deemed, for assessment purposes, to continue as an insured depository institution and must thereafter file and certify its quarterly certified statement invoices and pay assessments as though its insured status had not been terminated. The procedure for applying for the continuance or resumption of insured status is set forth in § 303.248 of this chapter.

§ 327.7 Payment of interest on assessment underpayments and overpayments.

(a) *Payment of interest*—(1) *Payment by institutions.* Each insured depository institution shall pay interest to the Corporation on any underpayment of the institution's assessment.

(2) *Payment by Corporation.* The Corporation will pay interest on any overpayment by the institution of its assessment.

(3) *Accrual of interest.* (i) Interest on an amount owed to or by the Corporation for the underpayment or overpayment of an assessment shall accrue interest at the relevant interest rate.

(ii) Interest on an amount specified in paragraph (a)(3)(i) of this section shall begin to accrue on the day following the regular payment date, as provided for in § 327.3(b)(2), for the amount so overpaid or underpaid, provided, however, that interest shall not begin to accrue on any overpayment until the day following the date such overpayment was received by the Corporation. Interest shall continue to accrue through the date on which the overpayment or underpayment (together with any interest thereon) is discharged.

(iii) The relevant interest rate shall be redetermined for each quarterly assessment interval. A quarterly assessment interval begins on the day following a regular payment date, as specified in § 327.3(b)(2), and ends on the immediately following regular payment date.

(b) *Interest rates.* (1) The relevant interest rate for a quarterly assessment interval that includes the month of January, April, July, and October, respectively, is the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill at the last auction held by the United States

Treasury Department during the preceding December, March, June, and September, respectively.

(2) The relevant interest rate for a quarterly assessment interval will apply to any amounts overpaid or underpaid on the payment date immediately prior to the beginning of the quarterly assessment interval. The relevant interest rate will also apply to any amounts owed for previous overpayments or underpayments (including any interest thereon) that remain outstanding, after any adjustments to such overpayments or underpayments have been made thereon, at the end of the regular payment date immediately prior to the beginning of the quarterly assessment interval. Interest will be compounded daily.

§ 327.8 Definitions.

For the purpose of this part 327:

(a) *Deposits.* The term *deposit* has the meaning specified in section 3(*l*) of the Federal Deposit Insurance Act.

(b) *Quarterly report of condition.* The term *quarterly report of condition* means a report required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act.

(c) *Assessment period—In general.* The term *assessment period* means a period beginning on January 1 of any calendar year and ending on March 31 of the same year, or a period beginning on April 1 of any calendar year and ending on June 30 of the same year; or a period beginning on July 1 of any calendar year and ending on September 30 of the same year; or a period beginning on October 1 of any calendar year and ending on December 31 of the same year.

(d) *Acquiring institution.* The term *acquiring institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(e) *Terminating institution.* The term *terminating institution* means an insured depository institution some or all of the deposits of which are assumed by another insured depository institution in a terminating transfer.

(f) *Terminating transfer.* The term *terminating transfer* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the terminating institution goes out of business or transfers all or substantially all its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments by or at the end of the assessment period during which such assumption of liability for deposits occurs. The term *terminating transfer* does not refer to the assumption of liability for deposits from the estate of a failed institution, or to a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution.

(g) *Small Institution.* An insured depository institution with assets of less than $10 billion as of December 31, 2006 (other than an insured branch of a foreign bank) shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (h) of this section reports assets of less than $10 billion in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(h) *Large Institution.* An insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (g) of this section reports assets of $10 billion or more in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter.

(i) *Long-Term Debt Issuer Rating.* A long-term debt issuer rating shall mean a current rating of an insured depository institution's long-term debt obligations by Moody's Investor Services, Standard & Poor's, or Fitch Ratings. A long-term debt issuer rating does not include a rating of a company that controls an insured depository institution, or an affiliate or subsidiary of the institution. A current rating shall mean one that has been confirmed or assigned within 12 months before the end of the quarter for which an assessment rate is being determined. If no current rating is available, the institution will be deemed to have no long-term debt issuer rating.

(j) *CAMELS composite and CAMELS component ratings.* The terms *CAMELS composite ratings* and *CAMELS component ratings* shall have the same meaning as in the Uniform Financial Institutions Rating System as published by the Federal Financial Institutions Examination Council.

(k) *ROCA supervisory ratings.* ROCA supervisory ratings rate risk management, operational controls, compliance, and asset quality.

(l) *New depository institution.* A new insured depository institution is a bank or thrift that has not been chartered for at least five years as of the last day of any quarter for which it is being assessed.

(m) *Established depository institution.* An established institution is a bank or thrift that has been chartered for at least five years as of the last day of any quarter for which it is being assessed.

(n) *Risk assignment.* An institution's risk assignment includes assignment to Risk Category I, II, III, or IV, and, within Risk Category I, assignment to an assessment rate or rates.

§ 327.9 Assessment risk categories and pricing methods.

(a) *Risk Categories.* Each insured depository institution shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(1) *Risk Category I.* All institutions in Supervisory Group A that are Well Capitalized;

(2) *Risk Category II.* All institutions in Supervisory Group A that are Adequately Capitalized, and all institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized;

(3) *Risk Category III.* All institutions in Supervisory Groups A and B that are Undercapitalized, and all institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized; and

(4) *Risk Category IV.* All institutions in Supervisory Group C that are Undercapitalized.

(b) *Capital evaluations.* An institution will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(1) *Well Capitalized.* (i) Except as provided in paragraph (b)(1)(ii) of this section, a Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section.

(2) *Adequately Capitalized.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized under this paragraph but satisfies each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Adequately Capitalized if the insured branch:

(A) Maintains the pledge of assets required under §347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under §347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(3) *Undercapitalized.* An undercapitalized institution is one that does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (b)(1) and (b)(2) of this section.

(c) *Supervisory evaluations.* Each institution will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information that the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(1) *Supervisory Group ''A.''* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(2) *Supervisory Group ''B.''* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(3) *Supervisory Group ''C.''* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

(d) *Determining Assessment Rates for Risk Category I Institutions.* Subject to paragraphs (d)(4), (6), (7) and (8) of this section, an insured depository institution in Risk Category I, except for a large institution that has at least one long-term debt issuer rating, as defined in §327.8(i), shall have its assessment rate determined using the supervisory ratings and financial ratios method set forth in paragraph (d)(1) of this section. A large insured depository institution in Risk Category I that has at least one long-term debt issuer rating shall have its assessment rate determined using the supervisory and debt ratings method set forth in paragraph (d)(2) of this section (subject to paragraphs (d)(4), (6), (7) and (8) of this section). The assessment rate for a large institution whose assessment rate in the prior quarter was determined using the supervisory and debt ratings method, but which no longer has a long-term debt issuer rating, shall be determined using the supervisory ratings and financial ratios method.

(1) *Supervisory ratings and financial ratios method.* Under the supervisory ratings and financial ratios method for Risk Category I institutions, each of five financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to or subtracted from a uniform amount. The resulting sum, subject to adjustment pursuant to paragraph (d)(4) of this section, if appropriate, and adjusted for the actual assessment rates set by the Board under §327.10, will equal an institution's assessment rate; provided, however, that no institution's assessment rate will be less than the minimum rate in effect for Risk Category I institutions for that quarter nor greater than the maximum rate in effect for Risk Category I institutions for that quarter. The five financial ratios are: Tier 1 Leverage Ratio; Loans past due 30–89 days/gross assets; Nonperforming assets/gross assets; Net loan charge-offs/gross assets; and Net income before taxes/risk-weighted assets. The ratios are defined in Table A.1 of Appendix A to this subpart. The ratios will be determined for an assessment period based upon information contained in an institution's report of condition filed as of the last day of the assessment period as set out in §327.9(b). The weighted average of CAMELS component ratings is created by multiplying

each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. Appendix A to this subpart contains the initial values of the pricing multipliers and uniform amount, describes their derivation, and explains how they will be periodically updated.

(i) *Publication of uniform amount and pricing multipliers.* The FDIC will publish notice in the FEDERAL REGISTER whenever a change is made to the uniform amount or the pricing multipliers for the supervisory ratings and financial ratios method.

(ii) *Implementation of CAMELS rating changes*—(A) *Changes between risk categories.* If, during a quarter, a CAMELS rating change occurs that results in an institution whose Risk Category I assessment rate is determined using the supervisory ratings and financial ratios method moving from Risk Category I to Risk Category II, III or IV, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the CAMELS rating in effect before the change, subject to adjustment pursuant to paragraph (d)(4) of this section, if appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10. For the portion of the quarter that the institution was not in Risk Category I, the institution's assessment rate shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS rating change occurs that results in an institution (other than a large institution that has at least one long-term debt issuer rating) moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings and financial ratios method, subject to adjustment pursuant to paragraph (d)(4) of this section, if appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10. For the portion of the quarter that the institution was not in Risk Category I, the institution's assessment rate shall be determined under the assessment schedule for the appropriate Risk Category.

(B) *Changes within Risk Category I.* If, during a quarter, an institution's CAMELS component ratings change in a way that would change the institution's assessment rate within Risk Category I, the assessment rate for the period before the change shall be determined under the supervisory ratings and financial ratios method using the CAMELS component ratings in effect before the change. Beginning on the date of the CAMELS component ratings change, the assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings in effect after the change.

(2) *Supervisory and debt ratings method.* A large insured depository institution in Risk Category I that has at least one long-term debt issuer rating shall have its assessment rate determined using the supervisory and debt ratings method (subject to paragraphs (d)(4) through (8) of this section). Its CAMELS component ratings will be weighted to derive a weighted average CAMELS rating using the same weights applied in the supervisory ratings and financial ratios method as set forth under paragraph (d)(1) of this section. Long-term debt issuer ratings will be converted to numerical values between 1 and 3 as provided in Appendix B to this subpart and the converted values will be averaged. The weighted average CAMELS rating and the average of converted long-term debt issuer ratings each will be multiplied by 1.176 (which shall be the pricing multiplier), and the products will be summed. To this result will be added −1.882 (which shall be a uniform amount for all institutions subject to the supervisory and debt ratings method). The resulting sum, subject to adjustment pursuant to paragraph (d)(4) of this section, if appropriate, and adjusted for the actual assessment rates set by the Board pursuant to § 327.10, will equal an institution's assessment rate; provided, however, that no institution's assessment rate will be less than the minimum rate in effect for Risk Category I institutions for that quarter nor greater than the maximum rate in effect for Risk Category I institutions for that quarter.

(3) *Assessment rate for insured branches of foreign banks*—(i) *Insured branches of foreign banks in Risk Category I.* Insured branches of foreign banks in Risk Category I shall be assessed using the weighted average ROCA component rating, as determined under paragraph (d)(3)(ii) of this section.

(ii) *Weighted average ROCA component rating.* The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The weighted average ROCA rating will be multiplied by 2.353 (which shall be the pricing multiplier). To this result will be added −1.882 (which shall be a uniform amount for all insured branches of foreign banks). The resulting sum, subject to adjustment pursuant to paragraph (d)(4) of this section and adjusted for assessment rates set by the FDIC pursuant to § 327.10(b), will equal an institution's assessment rate; provided, however, that no institution's assessment rate will be less than the minimum rate in effect for Risk Category I institutions for that quarter nor greater than the maximum rate in effect for Risk Category I institutions for that quarter.

(4) *Adjustments to the initial risk assignment for large banks or insured branches of foreign banks*—(i) *Basis for and size of adjustment.* Within Risk Category I, large institutions and insured branches of foreign banks are subject to risk assignment adjustment. In determining whether to make an adjustment for a large institution or an insured branch of a foreign bank, the FDIC may consider other relevant information in addition to the factors used to derive the risk assignment under paragraphs (d)(1), (2), or (3) of this section. Relevant information includes financial performance and condition information, other market information, and stress considerations, as described in Appendix C to this subpart. Any such adjustment shall be limited to a change in assessment rate of up to 0.5 basis points higher or lower than the rate determined using the supervisory ratings and financial ratios method, the supervisory and debt ratings method, or the weighted average ROCA component rating method, whichever is applicable.

(ii) *Adjustment subject to maximum and minimum rates.* No rate will be adjusted below the minimum rate or above the maximum rate for Risk Category I institutions in effect for the quarter.

(iii) *Prior notice of adjustments*—(A) *Prior notice of upward adjustment.* Prior to making any upward adjustment to an institution's rate because of considerations of additional risk information, the FDIC will formally notify the institution and its primary federal regulator and provide an opportunity to respond. This notification will include the reasons for the adjustment and when the adjustment will take effect.

(B) *Prior notice of downward adjustment.* Prior to making any downward adjustment to an institution's rate because of considerations of additional risk information, the FDIC will formally notify the institution's primary federal regulator and provide an opportunity to respond.

(iv) *Determination whether to adjust upward; effective period of adjustment.* After considering an institution's and the primary federal regulator's responses to the notice, the FDIC will determine whether the adjustment to an institution's assessment rate is warranted, taking into account any revisions to weighted average CAMELS component ratings, long-term debt issuer ratings, and financial ratios, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. The FDIC will evaluate the need for the adjustment each subsequent assessment period, until it determines that an adjustment is no longer warranted. The amount of adjustment will in no event be larger than that contained in the initial notice without further notice to, and consideration of, responses from the primary federal regulator and the institution.

(v) *Determination whether to adjust downward; effective period of adjustment.* After considering the primary federal regulator's responses to the notice, the

FDIC will determine whether the adjustment to an institution's assessment rate is warranted, taking into account any revisions to weighted average CAMELS component ratings, long-term debt issuer ratings, and financial ratios, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. Any downward adjustment in an institution's assessment rate will remain in effect for subsequent assessment periods until the FDIC determines that an adjustment is no longer warranted. Downward adjustments will be made without notification to the institution. However, the FDIC will provide advance notice to an institution and its primary federal regulator and give them an opportunity to respond before removing a downward adjustment.

(vi) *Adjustment without notice.* Notwithstanding the notice provisions set forth above, the FDIC may change an institution's assessment rate without advance notice under this paragraph, if the institution's supervisory or agency ratings or the financial ratios set forth in Appendix A to this subpart (for an institution without long-term debt issuer ratings) deteriorate.

(5) *Implementation of Supervisory and Long-Term Debt Issuer Rating Changes*—(i) *Changes between risk categories.* If, during a quarter, a CAMELS rating change occurs that results in an institution whose Risk Category I assessment rate is determined using the supervisory and debt ratings method or an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall be based upon its assessment rate for the prior quarter; no new Risk Category I assessment rate will be developed for the quarter in which the institution moved to Risk Category II, III or IV. If, during a quarter, a CAMELS rating change occurs that results in a large institution with a long-term debt issuer rating or an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate determined under paragraphs (d)(2) and (4) or (d)(3) and (4) of this section, as appropriate.

(ii) *Changes within Risk Category I.* If, during a quarter, an institution whose Risk Category I assessment rate is determined using the supervisory and debt ratings method remains in Risk Category I, but a CAMELS component or a long-term debt issuer rating changes that would affect the institution's assessment rate, or if, during a quarter, an insured branch of a foreign bank remains in Risk Category I, but a ROCA component rating changes that would affect the institution's assessment rate, separate assessment rates for the portion(s) of the quarter before and after the change(s) shall be determined under paragraphs (d)(2) and (4) or (d)(3) and (4) of this section, as appropriate.

(6) *Request to be treated as a large institution*—(i) *Procedure.* Any institution in Risk Category I with assets of between $5 billion and $10 billion may request that the FDIC determine its assessment rate as a large institution. The FDIC will grant such a request if it determines that it has sufficient information to do so. The absence of long-term debt issuer ratings alone will not preclude the FDIC from granting a request. The assessment rate for an institution without a long-term debt issuer rating will be derived using the supervisory ratings and financial ratios method, but will be subject to adjustment. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition for four consecutive quarters, the FDIC will consider such institution to be a small institution subject to the supervisory ratings and financial ratios method. An institution that disagrees with the FDIC's determination that it is a large or small institution may request review of that determination pursuant to § 327.4(c).

(ii) *Time limit on subsequent request for alternate method.* An institution whose request to be assessed as a large institution is granted by the FDIC shall not be eligible to request that it be assessed as a small institution for a period of three years from the first quarter in which its approved request to be assessed as a large bank became effective. Any request to be assessed as a small institution must be made to the FDIC's Division of Insurance and Research.

(7) *New and established institutions and exceptions*—(i) *New Risk Category I institutions*—(A) *Rule as of January 1, 2010.* Effective for assessment periods beginning on or after January 1, 2010, a new institution shall be assessed the Risk Category I maximum rate for the relevant assessment period, except as provided in paragraphs (d)(7)(ii)–(viii) of this section.

(B) *Rule prior to January 1, 2010.* Prior to January 1, 2010, a new institution's risk assignment shall be determined under paragraph (d)(1) or (2) of this section, as appropriate. Prior to January 1, 2010, a Risk Category I institution that has no CAMELS component ratings shall be assessed at one basis point above the minimum rate applicable to Risk Category I institutions until it receives CAMELS component ratings. If an institution has less than $10 billion in assets or has at least $10 billion in assets and no long-term debt issuer rating, its assessment rate will be determined under the supervisory ratings and financial ratios method once it receives CAMELS component ratings. The assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from the reports of condition that have been filed, until the earlier of the following two events occurs: the institution files four reports of condition, or, if it has at least $10 billion in assets, it receives a long-term debt issuer rating.

(ii) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (d)(7)(iii)–(viii) of this section, when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(A) The assets of the established institution, as reported in its report of condition for the quarter ending immediately before the merger, exceeded the assets of the new institution, as reported in its report of condition for the quarter ending immediately before the merger; and

(B) Substantially all of the management of the established institution continued as management of the resulting or surviving institution.

(iii) *Consolidation involving established institutions.* When established institutions consolidate into a new institution, the resulting institution is an established institution.

(iv) *Grandfather exception.* If a new institution merges into an established institution, and the merger agreement was entered into on or before July 11, 2006, the resulting institution shall be deemed to be an established institution for purposes of this section.

(v) *Subsidiary exception.* Subject to paragraph (d)(7)(vi) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(A) A company that is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act, and:

(*1*) At least one eligible depository institution (as defined in 12 CFR 303.2(r)) that is owned by the holding company has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established; and

(*2*) The holding company has a composite rating of at least "2" for bank holding companies or an above average or "A" rating for savings association holding companies and at least 75 percent of its insured depository institution assets are assets of eligible depository institutions, as defined in 12 CFR 303.2(r); or

(B) An eligible depository institution, as defined in 12 CFR 303.2(r), that has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established.

(vi) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, as those terms are defined in § 327.8, the FDIC will include any period of time that the institution was a federally insured credit union.

(vii) *CAMELS ratings for the surviving institution in a merger or consolidation.*

When an established institution merges with or consolidates into a new institution, if the FDIC determines the resulting institution to be an established institution under paragraph (d)(ii) of this section, its CAMELS ratings will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(viii) *Rate applicable to institutions subject to subsidiary or credit union exception*. On or after January 1, 2010, if an institution is considered established under paragraph (d)(7)(v) or (vi) of this section, but does not have CAMELS component ratings, it shall be assessed at one basis point above the minimum rate applicable to Risk Category I institutions until it receives CAMELS component ratings. If an institution has less than $10 billion in assets or has at least $10 billion in assets and no long-term debt issuer rating, its assessment rate will be determined under the supervisory ratings and financial ratios method once it receives CAMELS component ratings. The assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from all reports of condition that have been filed, until the earlier of the following two events occurs: the institution files four reports of condition, or, if it has at least $10 billion in assets, it receives a long-term debt issuer rating.

(ix) *Request for review*. An institution that disagrees with the FDIC's determination that it is a new institution may request review of that determination pursuant to § 327.4(c).

(8) *Assessment rates for bridge banks and conservatorships.* Institutions that are bridge banks under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum rate.

[71 FR 69309, Nov. 30, 2006]

§ 327.10 Assessment rate schedules.

(a) *Base Assessment Schedule.* The base annual assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

TABLE 1 TO PARAGRAPH (a)

	Risk Category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate vary between these rates.

(1) *Risk Category I Base Rate Schedule.* The base annual assessment rates for all institutions in Risk Category I shall range from 2 to 4 basis points.

(2) *Risk Category II, III, and IV Base Rate Schedule.* The base annual assessment rates for Risk Categories II, III, and IV shall be 7, 25, and 40 basis points respectively.

(3) All institutions in any one risk category, other than Risk Category I, will be charged the same assessment rate.

(b) *Adjusted Rate Schedule.* Beginning on January 1, 2007, the adjusted annual assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

TABLE 1 TO PARAGRAPH (b)

	Risk Category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	5	7	10	28	43

*Rates for institutions that do not pay the minimum or maximum rate vary between these rates.

(1) *Risk Category I Adjusted Rate Schedule.* The adjusted annual assessment rates for all institutions in Risk Category I shall range from 5 to 7 basis points.

(2) *Risk Category II, III, and IV Adjusted Rate Schedule.* The adjusted annual assessment rates for Risk Categories II, III, and IV shall be 10, 28, and 43 basis points respectively.

(3) All institutions in any one risk category, other than Risk Category I, will be charged the same assessment rate.

(c) *Rate schedule adjustments and procedures*—(1) *Adjustments.* The Board may increase or decrease the base assessment schedule up to a maximum increase of 3 basis points or a fraction thereof or a maximum decrease of 3 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the base assessment schedule. In no case may such adjustments result in an assessment rate that is mathematically less than zero or in a rate schedule that, at any time, is more than 3 basis points above or below the base assessment schedule for the Deposit Insurance Fund, nor may any one such adjustment constitute an increase or decrease of more than 3 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking, except that the Corporation may set assessment rates as necessary to manage the reserve ratio, within set parameters not exceeding cumulatively 3 basis points, pursuant to paragraph (c)(1) of this section, without further rulemaking.

(4) *Announcement.* The Board shall announce the assessment schedule and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in §327.3(b) of this part for the first assessment period for which the adjustment shall be effective. Once set, rates will remain in effect until changed by the Board.

[71 FR 69309, Nov. 30, 2006]

APPENDICES A–C TO SUBPART A

APPENDIX A TO SUBPART A

Method to Derive Pricing Multipliers and Uniform Amount

I. Introduction

The uniform amount and pricing multipliers are derived from:

- A model (the Statistical Model) that estimates the probability that a Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year;
- Minimum and maximum downgrade probability cutoff values, based on data from June 2006, that will determine which small institutions will be charged the minimum and maximum assessment rates in Risk Category I;
- The minimum base assessment rate for Risk Category I, equal to two basis points, and
- The maximum base assessment rate for Risk Category I, which is two basis points higher than the minimum rate.

II. The Statistical Model

The Statistical Model is defined in equation 1a below.

Equation 1a

$$
\begin{aligned}
\text{Downgrade}(0,1)_{i,t} = \beta_0 &+ \beta_1(\text{Tier 1 leverage ratio}_{it}) \\
&+ \beta_2(\text{Loans past due 30 to 89 days ratio}_{it}) \\
&+ \beta_3(\text{Nonperforming asset ratio}_{it}) \\
&+ \beta_4(\text{Net loan charge} - \text{off ratio}_{it}) \\
&+ \beta_5(\text{Net income before taxes ratio}_{it}) \\
&+ \beta_6(\text{Weighted average of the C, A, M, E and L component ratings}_{it})
\end{aligned}
$$

where Downgrade$(0,1)_{i,t}$ (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution i between 3 and 12 months after time t. Time t is the end of a year within the multi-year period over which the model was estimated (as explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are five financial ratios and a weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings. The five financial ratios included in the model are:

- Tier 1 leverage ratio
- Loans past due 30–89 days/Gross assets
- Nonperforming assets/Gross assets
- Net loan charge-offs/Gross assets
- Net income before taxes/Risk-weighted assets.

The financial ratios and the weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings (collectively, the regressors) are defined in Table A.1. The component rating for sensitivity to market risk (the ''S'' rating) is not available for years prior to 1997. As a result, and as described in Table A.1, the Statistical Model is estimated using a weighted average of five component ratings excluding the ''S'' component. In addition, delinquency and non-accrual data on government guaranteed loans are not available before 1993 for Call Report filers and before the third quarter of 2005 for TFR filers. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting delinquent or past-due government guaranteed loans from either the loans past due 30–89 days to gross assets ratio or the nonperforming assets to gross assets ratio.

TABLE A.1.—DEFINITIONS OF REGRESSORS

Regressor	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action
Loans Past Due 30–89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk)
Nonperforming Assets/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance to loan and lease losses for the most recent twelve months divided by gross assets
Net Income before Taxes/Risk-Weighted Assets (%)	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets
Weighted Average of C, A, M, E and L Component Ratings	The weighted sum of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' CAMELS components, with weights of 28 percent each for the ''C'' and ''M'' components, 22 percent for the ''A'' component, and 11 percent each for the ''E'' and ''L'' components. (For the regression, the ''S'' component is omitted.)

The financial ratio regressors used to estimate the downgrade probabilities are obtained from quarterly reports of condition (Reports of Condition and Income and Thrift Financial Reports). The weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings regressor is based on component ratings obtained from the most recent bank examination conducted within 24 months before the date of the report of condition.

The Statistical Model uses ordinary least squares (OLS) regression to estimate downgrade probabilities. The model is estimated with data from a multi-year period (as explained below) for all institutions in Risk Category I, except for institutions established within five years before the date of the report of condition.

The OLS regression estimates coefficients, β_j, for a given regressor j and a constant amount, β_0, as specified in equation 1a. As shown in equation 1b below, these coefficients are multiplied by values of risk measures at time T, which is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed. The sum of the products is then added to the constant amount to produce an estimated probability, $d_{i,T}$, that an institution will be downgraded to 3 or worse within 3 to 12 months from time T.

The risk measures are financial ratios as defined in Table A.1, except that the loans past due 30 to 89 days ratio and the nonperforming asset ratio are adjusted to exclude the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored agencies, under guarantee or insurance provisions. Also, the weighted sum of six CAMELS component ratings is used, with weights of 25 percent each for the ''C'' and ''M'' components, 20 percent for the ''A'' component, and 10 percent each for the ''E,'' ''L,'' and ''S'' components.

Equation 1b

$$
\begin{aligned}
d_{iT} = \beta_0 &+ \beta_1 \left(\text{Tier 1 leverage ratio}_{iT}\right) \\
&+ \beta_2 \left(\text{Loans past due 30 to 89 days ratio}_{iT}\right) \\
&+ \beta_3 \left(\text{Nonperforming asset ratio}_{iT}\right) \\
&+ \beta_4 \left(\text{Net loan charge} - \text{off ratio}_{iT}\right) \\
&+ \beta_5 \left(\text{Net income before taxes ratio}_{iT}\right) \\
&+ \beta_6 \left(\text{Weighted average of CAMELS component ratings}_{iT}\right)
\end{aligned}
$$

III. Minimum and maximum downgrade probability cutoff values

The pricing multipliers are also determined by minimum and maximum downgrade probability cutoff values, which will be computed as follows:

- The minimum downgrade probability cutoff value will be the maximum downgrade probability among the forty-five percent of all small insured institutions in Risk Category I (excluding new institutions) with the lowest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.[1] The minimum downgrade probability cutoff value is approximately 2 percent.
- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the five percent of all small insured institutions in Risk Category I (excluding new institutions) with the highest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.[2] The maximum downgrade probability cutoff value is approximately 14 percent.

IV. Derivation of uniform amount and pricing multipliers

The uniform amount and pricing multipliers used to compute the annual base assessment rate in basis points, P_{iT}, for any such institution i at a given time T will be determined from the Statistical Model, the minimum and maximum downgrade probability cutoff values, and minimum and maximum base assessment rates in Risk Category I as follows:

[1] As used in this context, a ''new institution'' means an institution that has been chartered as a bank or thrift for less than five years.

[2] As used in this context, a ''new institution'' means an institution that has been chartered as a bank or thrift for less than five years.

Equation 2

$$P_{iT} = \alpha_0 + \alpha_1 * d_{iT}, \text{ subject to } 2 \le P_{iT} \le 4$$

where α_0 and α_1 are a constant term and a scale factor used to convert d_{iT} (the estimated downgrade probability for institution i at a given time T from the Statistical Model) to an assessment rate, respectively. The numbers 2 and 4 in the restriction to equation 2 are the minimum base assessment rate and maximum base assessment rate, respectively, and they are expressed in basis points.

(P_{iT} is expressed as an annual rate, but the actual rate applied in any quarter will be $\frac{P_{iT}}{4}$.)

Solving equation 2 for minimum and maximum base assessment rates simultaneously, ($2 = \alpha_0 + \alpha_1 * 0.02$ and $4 = \alpha_0 + \alpha_1 * 0.14$), where 0.02 is the minimum downgrade probability cutoff value and 0.14 is the maximum downgrade probability cutoff value, results in values for the constant amount, α_0, and the scale factor, α_1:

Equation 3

$$\alpha_0 = 2 - \frac{2 * 0.02}{(0.14 - 0.02)} = 1.67 \text{ and}$$

Equation 4

$$\alpha_i = \frac{2}{(0.14 - 0.02)} = 16.67$$

Substituting equations 1b, 3 and 4 into equation 2 produces an annual base assessment rate for institution i at time T, P_{iT}, in terms of the uniform amount, the pricing multipliers and the ratios and weighted average CAMELS component rating referred to in 12 CFR 327.9(d)(2)(i):

Equation 5

$$\begin{aligned}
P_{iT} = & [1.67 + 16.67 * \beta_0] + 16.67 * [\beta_1 (\text{Tier 1 Leverage Ratio}_T)] + \\
& 16.67 * [\beta_2 (\text{Loans past due 30 to 89 days ratio}_T)] + 16.67 * [\beta_3 (\text{Nonperforming asset ratio}_T)] + \\
& 16.67 * [\beta_4 (\text{Net loan charge} - \text{off ratio}_T)] + 16.67 * [\beta_5 (\text{Net income before taxes ratio}_T)] + \\
& 16.67 * [\beta_7 (\text{Weighted average CAMELS component rating}_T)]
\end{aligned}$$

again subject to $2 \le P_{iT} \le 4$

where $1.67+16.67*\beta_0$ equals the uniform amount, $16.67*\beta_j$ is a pricing multiplier for the associated risk measure j, and T is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed.

V. Updating the Statistical Model, uniform amount, and pricing multipliers

The initial Statistical Model is estimated using year-end financial ratios and the weighted average of the ''C,'' ''A,'' ''M,'' ''E'' and ''L'' component ratings over the 1984 to 2004 period and downgrade data from the 1985 to 2005 period. The FDIC may, from time to time, but no more frequently than annually, re-estimate the Statistical Model with updated data and publish a new formula for determining assessment rates—equation 5—based on updated uniform amounts and pricing multipliers. However, the minimum and maximum downgrade probability cutoff values will not change without additional notice-and-comment rulemaking. The period covered by the analysis will be lengthened by one year each year; however, from time to time, the FDIC may drop some earlier years from its analysis.

[71 FR 69313, Nov. 30, 2006]

APPENDIX B TO SUBPART A

NUMERICAL CONVERSION OF LONG-TERM DEBT ISSUER RATINGS

Current long-term debt issuer rating*	Converted value
Standard & Poor's	
AAA	1.00
AA+	1.05
AA	1.15
AA−	1.30
A+	1.50
A	1.80
A−	2.20
BBB+	2.70
BBB or worse	3.00
Moody's	
Aaa	1.00
Aa1	1.05
Aa2	1.15
Aa3	1.30
A1	1.50
A2	1.80
A3	2.20
Baa1	2.70
Baa2 or worse	3.00
Fitch's	
AAA	1.00
AA+	1.05
AA	1.15
AA−	1.30
A+	1.50
A	1.80
A−	2.20
BBB+	2.70
BBB or worse	3.00

*A current rating is defined as one that has been assigned or reviewed in the last 12 months. Stale ratings are not considered.

[71 FR 69313, Nov. 30, 2006]

APPENDIX C TO SUBPART A

ADDITIONAL RISK CONSIDERATIONS FOR LARGE RISK CATEGORY I INSTITUTIONS

Information source	Examples of Associated Risk Indicators or Information
Financial Performance and Condition Information	*Capital Measures (Level and Trend)* • Regulatory capital ratios • Capital composition • Dividend payout ratios • Internal capital growth rates relative to asset growth *Profitability Measures (Level and Trend)* • Return on assets and return on risk-adjusted assets • Net interest margins, funding costs and volumes, earning asset yields and volumes • Noninterest revenue sources • Operating expenses • Loan loss provisions relative to problem loans • Historical volatility of various earnings sources *Asset Quality Measures (Level and Trend)* • Loan and securities portfolio composition and volume of higher risk lending activities (e.g., sub-prime lending) • Loan performance measures (past due, nonaccrual, classified and criticized, and renegotiated loans) and portfolio characteristics such as internal loan rating and credit score distributions, internal estimates of default, internal estimates of loss given default, and internal estimates of exposures in the event of default • Loan loss reserve trends • Loan growth and underwriting trends • Off-balance sheet credit exposure measures (unfunded loan commitments, securitization activities, counterparty derivatives exposures) and hedging activities *Liquidity and Funding Measures (Level and Trend)* • Composition of deposit and non-deposit funding sources • Liquid resources relative to short-term obligations, undisbursed credit lines, and contingent liabilities *Interest Rate Risk and Market Risk (Level and Trend)* • Maturity and repricing information on assets and liabilities, interest rate risk analyses • Trading book composition and Value-at-Risk information
Market Information	• Subordinated debt spreads • Credit default swap spreads • Parent's debt issuer ratings and equity price volatility • Market-based measures of default probabilities • Rating agency watch lists • Market analyst reports
Stress Considerations	*Ability to Withstand Stress Conditions* • Internal analyses of portfolio composition and risk concentrations, and vulnerabilities to changing economic and financial conditions

ADDITIONAL RISK CONSIDERATIONS FOR LARGE RISK CATEGORY I INSTITUTIONS—Continued

Information source	Examples of Associated Risk Indicators or Information
	• Stress scenario development and analyses • Results of stress tests or scenario analyses that show the degree of vulnerability to adverse economic, industry, market, and liquidity events. Examples include: i. an evaluation of credit portfolio performance under varying stress scenarios ii. an evaluation of non-credit business performance under varying stress scenarios. iii. an analysis of the ability of earnings and capital to absorb losses stemming from unanticipated adverse events • Contingency or emergency funding strategies and analyses • Capital adequacy assessments *Loss Severity Indicators* • Nature of and breadth of an institution's primary business lines and the degree of variability in valuations for firms with similar business lines or similar portfolios • Ability to identify and describe discrete business units within the banking legal entity • Funding structure considerations relating to the order of claims in the event of liquidation (including the extent of subordinated claims and priority claims) • Extent of insured institutions assets held in foreign units • Degree of reliance on affiliates and outsourcing for material mission-critical services, such as management information systems or loan servicing, and products • Availability of sufficient information, such as information on insured deposits and qualified financial contracts, to resolve an institution in an orderly and cost-efficient manner

[71 FR 69313, Nov. 30, 2006]

Subpart B—Implementation of One-Time Assessment Credit

AUTHORITY: 12 U.S.C. 1817(e)(3).

SOURCE: 71 FR 61383, Oct. 18, 2006, unless otherwise noted.

§ 327.30 Purpose and scope.

(a) *Scope.* This subpart B of part 327 implements the one-time assessment credit required by section 7(e)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(3) and applies to insured depository institutions.

(b) *Purpose.* This subpart B of part 327 sets forth the rules for:

(1) Determination of the aggregate amount of the one-time credit;

(2) Identification of eligible insured depository institutions;

(3) Determination of the amount of each eligible institution's December 31, 1996 assessment base ratio and one-time credit;

(4) Transferability of credit amounts among insured depository institutions;

(5) Application of such credit amounts against assessments; and

(6) An institution's request for review of the FDIC's determination of a credit amount.

§ 327.31 Definitions.

For purposes of this subpart and subpart C:

(a) The *average assessment rate* for any assessment period means the aggregate assessment charged all insured depository institutions for that period divided by the aggregate assessment base for that period.

(b) *Board* means the Board of Directors of the FDIC.

(c) *De facto rule* means any transaction in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution at the time of the transaction.

(d) An *eligible insured depository institution:*

(1) Means an insured depository institution that:

(i) Was in existence on December 31, 1996, and paid a deposit insurance assessment before December 31, 1996; or

(ii) Is a successor to an insured depository institution referred to in paragraph (d)(1)(i) of this section; and

(2) does not include an institution if its insured status has terminated as of or after the effective date of this regulation.

(e) *Merger* means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution. Notwithstanding part 303, subpart D, for purposes of this subpart B and subpart C of this part, *merger* does not include transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution, but there is not a legal merger or consolidation of the two insured depository institutions.

(f) *Resulting institution* refers to the acquiring, assuming, or resulting institution in a merger.

(g) *Successor* means a resulting institution or an insured depository institution that acquired part of another insured depository institution's 1996 assessment base ratio under paragraph 327.33(c) of this subpart under the *de facto* rule.

§ 327.32 Determination of aggregate credit amount.

The aggregate amount of the one-time credit shall equal $4,707,580,238.19.

§ 327.33 Determination of eligible institution's credit amount.

(a) Subject to paragraph (c) of this section, allocation of the one-time credit shall be based on each eligible insured depository institution's 1996 assessment base ratio.

(b) Subject to paragraph (c) of this section, an eligible insured depository institution's 1996 assessment base ratio shall consist of:

(1) Its assessment base as of December 31, 1996 (adjusted as appropriate to reflect the assessment base of December 31, 1996, of all institutions for which it is the successor), as the numerator; and

(2) The combined aggregate assessment bases of all eligible insured depository institutions, including any successor institutions, as of December 31, 1996, as the denominator.

(c) If an insured depository institution is a successor to an eligible insured depository institution under the *de facto* rule, as defined in paragraph 327.31(c) of this subpart, the successor and the eligible insured depository institution will divide the eligible insured depository institution's 1996 assessment base ratio pro rata, based on the deposit liabilities assumed in the transaction. In any subsequent transaction involving an insured depository institution that previously engaged in a transaction to which the *de facto* rule applied, the insured depository institution may not be deemed to have transferred more than its remaining 1996 assessment base ratio. If the transferring institution is no longer an insured depository institution after the transfer, the last successor will acquire the transferring institution's remaining 1996 assessment base ratio.

§ 327.34 Transferability of credits.

(a) Any remaining amount of the one-time assessment credit and the associated 1996 assessment base ratio shall transfer to a successor of an eligible insured depository institution.

(b) Prior to the final determination of its 1996 assessment base and one-time assessment credit amount by the FDIC, an eligible insured depository institution may enter into an agreement to transfer any portion of such institution's one-time credit amount and 1996 assessment base ratio to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to credit amount and the associated 1996 assessment base ratio shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

(c) An eligible insured depository institution may enter into an agreement after the final determination of its 1996 assessment base ratio and one-time credit amount by the FDIC to transfer any portion of such institution's one-time credit amount to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to the credit amount shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

§ 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an eligible insured depository institution's one-time credit shall be applied to the maximum extent allowable by law against that institution's quarterly assessment payment under subpart A of this part, until the institution's credit is exhausted.

(b) The following limitations shall apply to the application of the credit against assessment payments.

(1) For assessments that become due for assessment periods beginning in calendar years 2008, 2009, and 2010, the credit may not be applied to more than 90 percent of the quarterly assessment.

(2) For an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not at least adequately capitalized (as defined pursuant to section 38 of the Federal Deposit Insurance Act) at the beginning of an assessment period, the amount of the credit that may be applied against the institution's quarterly assessment for that period shall not exceed the amount that the institution would have been assessed if it had been assessed at the average assessment rate for all insured institutions for that period. The FDIC shall determine the average assessment rate for an assessment period based upon its best estimate of the average rate for the period. The estimate shall be made using the best information available, but shall be made no earlier than 30 days and no later than 20 days prior to the payment due date for the period.

(3) If the FDIC has established a restoration plan pursuant to section 7(b)(3)(E) of the Federal Deposit Insurance Act, the FDIC may elect to restrict the application of credit amounts, in any assessment period, up to the lesser of:

(i) The amount of an insured depository institution's assessment for that period; or

(ii) The amount equal to 3 basis points of the institution's assessment base.

§ 327.36 Requests for review of credit amount.

(a)(1) As soon as practicable after the publication date of this rule, the FDIC shall notify each insured depository institution by FDIC*connect* or mail of its 1996 assessment base ratio and credit amount in a Statement of One-Time Credit (''Statement''), if any. An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base ratio or credit amount as shown on the Statement within 30 days after the effective date of this rule. Such review may be requested if:

(i) The institution disagrees with a determination as to eligibility for the credit that relates to that institution's credit amount;

(ii) The institution disagrees with the calculation of the credit as stated on the Statement; or

(iii) The institution believes that the 1996 assessment base ratio attributed to the institution on the Statement does not fully or accurately reflect its own 1996 assessment base or appropriate adjustments for successors.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(b)(1) An insured depository institution may submit a request for review of the FDIC's adjustment to the credit amount in a quarterly invoice within 30 days of the date on which the FDIC provides the invoice. Such review may be requested if:

(i) The institution disagrees with the calculation of the credit as stated on the invoice; or

(ii) The institution believes that the 1996 assessment base ratio attributed to the institution due to the adjustment to the invoice does not fully or accurately reflect appropriate adjustments for successors since the last quarterly invoice.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(c) The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. In addition, the FDIC also shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(d) During the FDIC's consideration of the request for review, the amount of credit in dispute shall not be available for use by any institution.

(e) Within 30 days of being notified of the filing of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (c) does not submit a response to the request for review, that institution may not:

(1) Subsequently dispute the information submitted by other institutions on the transaction(s) at issue in the review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance, (or his or her designee), notifying the requesting and affected institutions of the determination of the Director as to whether the requested change is warranted. Notice of the procedures applicable to appeals under paragraph (h) of this section will be included with the Director's written determination. Whenever feasible, the FDIC will provide the institution with the aforesaid written response the later of:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information.

(h) Subject to paragraph (e) of this section, the insured depository institution that requested review under this section, or an insured depository institution materially affected by the Director's determination, that disagrees with that determination may appeal to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section will be included with the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

(i) Any adjustment to an institution's credits resulting from a determination by the Director of the FDIC's Assessment Appeals Committee shall be reflected in the institution's next assessment invoice. The adjustment to credits shall affect future assessments only and shall not result in a retroactive adjustment of assessment amounts owed for prior periods.

Subpart C—Implementation of Dividend Requirements

AUTHORITY: 12 U.S.C. 1817(e)(2), (4).

SOURCE: 71 FR 61389, Oct. 18, 2006, unless otherwise noted.

§327.50 Purpose and scope.

(a) *Scope.* This subpart C of part 327 implements the dividend provisions of section 7(e)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(2), and applies to insured depository institutions.

(b) *Purpose.* This subpart C of part 327 sets forth the rules for:

(1) The FDIC's annual determination of whether to declare a dividend and the aggregate amount of any dividend;

(2) The FDIC's determination of the amount of each insured depository institution's share of any declared dividend;

(3) The time and manner for the FDIC's payments of dividends; and

(4) An institution's appeal of the FDIC's determination of its dividend amount.

§ 327.51 Definitions.

For purposes of this subpart:

(a) *Board* has the same meaning as under subpart B of this part.

(b) *DIF* means the Deposit Insurance Fund.

(c) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio as determined pursuant to § 327.33 of subpart B of this part, adjusted as necessary after the effective date of subpart B of this part to reflect subsequent transactions in which the institution succeeds to another institution's assessment base ratio, or a transfer of the assessment base ratio pursuant to § 327.34.

(d) *Predecessor,* when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution, consistent with the definition of ''successor'' in § 327.31.

§ 327.52 Annual dividend determination.

(a) On or before May 15th of each calendar year, beginning in 2007, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.5 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) If the reserve ratio of the DIF exceeds 1.5 percent of estimated insured deposits, except as provided in paragraph (d) of this section, the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.5 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

(d)(1) The Board may suspend or limit a dividend otherwise required to be paid if the Board determines that:

(i) A significant risk of losses to the DIF exists over the next one-year period; and

(ii) It is likely that such losses will be sufficiently high as to justify the Board concluding that the reserve ratio should be allowed:

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent; or

(B) To exceed 1.5 percent.

(2) In making a determination under this paragraph, the Board shall consider:

(i) National and regional conditions and their impact on insured depository institutions;

(ii) Potential problems affecting insured depository institutions or a specific group or type of depository institution;

(iii) The degree to which the contingent liability of the FDIC for anticipated failures of insured institutions adequately addresses concerns over funding levels in the DIF; and

(iv) Any other factors that the Board may deem appropriate.

(3) Within 270 days of making a determination under this paragraph, the Board shall submit a report to the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs, providing a detailed explanation of its determination, including a discussion of the factors considered.

(e) The Board shall annually review any determination to suspend or limit dividend payments and must either:

(1) Make a new finding justifying the renewal of the suspension or limitation

under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

(2) Reinstate the payment of dividends as required by paragraph (b) or (c) of this section.

§ 327.53 Allocation and payment of dividends.

(a) For any dividend declared before January 1, 2009, allocation of such dividend among insured depository institutions shall be based solely on an insured depository institution's 1996 assessment base ratio, as determined pursuant to paragraph 327.51(c) of this subpart, as of December 31st of the year for which dividends are declared.

(b) The FDIC shall notify each insured depository institution of the amount of such institution's dividend payment based on its share as determined pursuant to paragraph (a) of this section. Notice shall be given as soon as practicable after the Board's declaration of a dividend through a special notice of dividend.

(c) The FDIC shall pay individual dividend amounts, which are not subject to request for review under section 327.54 of this subpart, to insured depository institutions no later than 45 days after the issuance of the special notices of dividend. The FDIC shall notify institutions whether dividends will offset the next collection of assessments at the time of the invoice. An institution's dividend amount may be remitted with that institution's assessment or paid separately. If remitted with the institution's assessment, any excess dividend amount will be a net credit to the institution and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A of this part. If remitted with the institution's assessment and the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited to the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution's dividend amount is subject to review under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC may credit the institution with the dividend amount provided on the invoice or freeze the amount in dispute. Adjustments to an individual institution's dividend amount based on the final determination of a request for review will be handled in the same manner as assessment underpayments and overpayments.

§ 327.54 Requests for review of dividend amount.

(a) An insured depository institution may submit a request for review of the FDIC's determination of the institution's dividend amount as shown on the special notice of dividend or assessment invoice, as appropriate. Such review may be requested if:

(1) The institution disagrees with the calculation of the dividend as stated on the special notice of dividend or invoice; or

(2) The institution believes that the 1996 assessment base ratio attributed to the institution has not been adjusted to include the 1996 assessment base ratio of an institution acquired by merger or transfer pursuant to §§ 327.33 and 327.34 of subpart B and the institution has not had an opportunity (whether or not that opportunity was utilized) to appeal that same determination under subpart B.

(b) Any such request for review must be submitted within 30 days of the date of the special notice of dividend or invoice for which a change is requested. The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(c) During the FDIC's consideration of the request for review, the amount of dividend in dispute may not be available for use by any institution.

(d) Within 30 days of receiving notice of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the requesting institution. If an institution that was notified under paragraph (b) of this section does not submit a response to the request for review, that institution may not subsequently:

(1) Dispute the information submitted by any other institution on the transaction(s) at issue in that review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(e) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(f) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance (''Director''), or his or her designee, notifying the affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information, whichever is later. Notice of the procedures applicable to appeals under paragraph (g) of this section will be included with the Director's written determination.

(g) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

§ 327.55 Sunset date.

Subpart C shall cease to be effective on December 31, 2008.

PART 328—ADVERTISEMENT OF MEMBERSHIP

AUTHORITY: 12 U.S.C. 1818(a), 1819 (Tenth), 1828(a).

SOURCE: 72 FR 66102, Nov. 13, 2006, unless otherwise noted.

§ 328.0 Scope.

Part 328 describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term ''insured depository institution'' includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

§ 328.1 Official sign.

(a) The official sign referred to in this part shall be 7″ by 3″ in size, with black lettering and gold background, and of the following design: