RESCINDED

Office of Thrift Supervision **July 27, 2006**

Department of the Treasury

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Transmittal

TR-379

Federal Register, Vol. 71, No. 96, pp. 28809 - 28819 **Number TR-379**

On May 18, 2006, the Federal Deposit Insurance Corporation (FDIC) issued the attached proposal to amend 12 CFR 327 to implement the one-time assessment credit for certain eligible insured depository institutions required by the Federal Deposit Insurance Act as amended by the Federal Deposit Insurance Report Act of 2005.

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

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

§ 327.53 Allocation and payment of dividends.

(a) For any dividend declared before January 1, 2009, allocation of such dividend among insured depository institutions shall be based solely on an insured depository institution's 1996 assessment base ratio.

(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 or, at the latest, with the institution's next assessment invoice.

(c) The FDIC shall pay individual dividend amounts to insured depository institutions at the time of the collection by the FDIC of the assessments for the second calendar quarter beginning after the declaration of the dividend. An institution's dividend amount shall be remitted with that institution's assessment. Any excess dividend amount will be a net credit of the FDIC and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A. If the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited to the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution requests review of its dividend amount under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC shall credit the institution with the dividend amount provided on the invoice. If the institution prevails on its request for review, then any additional amount of dividend will be remitted to the institution, with interest, with the institution's assessment in the next calendar quarter after the final determination has been made.

§ 327.54 Requests for review of dividend amount.

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

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

(2) The institution believes that the 1996 assessment base ratio attributed to the institution does not fully or accurately reflect appropriate adjustments for predecessors resulting from transactions involving the institution after the FDIC's final determination of the 1996 assessment base ratio under subpart B of this part.

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

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

(d) Within 30 days 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 (b) of this section does not submit a response to the request for review, that institution may not subsequently:

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

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

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

(f) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance (''Director''):

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

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

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information,whichever is later. Whenever feasible, the response will notify the institution of the determination of the Director as to whether the requested change is warranted. In all instances in which a timely request for review is submitted, the Director will make a determination on the request as promptly as possible and notify the institution in writing of the determination. Notice of the procedures applicable to reviews will be included with the special notice of dividend or assessment invoice providing notification of the dividend.

(g) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 15 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.

§ 327.55 Sunset date.

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

Dated at Washington, DC, this 9th day of May, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–7585 Filed 5–17–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD08

One-Time Assessment Credit

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is proposing to amend 12 CFR part 327 to implement the one-time assessment credit for certain eligible insured depository institutions required by the Federal Deposit Insurance Act (''FDI Act'') as amended by the Federal Deposit Insurance Reform Act of 2005 (''Reform Act''). The proposed rule covers: the aggregate amount of the one-time credit; the institutions that are eligible to receive credits; and the amount of each eligible institution's credit, which for some institutions may be largely dependent on how the FDIC defines ''successor'' for these purposes. The proposed rule also would establish the qualifications and procedures governing the application of assessment credits, and provide a reasonable opportunity for an institution to challenge administratively the amount of the credit.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal.propose.html.* Follow instructions for submitting comments on the Agency Web site.
- E-mail: *Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Munsell W. St.Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832.

SUPPLEMENTARY INFORMATION:

I. Background

Section 7(e)(3) of the Federal Deposit Insurance Act, as amended by the Reform Act,[1] requires that the FDIC's Board of Directors (''Board'') provide by regulation an initial, one-time assessment credit to each ''eligible'' insured depository institution (or its successor) based on the assessment base of the institution as of December 31, 1996, as compared to the combined aggregate assessment base of all eligible institutions as of that date (''the 1996 assessment base ratio''), taking into account such other factors the Board may determine to be appropriate. The aggregate amount of one-time credits is to equal the amount that the FDIC could have collected if it had imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund (''BIF'') and Savings Association Insurance Fund (''SAIF'') as of December 31, 2001. 12 U.S.C. 1817(e)(3).

An ''eligible'' insured depository institution is one that:

1. Was in existence on December 31, 1996, and paid a Federal deposit insurance assessment prior to that date;[2] or
2. Is a ''successor'' to any such insured depository institution.

The FDI Act requires the Board to define ''successor'' for these purposes and provides that the Board ''may consider any factors as the Board may deem appropriate.'' The amount of a credit to any eligible insured depository institution must be applied by the FDIC to the assessments imposed on such institution that become due for assessment periods beginning after the effective date of the one-time credit regulations required to be issued within 270 days after enactment.[3] 12 U.S.C. 1817(e)(3)(D)(i).

There are three restrictions on the use of credits:

1. As a general rule, for assessments that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010, credits may not be applied to more than 90 percent of an institution's assessment. 12 U.S.C. 1817(e)(3)(D)(ii). (This 90 percent limit does not apply to 2007 assessments.)
2. For an 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 FDI Act) at the beginning of an assessment period, the amount of any credit that may be applied against the institution's assessment for the period may not exceed the amount the institution would have been assessed had it been assessed at the average rate for all institutions for the period. 12 U.S.C. 1817(e)(3)(E).
3. If the FDIC is operating under a restoration plan to recapitalize the Deposit Insurance Fund (''DIF'') pursuant to section 7(b)(3)(E) of the FDI Act, as amended by the Reform Act, the FDIC may elect to restrict credit use; however, an institution must still be allowed to apply credits up to three basis points of its assessment base or its actual assessment, whichever is less. 12 U.S.C. 1817(b)(3)(E)(iii).

The one-time credit regulations must include the qualifications and procedures governing the application of assessment credits. These regulations also must include provisions allowing a bank or thrift a reasonable opportunity to challenge administratively the amount of credits it is awarded.[4] Any determination of the amount of an institution's credit by the FDIC pursuant to these administrative procedures is

[1] The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006.

[2] Prior to 1997, the assessments that SAIF member institutions paid the SAIF were diverted to the Financing Corporation (''FICO''), which had a statutory priority to those funds. Beginning with enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA,'' Pub. L. 101–73, 103 Stat. 183) and ending with the Deposit Insurance Funds Act of 1996 (''DIFA,'' Pub. L. 104–208, 110 Stat. 3009, 3009–479), FICO had authority, with the approval of the Board of Directors of the FDIC, to assess against SAIF members to cover anticipated interest payments, issuance costs, and custodial fees on FICO bonds. The FICO assessment could not exceed the amount authorized to be assessed against SAIF members pursuant to section 7 of the FDI Act, and FICO had first priority against the assessment. 12 U.S.C. 1441(f), as amended by FIRREA. Beginning in 1997, the FICO assessments were no longer drawn from SAIF. Rather, the FDIC began collecting a separate FICO assessment. 12 U.S.C. 1441(f), as amended by DIFA. Payments to SAIF prior to December 31, 1996, therefore, are considered deposit insurance assessments for purposes of the one-time assessment credit. The new law does not change the existing process through which the FDIC collects FICO assessments.

[3] Section 2109 of the Reform Act also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the dividend requirement, and assessments. An interim final rule on deposit insurance coverage was published on March 23, 2006. See 71 FR 14629. A notice of proposed rulemaking on the dividend requirement and a notice of proposed rulemaking on operational changes to the FDIC's assessment regulations are both being proposed by the FDIC at the same time as this notice on the one-time assessment credit. Additional rulemakings on the designated reserve ratio and risk-based assessments are expected to be proposed in the near future.

[4] Similarly, for dividends under the FDI Act as amended by the Reform Act, the regulations must include provisions allowing a bank or thrift a reasonable opportunity to administratively challenge the amount of dividends it is awarded. 12 U.S.C. 1817(e)(4).

final and not subject to judicial review. 12 U.S.C. 1817(e)(4).

Accordingly, the FDIC is requesting comment on proposed rules that would implement the one-time assessment credit requirement added by the Reform Act.

II. Description of the Proposal

As part of this rulemaking, the FDIC must, among other things: determine the aggregate amount of the one-time credit; determine the institutions that are eligible to receive credits; and determine the amount of each eligible institution's credit, which for some institutions may be largely dependent on how the FDIC defines ''successor'' for these purposes. The FDIC also must establish the qualifications and procedures governing the application of assessment credits, and provide a reasonable opportunity for an institution to challenge administratively the amount of the credit. The FDIC's determination after such challenge will be final and not subject to judicial review.

As set out more fully below, the FDIC proposes that the Board: rely on the 1996 assessment base figures contained in the Assessment Information Management System (AIMS II)[5]; define ''successor'' as the resulting institution in a merger or consolidation, while seeking comment on alternative definitions; determine that the FDIC will automatically apply each institution's credit against future assessments to the maximum extent allowed consistent with the limitations in the FDI Act; and provide an appeals process for administrative challenges to the amounts of credits that culminates in review by the Assessment Appeals Committee (AAC).

Shortly after publication of the notice of proposed rulemaking, the FDIC intends to make available to each insured depository institution the FDIC's calculation of that institution's 1996 assessment base (if any), and to give each institution the opportunity to review and verify its 1996 assessment base, as well as information related to mergers or consolidations to which it was a party.

[5] The current Assessment Information Management Systems (commonly referred to as AIMS II) contains a record for quarterly reports of condition data from institutions with bank and thrift charters. The FFIEC Central Data Repository (''FFIEC–CDR'') for banks and the Thrift Financial Report for thrifts provide AIMS II with the values of the deposit line items that are used in the calculation of an institution's assessment base.

A. Aggregate Amount of One-time Assessment Credit

The aggregate amount of the one-time assessment credit is expected to be $4,707,580,238.19, which is calculated by applying an assessment rate of 10.5 basis points to the combined assessment base of BIF and SAIF as of December 31, 2001. The FDIC proposes to rely on the assessment base numbers available from each institution's certified statement (or amended certified statement), filed quarterly and preserved in AIMS II, which records the assessment base for each insured depository institution as of that date. AIMS II is the FDIC's official system of records for determination of assessment bases and assessments due.

B. Determination of Eligible Insured Depository Institutions and Each Institution's 1996 Assessment Base Ratio

The FDIC must determine the assessment base of each eligible institution as of December 31, 1996, and any successor institutions, to determine the 1996 assessment base ratio. In making these determinations, the Board has the authority to take into account such factors as the Board may determine to be appropriate. 12 U.S.C. 1817(e)(3)(A).

Stated simply, the denominator of the 1996 assessment base ratio is the combined aggregate assessment base of all eligible insured depository institutions and their successors. The numerator of each eligible institution's 1996 assessment base ratio is its assessment base as of December 31, 1996, together with the assessment base on December 31, 1996, of each institution (if any) to which it is a successor. An eligible insured depository institution is one in existence as of December 31, 1996, that paid an assessment prior to that date (or a successor to such institution).

1. Determination of Eligible Institutions

As a starting point, the FDIC proposes to use the December 31, 1996 assessment base for each institution, as it appears on the institution's certified statement or as subsequently amended and as recorded in AIMS II. Those numbers reflect the bases on which institutions that existed on December 31, 1996, paid assessments. As of December 31, 2005, it appears that there were approximately 7,400 active insured depository institutions that may be eligible for the one-time assessment credit—that is, they were in existence on December 31, 1996, and had paid an assessment prior to that date.

a. Effect of Voluntary Termination or Failure

The FDIC has identified those institutions that have voluntarily terminated their insurance or failed since December 31, 1996, which otherwise would have been considered eligible insured depository institutions for purposes of the one-time credit. The FDIC proposes that the definition of ''successor'' (discussed more fully below) govern the determination of whether the one-time credits of an institution that voluntarily is eligible and its credits transfer to a successor. Whether an institution that voluntarily terminated would have a successor would depend on the specific circumstances surrounding its termination. The FDIC proposes that an insured depository institution that has failed would not have a successor.

b. De Novo Institutions

The FDIC has identified those institutions newly in existence as of December 31, 1996 (''*de novo* institutions'') that did not pay deposit insurance premiums prior to December 31, 1996. Under the statute, those institutions could not be eligible insured depository institutions for purposes of the one-time assessment credit.

The FDIC's records indicate that there were approximately 90 institutions that became newly insured between July 1, 1996 and December 31, 1996, that did not pay any deposit insurance assessment and did not acquire through merger or consolidation another institution that had paid assessments before year-end 1996. These institutions are not eligible for credits under the terms of the statute.

In addition, the FDIC's records indicate that there are two *de novo* institutions, which did not pay assessments directly, but each acquired by merger an institution that had paid assessments before December 31, 1996. Under traditional general principles of corporate law, the surviving or resulting institution in a merger or consolidation is considered to have acquired the rights, privileges, powers, franchises, and property of the terminating institution, as well as the liabilities, restrictions, and duties of that institution. The surviving or resulting institution effectively continues the business of the terminating institution. 15 William Meade Fletcher *et al.*, Fletcher Cyclopedia of the Law of Private Corporations §§ 7041–7100 (perm. ed., rev. vol. 1999). On that basis, the FDIC proposes that a *de novo* institution that acquired, through merger or consolidation, an existing insured depository institution that had paid a deposit insurance assessment be considered to have stepped into the shoes of the existing institution for purposes of determining eligibility for the one-time assessment credit.

2. Definition of ''Successor''

As noted above, an insured depository institution in existence on December 31, 1996, that paid insurance premiums is eligible for the one-time assessment credit. An institution also may be eligible as a ''successor'' to such an institution. In making the preliminary determinations of eligible insured depository institutions, their assessment bases as of December 31, 1996, and the combined assessment base of the BIF and the SAIF as of the same date, the FDIC proposes to rely on the institution's certified statement (as amended, if necessary), as recorded in AIMS II.

Many institutions that existed at the end of 1996 no longer exist. Some have disappeared through merger or consolidation. In fact, it appears that approximately 3,850 additional institutions that were in existence on December 31, 1996, have since combined with other institutions. In addition, 38 institutions have failed and no longer exist, while the FDIC has to date identified approximately 90 others that voluntarily relinquished federal deposit insurance coverage or had their coverage terminated. The FDIC does not maintain complete records on sales of branches or blocks of deposits, but various sources suggest that at least 1,400 and possibly over 1,800 branch or deposit transactions have occurred since 1996.

Section 7(e)(3)(F) of the FDI Act expressly charges the FDIC with defining ''successor'' by regulation for purposes of the one-time credit, and it provides the FDIC with broad discretion to do so. The Board may consider any factors it deems appropriate.

In developing its proposal regarding the definition of ''successor,'' the FDIC viewed the issue in the context of two fundamental questions: what would be most consistent with the purpose of the one-time credit and what would be operationally viable. While a number of definitions of ''successor'' are possible in light of the discretion accorded the FDIC in defining the term, on balance, the FDIC concluded that one approach was more consistent with the purpose of the credit and more operationally viable.

The FDIC considered definitions that would focus on the institution itself and definitions that linked credits to deposits and considered the arguments in support of those definitions. Proponents of an institution-based approach might argue that it is the institution that paid deposit insurance premiums to capitalize the insurance funds, that the potential one-time credit would be one of the rights or privileges of an institution that would be acquired through merger or consolidation under general principles of corporate law, and that a different approach could result in institutions that had not paid premiums to capitalize the funds receiving credits. Proponents of a ''follow-the-deposits'' definition, however, might argue that the one-time credit should adhere to deposits because the one-time credit is to be allocated based on deposits and is intended to offset future assessments to be paid on deposits. The FDIC also considered the operational viability of these approaches to the definition and found that the FDIC's existing systems of records could support an institution-based approach, but a ''follow-the-deposits'' approach would require collection of information from the industry before it could be fully implemented.

For the reasons set forth below, the FDIC proposes to define ''successor'' for purposes of the one-time credit as the resulting institution in a merger or consolidation occurring after December 31, 1996. As proposed, the definition would not include a purchase and assumption transaction, even if substantially all of the assets and liabilities of an institution are acquired by the assuming institution. However, the FDIC further requests comment on whether to include in this definition a regulatory definition of a *de facto* merger to recognize that the results of some transactions, which are not technically mergers or consolidations, largely mirror the results of a merger or consolidation.

a. Merger or Consolidation Rule

Defining ''successor'' as the resulting institution in a merger or consolidation is consistent with the clear purpose of the one-time assessment credit—that is, to recognize the contributions that some insured depository institutions made to capitalize the deposit insurance funds and conversely to recognize the fact that many newer institutions have never paid assessments because they were chartered after the reserve ratios of BIF and SAIF reached 1.25 percent and most institutions were charged nothing.[6] In addition, the FDIC believes that this definition is consistent with the general expectations of the industry, because it reflects the common legal meaning of the word ''successor'' and the principle that the resulting corporation in a merger or consolidation generally receives the rights, privileges, interests, and liabilities of the merging or consolidating corporations. 15 William Meade Fletcher *et al.*, Fletcher Cyclopedia of the Law of Private Corporations §§ 7041–7100 (perm. ed., rev. vol. 1999). Institutions that acquired other institutions by way of merger or consolidation will have believed that they were acquiring *all* of the rights and privileges of the acquired institution, known or unknown.

While it is possible that some state banking laws may differ, this definition is consistent with the National Bank Consolidation and Merger Act. 12 U.S.C. 215, 216. The FDIC has significant discretion in defining the term ''successor'' for these purposes, and a single federal standard is essential to allow the FDIC to implement and administer the one-time credit requirement in a timely and efficient manner.

Mergers and consolidations require regulatory approval under section 18(c) of the FDI Act, and the FDIC maintains records on true mergers and consolidations. Only if the FDIC's records are incomplete or in error will institutions have to provide information to the FDIC. Because the ''merger or consolidation rule'' relies principally on existing data, it is operationally viable. In addition, a merger or consolidation rule would not advantage or disadvantage parties simply on the basis of whether they kept records on transactions for which the statute of limitations has expired.[7]

b. *De Facto* Merger Alternative

Some transactions may be viewed as effectively paralleling the results of a merger or consolidation. The FDIC looked to traditional principles of corporate law for guidance on this issue and found a useful analogy. Traditional corporate law principles provide for

[6] Prior to the effective date of changes to the FDIC's assessment authority by the Reform Act, the FDIC is required to set assessments when necessary and only to the extent necessary to maintain the reserve ratio at 1.25 percent of estimated insured deposits, except for those institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well capitalized. 12 U.S.C. 1817(b)(2)(A) (2005).

[7] Section 7(b)(5) of the FDI Act currently requires institutions to maintain assessment-related records for five years, and section 7(g) provides a five-year statute of limitations for assessment actions. The Reform Act includes amendments to those provisions, prospectively shortening both to three years, effective on the date that new assessment regulations take effect. See sections 2104(b), (d) and 2109(a)(5) of the Reform Act.

certain exceptions to the general rule that liabilities do not transfer with the sale of assets, including an exception for a transaction that amounts to a *de facto* merger or consolidation (''*de facto* merger'').

The FDIC recognizes, however, that a *de facto* merger exception could be viewed as a departure to some extent from the clear, bright line that a strictly applied merger or consolidation rule would provide. The FDIC, therefore, seeks comment on whether to include *de facto* mergers in the definition of ''merger'' for purposes of the one-time assessment credit and to provide a regulatory definition of *de facto* merger. A *de facto* merger for these purposes could be defined, for example, as an eligible institution conveying all of its deposit liabilities and substantially all of its assets to a single acquiring institution, so long as the conveying institution subsequently terminated its deposit insurance. This type of transaction might have arisen, for example, as part of a voluntary liquidation. Even under this alternative, unless an eligible institution actually merged or consolidated with another institution, it would not have a successor if it conveyed its assets and deposit liabilities to more than one acquiring institution.

2. Alternative Approaches to Definition of Successor That Would ''Follow the Deposits''

The FDIC also explored alternative definitions of successor that allowed credits to follow deposits (regardless of the means by which deposits were transferred, including merger, consolidation, branch sale, or other deposit transfer). These alternative definitions might be based on a view that credits should adhere to deposits, as described above. Under these alternative definitions, credits could be transferred on a *pro rata* basis with the deposits transferred or they could be split between the parties to the deposit transfer transaction. Splitting the credits associated with a deposit transfer between the buyer and seller would be a compromise solution and would recognize that, as a practical matter, it is unlikely the parties to most of these deposit transfers took into account the potential for assessment credits at the time of the transactions.

After considering the arguments, the FDIC concluded that a ''follow-the-deposits'' approach seemed less consistent with the purpose of the one-time credit and did not reflect the reasonable expectations of parties to transactions based on general corporate law principles. In addition, the FDIC was concerned about the viability of a ''follow-the-deposits'' approach because of: An absence of reliable existing data; the number of interrelated transactions that would have to be resolved due to the passage of time and consolidation in the industry; and the potential inequities and litigation risks inherent in mechanisms (such as thresholds or other choices) that might be used to reduce the number of potential claims to a more manageable level. Potential inequities also arise in connection with the data issue because institutions that engaged in very similar transactions could be treated differently solely because some institutions retained records long past the expiration of the statute of limitations and others did not.

The FDIC does not routinely maintain the detailed data on all deposit transfer transactions that would be necessary to implement a ''follow-the-deposits'' rule. Thus, most, if not all, of the necessary information would have to be collected from the industry and disputes between institutions resolved before a deposit transfer approach to allocating the one-time credit could be fully implemented. As previously noted, available data suggests that, in addition to roughly 3,850 mergers and consolidations, at least 1,400 and perhaps over 1,800 branch or deposit transactions may have occurred since 1996.

Because of the possibility of a chain of mergers, consolidations, and deposit transfers, resolving one institution's claim to one-time credits first might require examining claims from many transactions in the chain. In most cases, the FDIC would have to review and rely on the records of the institutions involved in the deposit transfer. Appeals of credit determinations could become lengthy fact finding exercises involving the comparison of the available evidence from all of the institutions involved.

The FDIC explored developing a type of *de minimis* rule under which, for example, only deposit transfers (or a series of transfers) from one institution to another that, in total, exceeded some percentage threshold, such as 15 percent of the transferor's total domestic deposits or 30 percent of the transferee's deposits as determined at the time of the transfer, might be considered. The FDIC was concerned, however, that thresholds or other choices to limit the number of institutions covered by a rule by their nature may result in disparate treatment of otherwise similarly situated institutions.

Because the statute of limitations will have expired with respect to many deposit transfer transactions from the late 1990s, institutions may not have retained records of these transactions. Institutions that saved their records would have a significant advantage over those that did not, potentially leading to results based solely on the availability of records.

The FDIC is seeking comment on the proposed definition of ''successor,'' as well as alternative ''follow-the-deposits'' approaches, for purposes of the one-time assessment credit. The FDIC requests that commenters address the purpose of the one-time credit and the extent to which the various possible definitions of ''successor'' are viewed as consistent with that purpose. In addition, the FDIC requests that commenters consider whether a ''follow-the-deposits'' approach might be made more operationally viable, including how the data issues might be addressed.

3. No Successor Identified

If there is no successor to an institution that would have been eligible for the one-time assessment credit *before* the effective date of the final rule, because an otherwise eligible institution ceased to be an insured depository institution before that date, then the FDIC proposes that that portion of the aggregate one-time credit amount be redistributed among the eligible institutions. For example, if an otherwise eligible insured depository institution failed after December 31, 1996, but before the issuance of the final rule implementing the one-time credit, and had no successor, that institution would be excluded from the calculation. As a result, the remaining eligible institutions would receive a proportionate share of that failed institution's share of the one-time credit.

On the other hand, if there is no successor to an eligible insured depository institution that ceases to exist *after* the Board issues the final rule and allocates the one-time assessment credit among eligible insured depository institutions, it is proposed that that institution's credits expire unused. One example would be the failure of an eligible institution after it has received its one-time credit amount. Under those circumstances, any remaining one-time credit amount would simply expire.

D. Notification of 1996 Assessment Base Ratio and Credit Amount

The FDIC intends to make available a searchable database provided through the FDIC's public Web site (*http://www.fdic.gov*) that shows each currently existing institution and its predecessors by merger or consolidation from January 1, 1997, onward, based on information contained in certified statements, AIMS II, and the Structure Information Management System (''SIMS'').[8] The database would include corresponding December 31, 1996 assessment base amounts for each institution and its predecessors and preliminary estimates of the amount of one-time credit that the existing institution would receive based on the proposed definition of successor.

The database will also allow searching by institution name or insurance certificate number to ascertain which current institution (if any) would be considered a successor to an institution that no longer exists. Institutions would have the opportunity to review this information, which could significantly reduce the time needed to determine successors even if one of the ''follow-the-deposits'' alternatives for defining ''successor'' is adopted in the final rule. Institutions should be aware that this preliminary estimate could change, for example, because of a change in the definition of ''successor'' adopted in the final rule or because of a change to the information available to the FDIC for determining successorship.

As soon as practicable after the Board approves the final rule, the FDIC proposes to notify each insured depository institution of its 1996 assessment base ratio and share of the one-time assessment credit, based on the information developed through the FDIC's searchable database. The notice would take the form of a Statement of One-time Credit (or ''Statement''): Informing every institution of its 1996 assessment base ratio; itemizing the 1996 assessment bases to which the institution may now have claims pursuant to the successor rule based on existing successor information in the database; providing the amount of the institution's one-time credit based on that 1996 assessment base ratio as applied to the aggregate amount of the credit; and providing the explanation as to how ratios and resulting amounts were calculated generally. The FDIC proposes to provide the Statement of One-time Credit through FDICconnect and by mail in accordance with existing practices for assessment invoices.

Under the proposal, if an institution has any question as to the calculation of its 1996 assessment base ratio or its credit amount, the institution would be advised to contact the Division of Finance. The FDIC encourages institutions to discuss and attempt to resolve perceived discrepancies due to an omission of a merger or consolidation, or due to disagreement about the size of an institution's 1996 assessment base while the notice of proposed rulemaking is out for comment.[9] As described below, each institution would have the opportunity to challenge formally the amount of its one-time credit, regardless of whether the institution sought an informal resolution during the rulemaking. Depending upon the definition of ''successor'' ultimately adopted, some challenges may not be resolved prior to the collection of assessments after the effective date of the final rule. However, the FDIC proposes to make available any credit amounts that are not in controversy. For example, if an eligible institution argues that it may be entitled to a larger share of the one-time credit as a successor, the amount of its original 1996 base ratio and share will be available (assuming they are not in dispute), and any potential additional credit amounts would be frozen until resolution of the challenge.

E. Requests for Review of Credit Amounts

Section 7(e)(4) of the FDI Act requires the FDIC's credit regulations to include provisions allowing an institution a reasonable opportunity to challenge administratively the amount of its one-time credit. The FDIC's determination of the amount following any such challenge is to be final and not subject to judicial review. The proposed administrative procedures are intended generally to parallel the process for requesting revision of computation of quarterly assessment payments. Deadlines, however, would be shorter because of the need to resolve credit appeals quickly so institutions can use the credits to offset assessments.

As noted above, the FDIC expects to notify each institution of its one-time credit share as soon as practicable after the issuance of the one-time assessment credit final rule through FDICconnect and by mail. The Statement of One-time Credit would include: The 1996 assessment base ratio for the institution; the amount of the assessment credit to be awarded to the institution based on the 1996 ratio; and a discussion of the basis for these calculations, based on the FDIC's definition of ''successor'' and any other relevant factors.

After this initial notification, it is proposed that an updated notice of the remaining amount of one-time credit, as well as any appropriate adjustment to an institution's 1996 assessment base ratio due to a subsequent merger or consolidation, would be included with each quarterly assessment invoice until an institution's credits have been exhausted. The initial Statement and any subsequent assessment invoices advising of the remaining credit amount or an adjustment to the assessment base ratio would also advise institutions of their right to challenge the calculation and the procedures to follow.

The FDIC proposes that an institution could request review if (1) It disagrees with the FDIC's determination of eligibility or ineligibility for the credit; (2) it disagrees with the computation of the credit amount on the initial Statement or any subsequent invoice, or (3) it believes that the Statement or a subsequently updated invoice does not fully or accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio. For example, the institution may believe that its 1996 assessment base ratio has not been adjusted to reflect its acquisition through merger of an eligible institution.

The FDIC also proposes that an institution that disagrees with the FDIC's determination have 30 days from the date the FDIC made available its Statement of One-time Credit or adjusted invoice to file a request for review with the Division of Finance. The request would have to be accompanied by any documentation supporting the institution's claim. The FDIC proposes that, if an institution does not submit a timely request for review, the institution be barred from subsequently requesting review of its one-time assessment credit amount.

In addition, the requesting institution would have to identify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and provide those institutions with copies of the request for review and supporting documentation, as well as the FDIC's procedures for these requests for review. The FDIC would make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified. These institutions would then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request

[8] SIMS maintains current and historical non-financial data for all institutions that is retrieved by AIMS II to identify the current assessable universe for each quarterly assessment invoice cycle. SIMS offers institution-specific demographic data, including a complete set of information on merger or consolidation transactions. SIMS, however, does not contain complete information about deposit or branch sales.

[9] Staff believes that the information developed through the searchable database would be useful even if the final rule defines ''successor'' in a way that follows deposits, because a ''follow-the-deposit'' definition would include recognition of the deposits actually transferred as part of a merger or consolidation.

for review. If an institution identified and notified through this process does not submit a timely response, the FDIC proposes that the institution would be: (1) Foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process; and (2) foreclosed from any appeal of the decision by the Director of the Division of Finance (discussed below).

Under the proposal, the FDIC also would be able to request additional information as part of its review and require the institution to supply that information within 21 days of the date of the FDIC's request for additional information.

The FDIC proposes to freeze temporarily the amount of the proposed credit in controversy for the institutions involved in the request for review until the request is resolved.

The proposed rule would require a written response from the FDIC's Director of the Division of Finance (''Director''): (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions have been notified by the FDIC, within 60 days of the last response; or (3) if additional information has been requested by the FDIC, within 60 days of receipt of any additional information due to such request, whichever is later. Whenever feasible, the response would notify the requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted. In all instances in which a timely request for review is submitted, the Director will make a determination on the request as promptly as possible and notify the requesting institution and any other materially affected institutions in writing of the determination. Notice of the procedures applicable to reviews will be included with the initial Statement and any subsequent assessment invoice providing notification of the amount of credit and any change to the institution's 1996 assessment base ratio.

Under the proposed rule, the requesting institution, or an institution materially affected by the Director's decision, that disagrees with that decision may appeal its credit determination to the AAC. An appeal would have to be filed within 15 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals will be included with that written determination. The AAC's determination would be final and not subject to judicial review.

A number of challenges may arise in connection with the distribution of the one-time credit, in large part because many transactions occurred after 1996 and before the Reform Act provided for a one-time credit, and because this will be the first time that an institution's 1996 assessment base ratio is calculated. Once those challenges are resolved, and each institution's 1996 assessment base ratio for purposes of its one-time credit share is established, unforeseen circumstances or issues may lead to other challenges of credit share, and administrative procedures will remain in place to address those challenges.

Once the Director or the AAC has made the final determination, as appropriate, the FDIC would adjust the affected institutions' 1996 assessment base ratios consistent with that determination and correspondingly update each affected institution's share of the one-time credit.

F. Using Credits

The FDIC proposes that the FDIC track each institution's one-time credit amount and automatically apply an institution's credits to its assessment to the maximum extent allowed by law. For fiscal year 2007 assessment periods, for most institutions, credits generally can offset 100 percent of an institution's assessment. For assessments that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010, the FDI Act provides that credits may not be applied to more than 90 percent of an institution's assessment. Thus, under the proposal, credits would automatically apply to 90 percent of an institution's assessment, assuming the institution has sufficient credits, subject to the two other statutory limitations on usage. The statute does not define a ''fiscal year'' for these purposes. The FDIC, therefore, may define that term and proposes to define it as the calendar year.

One of the other limitations is that, for an institution that exhibits financial, operational or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized at the beginning of an assessment period, the amount of any credit that may be applied against the institution's assessment for the period may not exceed the amount the institution would have been assessed had it been assessed at the average rate for all institutions for the period. The FDIC proposes to interpret the phrase ''average assessment rate'' to mean the aggregate assessment charged all institutions in a period divided by the aggregate assessment base for that period. The FDI Act does not define ''average assessment rate'' for these purposes, leaving that to the discretion of the FDIC. On balance, the FDIC views the proposed approach as preferable to an average calculated by the sum of all assessment rates divided by the number of institutions, because the proposed approach more accurately reflects the average rate actually charged all insured institutions.

Section 7(e)(3)(E) of the FDI Act, as added by the Reform Act, also gives the FDIC the discretion to limit the application of the one-time credit, when the FDIC establishes a restoration plan to restore the reserve ratio of the DIF to the range established for it.[10] That discretion, however, is restricted by the statute. During the time that a restoration plan is in effect, the FDIC shall apply one-time credit amounts against any assessment imposed on an institution for any assessment period in an amount equal to the lesser of (1) the amount of the assessment, or (2) the amount equal to three basis points of the institution's assessment base.

Credit amounts may not be used to pay FICO assessments pursuant to section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f). The Reform Act does not affect the authority of FICO to impose and collect, with the approval of the FDIC's Board, assessments for anticipated interest payments, issuance costs, and custodial fees on obligations issued by FICO.

G. Transferring Credits

The FDI Act provides for transferring one-time credits through successors to eligible insured depository institutions. A successor institution, as defined by regulation, would succeed to the predecessor institution's credits and to its 1996 assessment base ratio for purposes of any future dividends.

The FDIC is further proposing to allow transfer of credits and adjustments to 1996 assessment base ratios by express agreement between insured depository institutions prior to the FDIC's final determination of an eligible insured depository institution's 1996 assessment base ratio and one-time credit amount pursuant to these regulations. It is possible that such agreements might already be part of deposit transfer contracts drafted in anticipation of deposit insurance reform legislative changes. Alternatively,

[10] Section 2105 of the Reform Act, amending section 7(b)(3) of the FDI Act to establish a range for the reserve ratio of the DIF, will take effect on the date that final regulations implementing the legislation with respect to the designated reserve ratio become effective. Those regulations are required to be prescribed within 270 days of enactment. Section 2109(a)(1) of the Reform Act.

institutions involved in a dispute over successorship, their 1996 assessment base ratio, and their shares of the one-time credit might reach a settlement over the disposition of the one-time credit. In either case, under the proposal, the FDIC would require the institutions to submit a written agreement signed by legal representatives of the involved institutions. Upon the FDIC's receipt of the agreement, appropriate adjustments would be made to the institutions' affected one-time credit amounts and 1996 assessment base ratios. Adjustments to each institution's credit amount and 1996 assessment base ratio would then be reflected with the next quarterly assessment invoice, so long as the institutions submit the written agreement, at least 10 business days prior to the FDIC's issuance of invoices for the next assessment period. If the FDIC does not receive the written agreement at least 10 days before the next assessment invoice, the FDIC shall retroactively adjust the invoice or invoices in later assessment periods.

Similarly, after an institution's credit share has been finally determined and no request for review is pending with respect to that credit amount, the FDIC proposes to recognize an agreement between insured depository institutions to transfer any portion of the one-time credit from the eligible institution to another institution. Adjustments to each institution's credit amount would then be reflected with the next quarterly assessment invoice, so long as the institutions notify the FDIC of such agreement, through a written agreement signed by legal representatives of the institutions, at least 10 business days prior to the FDIC's issuance of invoices for the next assessment period. If the FDIC does not receive the written agreement at least 10 days before the next assessment invoice, the FDIC shall retroactively adjust the invoice or invoices in later assessment periods.

With respect to these transactions, occurring after the determination of each eligible institution's 1996 assessment base ratio and share of the one-time credit as of the effective date of these regulations, the FDIC proposes *not* to adjust the transferring institution's 1996 assessment base ratio. Adjustments to the 1996 ratios would be made only to reflect mergers or consolidations occurring after the effective date of these regulations. There would seem to be less likelihood of disputes over successorship because institutions would be aware of the definition of ''successor'' and could take that into account when entering future contracts as the parties deem appropriate. Thus, there seems little need to allow the sale of an institution's 1996 assessment base ratio, which the FDIC would be required to track on an ongoing basis for dividend purposes.

III. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 604, 605. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA. 5 U.S.C. 601. The proposed one-time assessment credit rule relates directly to the rates imposed on insured depository institutions for deposit insurance, as they will offset future deposit insurance assessments. Nonetheless, the FDIC is voluntarily undertaking an initial regulatory flexibility analysis of the proposal and seeking comment on it.

As discussed in detail in the **SUPPLEMENTARY INFORMATION** section, the proposed rule is required by statute to implement the one-time assessment credit added to the FDI Act by the Reform Act, and if it is adopted in final form, would not have a significant impact on a substantial number of small entities within the meaning of those terms as used in the RFA. Section 7(e)(3) of the FDI Act provides for the allocation of the one-time credit among eligible insured depository institutions and their successors, based on each institution's assessment base as of December 31, 1996, as compared to the combined assessment bases of all eligible institutions. The statute defines ''eligible insured depository institution'' and requires the FDIC to define ''successor'' for these purposes. These credits will be used to offset deposit insurance assessments collected after the effective date of the final rule.

All insured depository institutions that are eligible, regardless of size, would be affected by this rule. Of the approximately 8,845 insured depository institutions as of December 31, 2005, approximately 5,360 institutions fell within the definition of ''small entity'' in the RFA—that is, having total assets of no more than $165 million. Approximately 4,390 small institutions appear to be eligible for the one-time credit under the FDI Act definition of ''eligible insured depository institution.'' These institutions would have approximately $241 million in one-time credits out of a total of approximately $4.7 billion in one-time credits, given the FDI Act definition of ''eligible insured depository institution'' and the definition of ''successor'' proposed in this rulemaking.[11] These one-time credits represent approximately 8 basis points of the combined assessment base of small institutions as of December 31, 2005. Assuming, for purposes of illustration, that small institutions were charged an average annual assessment rate of 2 basis points, these one-time credits would last, on average, approximately 4 years. In sum, most small, eligible institutions would benefit if the proposed rule were made final.

The proposed rule relies primarily on information already available to the FDIC and requires little new reporting or recordkeeping. If an eligible institution, regardless of size, disagrees with the FDIC's determination of its credit amount, it may request review of

[11] The present value of these one-time credits depends upon when they are used, which in turn depends on the assessment rates charged. The one-time credits do not earn interest; therefore, the higher the assessment rate charged—and the faster credits are used—the greater their present value. The FDIC has proposed making one-time credits transferable, which could increase their present value.

that determination. The review procedures are required by the statute and largely parallel existing procedures for similar requests for review. Moreover, the FDIC proposes to recognize settlements between institutions if there is a disagreement as to an institution's eligibility or the amount of its credit. The FDIC would merely require the institutions' to demonstrate their agreement with the submission of a signed document. Neither the request for review nor the submission of agreement is required generally, but rather is aimed at responding to questions raised by individual institutions based on their particular circumstances. Thus, the FDIC does not view the proposed rule as imposing a significant burden on small institutions.

Based on these findings, particularly the ability to offset future assessments for some period of time, the FDIC has concluded that the economic impact of the one-time credit rule would be largely positive and could be ''significant'' for some small, eligible institutions. One potentially negative economic impact could be felt by a small number of institutions that would not be eligible under the proposed definition of ''successor,'' but might be eligible if an alternative definition were adopted to recognize acquisitions of deposit or branches. As discussed more fully in the **SUPPLEMENTARY INFORMATION** section, the FDIC concluded that the proposed definition of successor is more consistent with the purpose of the one-time credit and more operationally viable. It is particularly noted, for RFA purposes, that the proposed definition, for the most part, relies on existing data in the FDIC's official systems of records, while the alternatives considered would require collection of information from the industry. (The alternative definitions of ''successor'' also would not affect a substantial number of small institutions.[12])

The FDIC has been unable to identify any other relevant federal rules that may duplicate or conflict with this proposed rule, although the FDIC's Notice of Proposed Rulemaking to implement the dividend requirements added by the Reform Act overlaps with this proposed rule because both statutory provisions rely to some extent on an institution's assessment base as of December 31, 1996. Commenters are invited to provide the FDIC with any information they may have about the likely quantitative effects of the proposal.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this proposed rule has been submitted to OMB for review.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this proposal. Such comments should refer to ''Notification of Credit Transfers, 3064–AD08.'' Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- E-mail: *comments@FDIC.gov.* Include ''Notification of Credit Transfers, 3064–AD08'' in the subject line of the message.
- Mail: Steve Hanft (202–898–3907), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.
- A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Comment is solicited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Summary of the collection: The information collection occurs when an institution participates in a transaction that results in the transfer of one-time credits or an institution's 1996 assessment base, as permitted under the proposed rule, and seeks the FDIC's recognition of that transfer. It is expected that most transactions will occur during the first year.

Need and Use of the Information: Institutions are required to notify the FDIC of these transactions so that the FDIC can accurately track the transfer of credits, apply available credits appropriately against institutions' deposit insurance assessments, and determine an institution's 1996 assessment base if the transaction involved both the base and the credit amount. The need for credit transfer information will expire when the credit pool has been exhausted.

Respondents: Insured depository institutions.

Frequency of response: Occasional.

Annual Burden Estimate:

Number of responses: 200–500 during the first year with fewer than 10 per year thereafter.

Average number of hours to prepare a response: 2 hours.

Total annual burden: 400–1,000 hours the first year, and fewer than 100 hours thereafter.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

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

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

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

[12] Preliminary analysis suggests that the eligibility or credit amounts of some small institutions could be affected if the alternative definition of a ''successor'' as the acquirer of deposits, regardless of whether acquired through a merger or consolidation, were adopted. Compared to the proposed definition of ''successor,'' at least 330 small institutions could gain or lose credits. However, the value of the gain or loss is not known because the FDIC does not maintain comprehensive records of deposit transfers.

PART 327—ASSESSMENTS

1. Revise subpart B, consisting of § 327.30 through 327.36, to read as follows:

Subpart B—Implementation of One-time Assessment Credit

Subpart B—Implementation of One-time Assessment Credit

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

§ 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 of this part:

(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) An *eligible insured depository institution* means an insured depository institution that:

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

(2) Is a successor to an insured depository institution referred to in paragraph (c)(1) of this section. The term shall not include an institution if its insured status has terminated.

(d) *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 all 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.

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

(f) *Successor* means a resulting institution.

§ 327.32 Determination of aggregate credit amount.

The aggregate amount of the one-time credit shall equal the product of:

(a) The combined assessment base of BIF and SAIF as of December 31, 2001, as reflected in the FDIC's official system of record for determination of assessment bases and assessments due; and

(b) 10.5 basis points.

§ 327.33 Determination of eligible institution's credit amount.

(a) Allocation of the one-time credit shall be based on each eligible insured depository institution's 1996 assessment base ratio.

(b) An 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 eligible 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.

§ 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, 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 submit to the FDIC's Division of Finance a written agreement, signed by legal representatives of both institutions. 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. If the FDIC does not receive the written agreement at least 10 days before the next assessment invoice, the FDIC shall retroactively adjust the invoice or invoices in later assessment periods.

(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 to transfer any portion of such institution's one-time credit amount to another insured depository institution. The parties to the agreement shall submit to the FDIC's Division of Finance a written agreement, signed by legal representatives of both institutions. 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. If the FDIC does not receive the written agreement at least 10 days before the next assessment invoice, the FDIC shall retroactively adjust the invoice or invoices in later assessment periods.

§ 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an 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.

(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, 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) An insured depository institution may submit a request for review of the FDIC's final determination of the institution's credit amount as shown on the Statement of One-time Credit (''Statement'') within 30 days of the date the FDIC makes the Statement available. 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 may not subsequently request 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 may not subsequently request 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. 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 the request for review, the amount of credit in dispute shall not be available for use by any institution.

(e) Within 30 days 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) of this section 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:

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

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

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information,whichever is later. Whenever feasible, the response will notify the institution of the determination of the Director as to whether the requested change is warranted. In all instances in which a timely request for review is submitted, the Director will make a determination on the request as promptly as possible and notify the institution in writing of the determination. Notice of the procedures applicable to reviews will be included with the Statement and assessment invoices.

(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 15 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.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of May, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–7583 Filed 5–17–06; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24793; Directorate Identifier 2006–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A330, A340–200, and A340–300 airplanes. This proposed AD would require replacing the attachment landing assemblies of certain blow-down panels of the wing leading edges with new, improved landing assemblies. This proposed AD results from several reports of full or partial loss of certain blow-down panels of the wing leading edges during flight. We are proposing this AD to prevent damage to the airplane and hazards to persons or property on the ground.

DATES: We must receive comments on this proposed AD by June 19, 2006.