

(b) *Security devices.* Each insured non-member bank shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper-resistant locks on exterior doors and exterior windows that may be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the structure of the banking office and its surroundings.

§ 326.4 Reports.

The security officer for each insured nonmember bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

Subpart B—Procedures for Monitoring Bank Secrecy Act Compliance

§ 326.8 Bank Secrecy Act compliance.

(a) *Purpose.* This subpart is issued to assure that all insured nonmember banks as defined in § 326.1³ establish

³In regard to foreign banks, the programs and procedures required by § 326.8 need be instituted only at an *insured branch* as defined in § 347.202 of this chapter which is a *State branch* as defined in § 347.202 of this chapter.

and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103.

(b) *Compliance procedures*—(1) *Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(1) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as 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

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

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;

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(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 *FDICconnect* a quarterly certified statement invoice each assessment period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via *FDICconnect*, 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 *FDICconnect*.

(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 *FDICconnect*. 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 *FDICconnect*. E-mail notification will be sent to all individuals with *FDICconnect* 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.* 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 *FDICconnect* 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 de-

termination 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 FDICconnect 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.

[54 FR 51374, Dec. 15, 1989, as amended at 74 FR 9550, Mar. 4, 2009]

§ 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

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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 2 percent.

[71 FR 69277, 69326, Nov. 30, 2006, as amended at 75 FR 79293, Dec. 20, 2010]

§ 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 and using the assessment base reported in the terminating institution's quarterly report of condition for that quarter.

(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 as-

sessments 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.

[71 FR 69277, Nov. 30, 2006, as amended at 74 FR 9551, Mar. 4, 2009]

§ 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

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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

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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 or an institution classified as large for purposes of § 327.9(d)(8)) shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (h) of this section (other than an institution classified as large for purposes of § 327.9(d)(8)) reports assets of less than \$10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(h) *Large institution*. An institution classified as large for purposes of § 327.9(d)(8) or 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 quarterly 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 rating of an insured depository institution's long-term debt obligations by Moody's Investor Services, Standard & Poor's, or Fitch Ratings that has not been withdrawn before the end of the quarter being assessed. A withdrawn rating shall mean one that has been withdrawn by the rating agency and not replaced with another rating by the same agency. 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.

(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 savings association that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed.

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

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (m)(2), (3), (4), and (5) of this section and §327.9(d)(10)(ii), (iii), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(i) 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

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

(2) *Consolidation involving established institutions.* When established institutions consolidate, the resulting institution is an established institution.

(3) *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 part.

(4) *Subsidiary exception.* Subject to paragraph (m)(5) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(i) 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:

(A) 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

(B) The holding company has a composite rating of at least "2" for bank holding companies or an above average or "A" rating for savings and loan 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

(ii) 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.

(5) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, the FDIC will include any period of time that the institution was a federally insured credit union.

(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.

(o) *Unsecured debt.*—For purposes of the unsecured debt adjustment as set forth in §327.9(d)(5), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(p) *Senior unsecured liability.*—For purposes of the unsecured debt adjustment as set forth in §327.9(d)(5), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b)), but shall not include any senior unsecured debt that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program, 12 CFR Part 370.

(q) *Subordinated debt.*—For purposes of the unsecured debt adjustment as set forth in §327.9(d)(5), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(r) *Long-term unsecured debt*—For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(5), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity.

(s) *Reciprocal deposits*—Deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) for any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

[54 FR 51374, Dec. 15, 1989, as amended at 74 FR 9551, Mar. 4, 2009]

§ 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, as 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 Initial Base Assessment Rates for Risk Category I Institutions.* Subject to paragraphs (d)(2), (4), (5), (6), (8), (9) and (10) 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 initial base assessment rate determined using the 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 initial base assessment rate determined using the large bank method set forth in paragraph (d)(2) of this section (subject to paragraphs (d)(2), (4), (5), (6), (8), (9) and (10) of this section). The initial base assessment rate for a large

institution whose assessment rate in the prior quarter was determined using the large bank method, but which no longer has a long-term debt issuer rating, shall be determined using the financial ratios method.

(1) *Financial ratios method.* Under the financial ratios method for Risk Category I institutions, each of six 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 shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(4), (5) and (6) of this section, as appropriate (which will produce the total base assessment rate), and adjusted for the actual assessment rates set by the Board under § 327.10(c), will equal an institution's assessment rate. The six 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; Net income before taxes/risk-weighted assets; and the Adjusted brokered deposit ratio. 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%. The following table sets forth the initial values of the pricing multipliers:

Risk measures*	Pricing multipliers**
Tier 1 Leverage Ratio	(0.056)
Loans Past Due 30–89 Days/Gross Assets	0.575
Nonperforming Assets/Gross Assets	1.074
Net Loan Charge-Offs/Gross Assets	1.210
Net Income before Taxes/Risk-Weighted Assets	(0.764)
Adjusted brokered deposit ratio	0.065
Weighted Average CAMELS Component Rating	1.095

* Ratios are expressed as percentages.
 ** Multipliers are rounded to three decimal places.

The six financial ratios and the weighted average CAMELS component rating will be multiplied by the respective pricing multiplier, and the products will be summed. To this result will be added the uniform amount of 11.861. The resulting sum shall equal the institution’s initial base assessment rate; provided, however, that no institution’s initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. Appendix A to this subpart describes the derivation of the pricing multipliers and uniform amount and explains how they will be periodically updated.

(i) *Publication and 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 financial ratios method.

(ii) *Implementation of CAMELS rating changes—(A) Changes between risk categories.* If, during a quarter, a CAMELS composite rating change occurs that results in an institution whose Risk Category I assessment rate is determined using the financial ratios method moving from Risk Category I to Risk Category II, III or IV, the institution’s initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings in effect before the change and the financial ratios as of the end of the quarter, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under §327.10(c). For the portion of the

quarter that the institution was not in Risk Category I, the institution’s initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS composite rating change occurs that results in an institution moving from Risk Category II, III or IV to Risk Category I, and its initial base assessment rate would be determined using the financial ratios method, then that method shall apply for the portion of the quarter that it was in Risk Category I, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under §327.10(c). For the portion of the quarter that the institution was not in Risk Category I, the institution’s initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), 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 initial base assessment rate within Risk Category I, the initial base assessment rate for the period before the change shall be determined under the financial ratios method using the CAMELS component ratings in effect before the change, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate. Beginning on the date of the CAMELS component ratings change, the initial base assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings

in effect after the change, again subject to adjustment pursuant to paragraphs (d)(4), (5), and (6) of this section, as appropriate.

(2) *Large bank method.* A large insured depository institution in Risk Category I that has at least one long-term debt issuer rating, as defined in § 327.8(i), shall have its initial base assessment rate determined using the large bank method. The initial base assessment rate under the large bank method shall be derived from three components, each given a 33⅓ percent weight: a component derived using the financial ratios method, a component derived using long-term debt issuer ratings, and a component derived using CAMELS component ratings. The institution's assessment rate computed using the financial ratios method shall be converted to a financial ratios score by first subtracting 10 from the financial ratios method assessment rate and then multiplying the result by ½. The result will equal an institution's financial ratios score. Its CAMELS component ratings will be weighted to derive a weighted average CAMELS rating using the same weights applied in the 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 financial ratios score, the weighted average CAMELS rating and the average of converted long-term debt issuer ratings each will be multiplied by 1.692 (which shall be the pricing multiplier), and the products will be summed. To this result will be added 3.873 (which shall be a uniform amount for all institutions subject to the large bank method). The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(4), (5), and (6)

of this section, as appropriate (which will produce the total base assessment rate), and adjusted for the actual assessment rates set by the Board pursuant to § 327.10(c), will equal an institution's assessment rate.

(i) *Implementation of Large Bank Method Changes between Risk Categories.* If, during a quarter, a CAMELS or ROCA rating change occurs that results in an institution whose Risk Category I initial base assessment rate is determined using the large bank method or an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined as for any other institution in Risk Category I whose initial base assessment rate is determined using the large bank method, subject to adjustments pursuant to paragraph (d)(4), (5), and (6) of this section, as appropriate or, if the institution is an insured branch of a foreign bank, using the weighted average ROCA component rating, subject to adjustment pursuant to paragraph (d)(4). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which, unless the institution is an insured branch of a foreign bank, shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS or ROCA 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 (d)(4), (5), and (6)) or (d)(3) (and (d)(4), (5), and (6)) of this section, as appropriate. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(5), (6) and (7), shall be determined under the assessment schedule for the appropriate Risk Category.

(ii) *Implementation of Large Bank Method Changes within Risk Category I.* If, during a quarter, an institution whose Risk Category I initial base assessment rate is determined using the large bank method remains in Risk Category I, but the financial ratios score, a CAMELS component or a long-term debt issuer rating changes that would affect the institution's initial base 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 initial base 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 (d)(4), (5), and (6)) or (d)(3) (and (d)(4)) of this section, as appropriate.

(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 5.076 (which shall be the pricing multiplier). To this result will be added 3.873 (which shall be a uniform amount for all insured branches of foreign banks). The resulting sum—the initial base assessment rate—subject to adjustments pursuant to paragraph (d)(4) of this section will equal an institution's total base assessment rate; provided, however, that no institution's total base assessment rate will be less than the minimum total base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum total base assessment rate in effect for Risk Category I institutions for that quarter.

(iii) No insured branch of a foreign bank in any risk category shall be sub-

ject to the unsecured debt adjustment, the secured liability adjustment, or the brokered deposit adjustment.

(4) *Adjustment 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 except new institutions as provided under paragraph (d)(9)(i)(A) of this section, are subject to adjustment of their initial base assessment rate. Any such large bank adjustment shall be limited to a change in the initial base assessment rate of up to one basis point higher or lower than the rate determined using the financial ratios method, the large bank method, or the weighted average ROCA component rating method, whichever is applicable. In determining whether to make this initial base assessment rate 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 or supervisory information, potential loss severity, and stress considerations, as described in Appendix C to this subpart.

(ii) *Adjustment subject to maximum and minimum rates.* No adjustment to the initial base assessment rate for large banks shall decrease any rate so that the resulting rate would be less than the minimum initial base assessment rate, or increase any rate above the maximum initial base assessment rate.

(iii) *Prior notice of adjustments—(A) Prior notice of upward adjustment.* Prior to making any upward large bank adjustment to an institution's initial base assessment 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 large bank adjustment to an institution's initial base assessment 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 large bank adjustment to an institution's initial base 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 large bank adjustment to an institution's initial base 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 initial base 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 initial base 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 deteriorate.

(5) *Unsecured debt adjustment to initial base assessment rate for all institutions.* All institutions within all risk categories, except new institutions as provided under paragraph (d)(9)(i)(C) of this section and insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, are subject to downward adjustment of assessment rates for unsecured debt, based on the ratio of long-term unsecured debt (and, for small institutions as defined in paragraph (ii) below, specified amounts of Tier 1 capital) to domestic deposits. Any unsecured debt adjustment shall be made after any adjustment under paragraph (d)(4) of this section.

(i) *Large institutions*—The unsecured debt adjustment for large institutions shall be determined by multiplying the institution's ratio of long-term unsecured debt to domestic deposits by 40 basis points.

(ii) *Small institutions*—The unsecured debt adjustment for small institutions will factor in an amount of Tier 1 capital (qualified Tier 1 capital) in addition to any long-term unsecured debt; the amount of qualified Tier 1 capital will be the sum of the amounts set forth below:

Range of Tier 1 capital to adjusted average assets	Amount of Tier 1 capital within range which is qualified (percent)
≤5%	0
>5% and ≤6%	10
>6% and ≤7%	20
>7% and ≤8%	30
>8% and ≤9%	40
>9% and ≤10%	50
>10% and ≤11%	60
>11% and ≤12%	70
>12% and ≤13%	80
>13% and ≤14%	90
>14%	100

For institutions that file Thrift Financial Reports, adjusted total assets will be used in place of adjusted average assets in the preceding table. The sum of qualified Tier 1 capital and long-term unsecured debt as a percentage of domestic deposits will be multiplied by 40 basis points to produce the

unsecured debt adjustment for small institutions.

(iii) *Limitation*—No unsecured debt adjustment for any institution shall exceed five basis points.

(iv) *Applicable quarterly reports of condition*—Ratios for any given quarter shall be calculated from quarterly reports of condition (Call Reports and Thrift Financial Reports) filed by each institution as of the last day of the quarter. Until institutions separately report long-term senior unsecured liabilities and long-term subordinated debt in their quarterly reports of condition, the FDIC will use subordinated debt included in Tier 2 capital and will not include any amount of senior unsecured liabilities in calculating the unsecured debt adjustment.

(6) *Secured liability adjustment for all institutions*. All institutions within all risk categories, except insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, are subject to upward adjustment of their assessment rate based upon the ratio of their secured liabilities to domestic deposits. Any such adjustment shall be made after any applicable large bank adjustment or unsecured debt adjustment.

(i) *Secured liabilities for banks*—Secured liabilities for banks include Federal Home Loan Bank advances, securities sold under repurchase agreements, secured Federal funds purchased and other borrowings that are secured as reported in banks' quarterly Call Reports.

(ii) *Secured liabilities for savings associations*—Secured liabilities for savings associations include Federal Home Loan Bank advances as reported in quarterly Thrift Financial Reports ("TFRs"). Secured liabilities for savings associations also include securities sold under repurchase agreements, secured Federal funds purchased or other borrowings that are secured. Any of these secured amounts not reported separately from unsecured or other liabilities in the TFR will be imputed based on simple averages for Call Report filers as of June 30, 2008. As of that date, on average, 63.0 percent of the sum of Federal funds purchased and securities sold under repurchase agreements reported by Call Report filers

were secured, and 49.4 percent of other borrowings were secured.

(iii) *Calculation*—An institution's ratio of secured liabilities to domestic deposits will, if greater than 25 percent, increase its assessment rate, but any such increase shall not exceed 50 percent of its assessment rate before the secured liabilities adjustment. For an institution that has a ratio of secured liabilities (as defined in paragraph (ii) above) to domestic deposits of greater than 25 percent, the institution's assessment rate (after taking into account any adjustment under paragraphs (d)(5) or (6) of this section) will be multiplied by the following amount: The ratio of the institution's secured liabilities to domestic deposits minus 0.25. Ratios of secured liabilities to domestic deposits shall be calculated from the report of condition, or similar report, filed by each institution.

(7) *Brokered Deposit Adjustment for Risk Categories II, III, and IV*. All institutions in Risk Categories II, III, and IV, except insured branches of foreign banks as provided under paragraph (d)(3)(iii) of this section, shall be subject to an assessment rate adjustment for brokered deposits. Any such brokered deposit adjustment shall be made after any adjustment under paragraph (d)(5) or (6). The brokered deposit adjustment includes all brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and 12 CFR 337.6, including reciprocal deposits as defined in § 327.8(r), and brokered deposits that consist of balances swept into an insured institution by another institution. The adjustment under this paragraph is limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates do not affect the adjustment. The adjustment is determined by multiplying by 25 basis points the difference between an institution's ratio of brokered deposits to domestic deposits and 0.10. The maximum brokered deposit adjustment will be 10 basis points. Brokered deposit ratios for any given quarter are calculated from the quarterly reports of condition filed by each institution as of the last day of the quarter.

(8) *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 initial base 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 initial base assessment rate for an institution without a long-term debt issuer rating will be derived using the financial ratios method, but will be subject to adjustment as a large institution under paragraph (d)(4) of this section. 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 financial ratios method.

(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.

(iii) 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).

(9) *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 that is well capitalized shall be assessed the Risk Category I maximum initial base assessment rate for the relevant assessment period, except as provided in § 327.8(m)(1), (2), (3), (4), (5) and paragraphs (ii) and (iii) below. No new institution in Risk Cat-

egory I shall be subject to the large bank adjustment as determined under paragraph (d)(4) of this section.

(B) *Rule prior to January 1, 2010*. Prior to January 1, 2010, a new institution's initial base assessment rate 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 is well capitalized and has no CAMELS component ratings shall be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. The initial base assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from the quarterly reports of condition that have been filed, until the institution files four such reports. Prior to January 1, 2010, assessment rates for new institutions in Risk Category I shall be subject to the large bank adjustment as determined under paragraph (d)(4) of this section.

(C) *Applicability of adjustments to new institutions prior to and as of January 1, 2010*. No new institution in any risk category shall be subject to the unsecured debt adjustment as determined under paragraph (d)(5) of this section. All new institutions in any Risk Category shall be subject to the secured liability adjustment as determined under paragraph (d)(6) of this section. All new institutions in Risk Categories II, III, and IV shall be subject to the brokered deposit adjustment as determined under paragraph (d)(7) of this section.

(ii) *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 § 327.8(m)(1), its CAMELS ratings for assessment purposes will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(iii) *Rate applicable to institutions subject to subsidiary or credit union exception*. If an institution is considered established under § 327.8(m)(4) and (5), but

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does not have CAMELS component ratings, it shall be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. Thereafter, the assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from all quarterly reports of condition that have been filed, until the institution files four quarterly reports of condition or it receives a long-term debt issuer rating and it is a large institution.

(iv) *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).

(10) *Assessment rates for bridge depository institutions and conservatorships.* Institutions that are bridge depository institutions 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 initial base assessment rate, which shall not be subject to adjustment under paragraphs (d)(4), (5), (6) or (7) of this section.

[74 FR 9552, Mar. 4, 2009]

§ 327.10 Assessment rate schedules.

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

INITIAL BASE ASSESSMENT RATE SCHEDULE

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual rates (in basis points)	12	16	22	32	45

* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 12 to 16 basis points.

(2) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 22, 32, and 45 basis points, respectively.

(3) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(b) *Total Base Assessment Rate Schedule after Adjustments.* The total base assessment rates after adjustments for an insured depository institution shall be the rate prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)*

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	–5–0	–5–0	–5–0	–5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment		0–10	0–10	0–10
Total base assessment rate	7–24.0	17–43.0	27–58.0	40–77.5

* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for all institu-

tions in Risk Category I shall range from 7 to 24 basis points.

(2) *Risk Category II Total Base Assessment Rate Schedule.* The annual total

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base assessment rates for Risk Category II shall range from 17 to 43 basis points.

(3) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 27 to 58 basis points.

(4) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 40 to 77.5 basis points.

(c) *Total Base Assessment Rate Schedule adjustments and procedures—(1) Board Rate Adjustments.* The Board may increase or decrease the total base assessment rate 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 total base assessment rate schedule. In no case may such Board rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 3 basis points above or below the total base assessment schedule for the Deposit Insurance Fund, nor may any one such Board 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 schedules 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.

[74 FR 9556, Mar. 4, 2009]

§ 327.11 Special assessments.

(a) *Special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose a special assessment on each insured depository institution of 5 basis points based on the institution's total assets less Tier 1 capital as reported on the report of condition for the second assessment period of 2009. The special assessment paid by any institution shall not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment.

(b) *Special assessments after June 30, 2009—(1) Authority for additional special assessments.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to or below zero at the end of a calendar quarter, a special assessment of up to 5 basis points on total assets less Tier 1 capital as reported on the report of condition for that calendar quarter may be imposed by a vote of the Board on all insured depository institutions. For any institution, the amount of such a special assessment shall not exceed 10 basis points times the institution's assessment base reported as of the date that the special assessment is imposed.

(2) *Termination of authority.* The authority to impose additional special assessments under this paragraph (b) shall terminate on January 1, 2010, but such termination of authority shall not prevent the Corporation from thereafter collecting any special assessment imposed prior to January 1, 2010.

(3) *Estimation process.* For purposes of any special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

(4) *Imposition and announcement of special assessments.* Any special assessment under this paragraph (b) shall be imposed on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice of the special assessment published in the FEDERAL REGISTER.

(c) *Invoicing of any special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice for the assessment period in which the special assessment was imposed.

(d) *Payment of any special assessment.* Each insured depository institution shall pay to the Corporation any special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any special assessment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the special assessment was imposed.

[74 FR 25644, May 29, 2009]

§ 327.12 Prepayment of quarterly risk-based assessments.

(a) *Requirement to prepay assessment.* On December 30, 2009, each insured depository institution shall pay to the FDIC a prepaid assessment, which shall equal its estimated quarterly risk-

based assessments aggregated for the fourth quarter of 2009, and all of 2010, 2011, and 2012 (the "prepayment period").

(b) *Calculation of prepaid assessment.*

(1) *Prepaid assessment.* (i) *Fourth quarter 2009 and all of 2010.* An institution's prepaid assessment for the fourth quarter of 2009 and for all of 2010 shall be determined by multiplying its prepaid assessment rate as defined in paragraph (b)(2) of this section times the corresponding prepaid assessment base for each quarter as determined pursuant to paragraph (b)(3) of this section.

(ii) *All of 2011 and 2012.* An institution's prepaid assessment for each quarter of 2011 and 2012 shall be determined by multiplying the sum of its prepaid assessment rate as defined in paragraph (b)(2) of this section, plus .75 basis points (which implements the 3 basis point increase in annual assessment rates adopted by the Board on September 29, 2009), times the corresponding prepaid assessment base for each quarter determined pursuant to paragraph (b)(3) of this section.

(2) *Prepaid assessment rate.* For each quarter of the prepayment period, an institution's prepaid assessment rate shall equal the total base assessment rate that the institution would have paid for the third quarter of 2009 had the institution's CAMELS ratings in effect on September 30, 2009, and, where applicable, long-term debt issuer ratings in effect on September 30, 2009, been in effect for the entire third quarter of 2009.

(3) *Prepaid assessment base.* For each quarter of the prepayment period, an institution's prepaid assessment base shall be calculated by increasing its third quarter 2009 assessment base at an annual rate of 5 percent.

(4) *Finality of prepaid assessment.* The prepaid assessment rate and prepaid assessment base defined in paragraphs (b)(2) and (3) of this section shall be determined based upon data in the FDIC's computer systems as of December 24, 2009. Changes to data underlying an institution's adjusted total base assessment rate or assessment base, whether by amendment to a report of condition or otherwise, received by the FDIC after December 24, 2009, shall not

affect an institution's prepaid assessment.

(5) *Prepaid assessment rates for mergers and consolidations.* For mergers and consolidations recorded in the FDIC's computer systems no later than December 24, 2009, the acquired institution's prepaid assessment rate under paragraph (b)(2) of this section shall be the prepaid assessment rate of the acquiring institution.

(c) *Invoicing of prepaid assessment.* The FDIC shall advise each insured depository institution of the amount and calculation of its prepaid assessment at the same time the FDIC provides the institution's quarterly certified statement invoice for the third quarter of 2009. The FDIC will re-invoice through FDICconnect based upon any data changes as provided in paragraph (b)(4) of this section.

(d) *Payment of prepaid assessment.* Each insured depository institution shall pay to the Corporation the amount of its prepaid assessment as required under paragraph (a) of this section in compliance with and subject to the provisions of §§ 327.3 and 327.7 of subpart A.

(1) *Exception to ACH payment.* If an institution's prepaid assessment is greater than \$99 million, the institution shall make payment by wire transfer to the FDIC, rather than by funding its designated deposit account for payment via ACH as provided in § 327.3 of subpart A.

(2) *One-time assessment credits.* The FDIC will not apply an institution's one-time assessment credit under subpart B of this part 327 to reduce an institution's prepaid assessment. The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B to its quarterly deposit insurance assessments before applying its prepaid assessments.

(e) *Use of prepaid assessments.* Prepaid assessments shall only be used to offset regular quarterly risk-based deposit insurance assessments payable under this subpart A. The FDIC will begin offsetting regular quarterly risk-based deposit insurance assessments against prepaid assessments on March 30, 2010. The FDIC will continue to make such offsets until the earlier of the exhaustion of the institution's prepaid assess-

ment or June 30, 2013. Any prepaid assessment remaining after collection of the amount due on June 30, 2013, shall be returned to the institution. If the FDIC, in its discretion, determines that its liquidity needs allow, it may return any remaining prepaid assessment to the institution prior to June 30, 2013.

(f) *Transfers.* An insured depository institution may enter into an agreement to transfer, but not pledge, any portion of that institution's prepaid assessment to another insured depository institution, provided that the parties to the agreement 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 institution transferring its prepaid assessment shall submit the required notice and documentation through FDICconnect. That information will be presented by the FDIC through FDICconnect to the institution acquiring the prepaid assessments for its acceptance. The adjustment to the amount of the prepaid assessment for each institution involved in the transfer will be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of acceptance by the institution acquiring the prepaid assessments.

(g) *Prepaid assessments following a merger.* In the event that an insured depository institution merges with, or consolidates into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the acquired institution's prepaid assessment not otherwise transferred pursuant to paragraph (f) of this section.

(h) *Disposition in the event of failure or termination of insured status.* In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution's receiver. In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment

remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution, subject to the provisions of § 327.6 of subpart A.

(1) *Exemptions.* (1) *Exemption without application.* The FDIC, after consultation with an institution's primary federal regulator, will exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement under paragraph (a) of this section if the FDIC determines that the prepayment would adversely affect the safety and soundness of that institution. No application is required for this review and the FDIC will notify any affected institution of its exemption by November 23, 2009.

(2) *Application for exemption.* An institution may also apply to the FDIC for an exemption from the prepayment requirement under paragraph (a) of this section if the prepayment would significantly impair the institution's liquidity, or would otherwise create extraordinary hardship. Written applications for exemption from the prepayment obligation must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (prepaidassessment@fdic.gov) or fax (202-898-6676). The application must contain a full explanation of the need for the exemption and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC will exercise its discretion in deciding whether to exempt an institution that files an application for exemption. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, either that the institution is exempt from the prepaid assessment or the FDIC has postponed determination under paragraph (i)(4) of this section. The FDIC's denial of applications for exemption will be final and not subject to further agency review.

(3) *Application for Withdrawal of Exemption.* An institution that has received an exemption under paragraph (i)(1) of this section may request that

the FDIC withdraw the exemption. Written applications for withdrawal of exemption must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (prepaidassessment@fdic.gov) or fax (202-898-6676). The application must contain a full explanation of the reasons the exemption is not needed and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC, after consultation with the institution's primary Federal regulator, will exercise its discretion in deciding whether to withdraw the exemption. The FDIC will notify an institution of its decision to withdraw the exemption by December 15, 2009; that determination will be final and not subject to further agency review. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, that the exemption is withdrawn.

(4) *Postponement of determination.* The FDIC may postpone making a determination on any application for exemption filed under paragraph (i)(2) of this section until no later than January 14, 2010. An institution notified by the FDIC of such postponement will not have to pay the prepaid assessment calculated under paragraph (b) of this section on December 30, 2009. If the FDIC denies the application for exemption, the FDIC will notify the institution of the denial and of the date by which the institution must pay the prepaid assessment. The due date for payment of the prepaid assessment after such a denial will be no less than 15 days after the date of the notice of denial.

(5) *Obligation to pay third quarter 2009 assessment.* Any institution exempted from the prepayment requirement or any institution whose application for exemption has been postponed under this section shall pay to the Corporation on December 30, 2009, any amount due for the third quarter of 2009 as shown on the certified statement invoice for that quarter.

[74 FR 59065, Nov. 17, 2009]

§ 327.15 Emergency special assessments.

(a) *Emergency special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose an emergency special assessment of 20 basis points on each insured depository institution based on the institution's assessment base calculated pursuant to § 327.5 for the second assessment period of 2009.

(b) *Emergency special assessments after June 30, 2009.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to zero or negative at the end of a calendar quarter, an emergency special assessment of up to 10 basis points may be imposed by a vote of the Board on all insured depository institutions based on each institution's assessment base calculated pursuant to § 327.5 for the corresponding assessment period.

(1) *Estimation process.* For purposes of any emergency special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

(2) *Imposition and announcement of emergency special assessments.* Any emergency special assessment under this paragraph (b) shall be on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice published in the FEDERAL REGISTER of the emergency special assessment.

(c) *Invoicing of any emergency special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any emergency special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institu-

tion's quarterly certified statement invoice for the assessment period in which the emergency special assessment was imposed.

(d) *Payment of any emergency special assessment.* Each insured depository institution shall pay to the Corporation any emergency special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any emergency special assessment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the emergency special assessment was imposed.

[74 FR 9341, Mar. 3, 2009]

APPENDIX A TO SUBPART A OF PART 327

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 30, 2008, that will determine which small institutions will be charged the minimum and maximum initial base assessment rates applicable to Risk Category I;
- The minimum initial base assessment rate for Risk Category I, equal to 12 basis points, and
- The maximum initial base assessment rate for Risk Category I, which is four basis points higher than the minimum rate.

II. THE STATISTICAL MODEL

The Statistical Model is defined in equations 1 and 3 below.

Equation 1

$Downgrade(0,1)_{i,t} = \beta_0 + \beta_1$ (Tier 1 Leverage Ratio_T) + β_2 (Loans past due 30 to 89 days ratio_{i,t}) + β_3 (Nonperforming asset ratio_{i,t}) + β_4 (Net loan charge-off ratio_{i,t}) + β_5 (Net income before taxes ratio_{i,t}) + β_6 (Adjusted brokered deposit ratio_{i,t}) + β_7 (Weighted average CAMELS component rating_{i,t}) 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 six financial ratios and a weighted average of the “C,” “A,” “M,” “E” and “L” component ratings. The six 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

- Brokered deposits/domestic deposits above the 10 percent threshold, adjusted for the asset growth rate factor

Table A.1 defines these six ratios along with the weighted average of CAMELS component ratings. The adjusted brokered deposit ratio ($B_{i,T}$) is calculated by multiplying the ratio of brokered deposits to domestic deposits above the 10 percent threshold by an asset growth rate factor that ranges from 0 to 1 as shown in Equation 2 below. The asset growth rate factor ($A_{i,T}$) is calculated by subtracting 0.4 from the four-year cumulative gross asset growth rate (expressed as a number rather than as a percentage), adjusted for mergers and acquisitions, and multiplying the remainder by $\frac{3}{5}$. The factor cannot be less than 0 or greater than 1.

Equation 2

$$B_{i,T} = \left(\frac{\text{Brokered Deposits}_{i,T} - 0.10}{\text{Domestic Deposits}_{i,T}} \right) * A_{i,T}$$

$$\text{where } A_{i,T} = \left[\left(\frac{\text{GrossAssets}_{i,T} - \text{GrossAssets}_{i,T-4}}{\text{GrossAssets}_{i,T-4}} - 0.4 \right) * \frac{10}{3} \right], \text{ subject to } 0 \leq A_{i,T} \leq 1 \text{ and } B_{i,T} \geq 0.$$

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. 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 with-

out 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. Reciprocal deposits are not presently reported in the Call Report or TFR. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting reciprocal deposits from brokered deposits in determining the adjusted brokered deposit 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.
Adjusted brokered deposit ratio (%)	Brokered deposits divided by domestic deposits less 0.10 multiplied by the asset growth rate factor (which is the term $A_{i,T}$ as defined in equation 2 above) that ranges between 0 and 1.

TABLE A.1—DEFINITIONS OF REGRESSORS—Continued

Regressor	Description
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 variable 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 1. As shown in equation 3 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: (1) 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; (2) 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; and (3) reciprocal deposits are deducted from brokered deposits in determining the adjusted brokered deposit ratio.

Equation 3

$$d_{i,T} = \beta_0 + \beta_1 (\text{Tier 1 Leverage Ratio}_{i,T}) + \beta_2 (\text{Loans past due 30 to 89 days ratio}_{i,T}) + \beta_3 (\text{Nonperforming asset ratio}_{i,T}) + \beta_4 (\text{Net loan charge-off ratio}_{i,T}) + \beta_5 (\text{Net income before taxes ratio}_{i,T}) + \beta_6 (\text{Adjusted brokered deposit ratio}_{i,T}) + \beta_7 (\text{Weighted average CAMELS component rating}_{i,T})$$

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 twenty-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, 2008.^{1,2} The minimum downgrade probability cutoff value is 0.0182.

- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the fifteen 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, 2008. The maximum downgrade probability cutoff value is 0.1506.

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, $P_{i,T}$, 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 initial base assessment rates in Risk Category I as follows:

Equation 4

$$P_{i,T} = \alpha_0 + \alpha_1 * d_{i,T} \text{ subject to } \text{Min} \leq P_{i,T} \leq \text{Min} + 4$$

where α_0 and α_1 are a constant term and a scale factor used to convert $d_{i,T}$ (the estimated downgrade probability for institution i at a given time T from the Statistical Model) to an assessment rate, respectively,

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

²For purposes of calculating the minimum and maximum downgrade probability cutoff values, institutions that have less than \$100,000 in domestic deposits are assumed to have no brokered deposits.

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and *Min* is the minimum initial base assessment rate expressed in basis points. (P_{IT} is expressed as an annual rate, but the actual rate applied in any quarter will be $P_{IT}/4$.) The maximum initial base assessment rate is 4 basis points above the minimum (*Min* + 4)

Solving equation 4 for minimum and maximum initial base assessment rates simultaneously,

$$Min = \alpha_0 + \alpha_1 * 0.0182 \text{ and } Min + 4 = \alpha_0 + \alpha_1 * 0.1506$$

where 0.0182 is the minimum downgrade probability cutoff value and 0.1506 is the maximum downgrade probability cutoff value, results in values for the constant amount, α_0 and the scale factor, α_1 :

Equation 5

$$\alpha_0 = Min - \frac{4 * 0.0182}{(0.1506 - 0.0182)} = Min - 0.550$$

and *Equation 6*

$$\alpha_1 = \frac{4}{(0.1506 - 0.0182)} = 30.211$$

Substituting equations 3, 5 and 6 into equation 4 produces an annual initial 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 7

$$P_{IT} = [(Min - 0.550) + 30.211 * \beta_0] + 30.211 * [\beta_1 (Tier 1 Leverage Ratio_T) + 30.211 * [\beta_2 (Loans past due 30 to 89 days ratio_T) + 30.211 * [\beta_3 (Nonperforming asset ratio_T) + 30.211 * [\beta_4 (Net loan charge-off ratio_T) + 30.211 * [\beta_5 (Net income before taxes ratio_T) + 30.211 * [\beta_6 (Adjusted brokered deposit ratio_T) + 30.211 * [\beta_7 (Weighted average CAMELS component rating_T)]]]]]]]]]$$

again subject to $Min \leq P_{IT} \leq Min + 4$

where $(Min - 0.550) + 30.211 * \beta_0$ equals the uniform amount, $30.211 * \beta_1$ 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 1988 to 2006 period and downgrade data from the 1989 to 2007 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 initial base assessment rates—equation 7—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.

[74 FR 9557, Mar. 4, 2009]

**APPENDIX B TO SUBPART A OF PART 327
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

[74 FR 9559, Mar. 4, 2009]

APPENDIX C TO SUBPART A OF PART 327

ADDITIONAL RISK CONSIDERATIONS FOR LARGE RISK CATEGORY I INSTITUTIONS

Information source	Examples of associated risk indicators or information
Financial Performance and Condition Information.	<p><i>Capital Measures (Level and Trend)</i></p> <ul style="list-style-type: none"> • Regulatory capital ratios. • Capital composition. • Dividend payout ratios. • Internal capital growth rates relative to asset growth. <p><i>Profitability Measures (Level and Trend)</i></p> <ul style="list-style-type: none"> • 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. <p><i>Asset Quality Measures (Level and Trend)</i></p> <ul style="list-style-type: none"> • 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 re-negotiated 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. <p><i>Liquidity and Funding Measures (Level and Trend)</i></p> <ul style="list-style-type: none"> • Composition of deposit and non-deposit funding sources. • Liquid resources relative to short-term obligations, undisbursed credit lines, and contingent liabilities. <p><i>Interest Rate Risk and Market Risk (Level and Trend)</i></p> <ul style="list-style-type: none"> • Maturity and repricing information on assets and liabilities, interest rate risk analyses. • Trading book composition and Value-at-Risk information.
Market Information	<ul style="list-style-type: none"> • 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	<p><i>Ability to Withstand Stress Conditions</i></p> <ul style="list-style-type: none"> • Internal analyses of portfolio composition and risk concentrations, and vulnerabilities to changing economic and financial conditions. • 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: <ol style="list-style-type: none"> 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. <p><i>Loss Severity Indicators</i></p> <ul style="list-style-type: none"> • 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 discreet 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.

[74 FR 9560, Mar. 4, 2009]

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 FDICconnect 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: 73 FR 73162, Dec. 2, 2008, 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 provides 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) *Assessment base share* means an *insured depository institution's 1996 assessment base ratio* divided by the total of all existing, eligible insured depository institution's shares of the 1996 assessment base (rounded to 14 decimal places).

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

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

(d)(1) An *eligible premium* means an assessment paid by an insured depository institution (or its predecessor) that did not exceed, for the applicable assessment period, the maximum assessment applicable in that assessment period to a Risk Category 1 institution under subpart A of this part.

(2) An eligible premium does not include any assessments or fees paid by insured depository institutions for the Temporary Liquidity Guarantee Program. An eligible premium also does not include any emergency special assessments paid by insured depository institutions pursuant to section

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13(c)(4)(G) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c)(4)(G), whether to repay any loss to the FDIC as a consequence of the Temporary Liquidity Guarantee Program or for any other reason.

(e) An insured depository institution's *eligible premium share* means that institution's cumulative eligible premiums over the previous five years (ending on December 31st of the year prior to the year in which the dividend is declared) divided by the cumulative total of all eligible premiums paid by all existing insured depository institutions or their predecessors over that five-year period (rounded to 14 decimal places).

(f) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio, as determined pursuant to §327.33 of this part, adjusted as necessary 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. The 1996 assessment base ratio shall be rounded to seven decimal places.

(g) *Predecessor*, when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution or acquired by an institution under §327.33(c) under the de facto rule, consistent with the definition of *successor* in §327.31.

§ 327.52 Annual dividend determination.

(a) If the DIF reserve ratio as of December 31st of 2008 or any later year equals or exceeds 1.35 percent, then on or before May 10th of the following year, 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 1.50 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 ag-

gregate dividend to be paid to insured depository institutions.

(c) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF exceeds 1.50 percent of estimated insured deposits, the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.50 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 1.50 percent; or

(B) To exceed 1.50 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

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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)(1) The allocation of any dividend among insured depository institutions shall be based on the institution's 1996 assessment base share and the institution's eligible premium share.

(2) As set forth in the following table, the part of a dividend allocated based upon an institution's 1996 assessment base share shall decline steadily from 100 percent to zero over fifteen years, and the part of a dividend allocated based upon an institution's eligible premium share shall increase steadily over the same fifteen-year period from zero to 100 percent. The 15-year period shall begin as if it had applied to a dividend based upon the reserve ratio at the end of 2006 and shall end with respect to any dividend based upon the reserve ratio at the end of 2021. Dividends based upon the reserve ratio as of December 31, 2021, and thereafter shall be allocated among insured depository institutions based solely on eligible premium shares.

TOTAL DIF DIVIDEND DISTRIBUTION TABLE

Based upon the DIF reserve ratio at year-end	Part of total DIF dividend determined by:	
	1996 Assessment base shares	Eligible premium shares
2006 ¹	1 (100.0%)	0 (0%)
2007 ¹	14/15 (93.3%)	1/15 (6.7%)
2008	13/15 (86.7%)	2/15 (13.3%)
2009	4/5 (80.0%)	1/5 (20.0%)
2010	11/15 (73.3%)	4/15 (26.7%)
2011	2/3 (66.7%)	1/3 (33.3%)
2012	3/5 (60.0%)	2/5 (40.0%)
2013	8/15 (53.3%)	7/15 (46.7%)
2014	7/15 (46.7%)	8/15 (53.3%)
2015	2/5 (40.0%)	3/5 (60.0%)
2016	1/3 (33.3%)	2/3 (66.7%)
2017	4/15 (26.7%)	11/15 (73.3%)
2018	1/5 (20.0%)	4/5 (80.0%)
2019	2/15 (13.3%)	13/15 (86.7%)
2020	1/15 (6.7%)	14/15 (93.3%)
2021	0 (0%)	1 (100.0%)
Thereafter	0 (0%)	1 (100%)

¹The 15-year period shall be computed as if it had applied to dividends based upon the reserve ratios at the end of 2006 and 2007.

(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, unless they are the subject of a request for review under § 327.54, to insured depository institutions on June 30 of the year the dividend is declared. 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 will be settled with that 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 the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited by 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 shall withhold the payment of the disputed portion of the dividend amount involved in the request for review. 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.

(e) An institution may sell, assign, or otherwise transfer its right to a current or future dividend. However, the FDIC will pay dividend amounts to insured institutions without regard to any such sale, assignment or transfer, regardless of whether the FDIC has received notice of the sale, assignment or transfer.

§ 327.54 Requests for review.

(a) An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base share and/or its eligible premium share as shown

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on the institution's quarterly assessment invoice. Such requests shall be subject to the provisions of §327.3(f)(3) of this part, except for the invoice provided by the FDIC in March of any calendar year in which the FDIC declares a dividend. If the FDIC declares a dividend, any request for review of an institution's 1996 assessment base share and/or its eligible premium share as shown on the institution's March quarterly assessment invoice must be filed within 30 days of the date that the FDIC notifies the institution of its dividend amount. If an institution does not submit a timely request for review for the first invoice in which the dividend-related information that forms the basis for the request appears, the institution shall be barred from subsequently requesting review of that information.

(b) 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. 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

(2) The institution believes that the 1996 assessment base ratio attributed to the institution is inaccurate or 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 this part and §327.51(g), and the institution has not had a prior opportunity to request review or appeal under subpart B of this part or paragraph (a) of this section; or

(3) The institution believes that the special notice does not fully or accurately reflect its eligible premiums or those of any of its predecessors and the institution has not had a prior opportunity to request review or appeal under subpart B of this part or paragraph (a) of this section.

(c) Any such request for review under paragraph (b) of this section must be submitted within 30 days of the date of the special notice of dividend 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.

(d) During the FDIC's consideration of a request for review, the amount of dividend in dispute will not be paid.

(e) Within 30 days of receiving notice of the request for review under paragraph (b) of this section, 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) 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.

(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 under paragraph (b) of this section 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

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whether the requested change is warranted, whenever feasible:

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

(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.

(h) 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 (b) 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.

328.1 Official sign.

328.2 Display and procurement of official sign.

328.3 Official advertising statement requirements.

328.4 Prohibition against receiving deposits at same teller station or window as non-insured institution.

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.

PART 328—ADVERTISEMENT OF MEMBERSHIP

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328.0 Scope.

§ 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:

