Certificate

I ______________________, certify that I am the Secretary of XYZ CORPORATION, that________ , who signed this Agreement for this corporation, was then_______________________of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporation powers. WITNESS MY HAND, and the seal of this corporation, this __day of____________ , 20____.

BY: ______________________________

(CORPORATE SEAL)

§ 3403.15 Other Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR Part 3—USDA implementation of the Debt Collection Act.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 331 and 9 CFR Part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

9 CFR Parts 1, 2, 3, and 4—USDA implementation of the Act of August 24, 1966, Pub. L. 89–544, as amended (commonly known as the Laboratory Animal Welfare Act).

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)— prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3403.16 Other considerations.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, DC, on this 10th day of May, 2006.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 06–4649 Filed 5–17–06; 8:45 am]

BILLING CODE 3410–22–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN–3064–AD03

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC proposes to amend 12 CFR part 327 to make the deposit insurance assessment system react more quickly and more accurately to changes in institutions' risk profiles, and in so doing to eliminate several causes for complaint by insured depository institutions. The proposed revisions would provide for assessment collection after each quarter ends, which would allow for consideration of more current supervisory information. The computation of institutions' assessment bases would change in the following ways: institutions with $300 million or more in assets would be required to determine their assessment bases using average daily deposit balances, and the float deduction used to determine the assessment base would be eliminated. In addition, the rules governing assessments of institutions that go out of business would be simplified; newly insured institutions would be assessed for the assessment period they become insured; prepayment and double payment options would be eliminated; institutions would have 90 days from each quarterly certified statement invoice to file requests for review and requests for revision; the rules governing quarterly certified statement invoices would be adjusted for a quarterly assessment system and for a three-year retention period rather than the present five-year period.

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 Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to passage of the Federal Deposit Insurance Reform Act of 2005 and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (collectively, the Reform Act),[1] the FDIC was statutorily required to set assessments semiannually. The FDIC did so by setting assessment rates and assigning institutions to risk classes prior to each semiannual assessment period. The semiannual assessment was collected in two installments, one near the start of the semiannual period and the other three months into the period, so that, in practice, assessment collection was accomplished prospectively every quarter.

Provisions in the Reform Act have removed longstanding restraints on the format of the deposit insurance assessment system and granted the FDIC discretion to revamp and improve the manner in which assessments are determined and collected from insured depository institutions. The FDIC has been vested with discretion to set assessment rates, classify institutions for risk-based assessment purposes and collect assessments within a system and on a schedule designed to track more accurately the degree of risk to the deposit insurance fund posed by depository institutions. The Reform Act also eliminated any requirement that the assessment system be semiannual.

The risk-based system has been in operation for 13 years. The FDIC's experience with that system and with approaches and arguments made by institutions that have filed requests for review with the FDIC's Division of Insurance and Research (DIR) and subsequent appeals to the FDIC's Assessment Appeals Committee (AAC) have prompted some of the present proposals to revise the FDIC's deposit insurance assessment system. For example, many appeals to the AAC involved assertions by insured institutions that the FDIC's system did not take into account their improved condition quickly enough. The proposed changes to the assessment system will enable the FDIC to make changes to an institution's assessment rate closer in time to changes in the institution's risk profile. The revisions will enhance the assessment process for institutions and eliminate many of the bases for requests for review filed with DIR by insured institutions as well as appeals filed with the AAC. These proposals would become effective on January 1, 2007, except for the use of average daily assessment bases which may be delayed pending appropriate changes to the reports of condition.

The amendments to the FDIC's operational processes governing assessments affect 12 CFR 327.1 through 12 CFR 327.8.[2] These sections detail the procedures governing deposit insurance assessment and collection as well as calculation of the assessment base; risk differentiation and pricing of deposit insurance will be the subject of a separate rulemaking.

II. Description of the Proposal

A. Collect Quarterly Assessments in Arrears

Under the present system assessments are collected from insured institutions on a semiannual basis in two installments. The first collection is made at the beginning of the semiannual period; the second collection is made in the middle of the semiannual period.[3] The FDIC proposes changing this approach to collect assessments in arrears, that is, after the period being insured. The assessment for each quarter would be due approximately at the end of the following quarter, on the specified payment date.[4] The charts below present a comparison of the current and proposed processes.

CURRENT PROCESS

Quarterly installment	Date of capital and supervisory evaluation	Assessment base [5]	Invoice date	Payment date
First Semiannual Period: January 1–June 30, 2007				
1	September 30, 2006	September 30, 2006	December 15, 2006	January 2, 2007.[6]
2	September 30, 2006	December 31, 2006	March 15, 2007	March 30, 2007.
Second Semiannual Period: July 1–December 31, 2007				
1	March 31, 2007	March 31, 2007	June 15, 2007	June 30, 2007.
2	March 31, 2007	June 30, 2007	September 15, 2007	September 30, 2007.

PROPOSED PROCESS

Quarter	Date of capital evaluation [7]	Assessment base [8]	Invoice date	Payment date
1	March 31, 2007	March 31, 2007	June 15, 2007	June 30, 2007.
2	June 30, 2007	June 30, 2007	September 15, 2007	September 30, 2007.

[1] Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Pubic Law 109–173, 119 Stat. 3601.

[2] The Reform Act requires the FDIC, within 270 days of enactment, to prescribe final regulations, after notice and opportunity for comment, providing for assessments under section 7(b) of the Federal Deposit Insurance Act. See Section 2109(a)(5) of the Reform Act. Section 2109 also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the one-time assessment credit, and dividends. 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 one-assessment credit and a notice of proposed rulemaking on dividends are both being considered by the Board of Directors at the same time as this notice on operational changes to part 327. Additional rulemakings on the designated reserve ratio and risk-based assessments are expected to be proposed in the near future.

[3] In December of 1994, the FDIC modified the procedure for collecting deposit insurance assessments, changing from semiannual to quarterly collection.

[4] Adjustments to prior period invoices will continue to be reflected in invoices for later periods.

[5] That is, the date of the report of condition on which the assessment base is determined.

[6] Under the existing process, December 30, 2006 is the alternate payment date.

PROPOSED PROCESS—Continued

Quarter	Date of capital evaluation [7]	Assessment base [8]	Invoice date	Payment date
3	September 30, 2007	September 30, 2007	December 15, 2007	December 30, 2007.
4	December 31, 2007	December 31, 2007	March 15, 2008	March 30, 2008.

The FDIC proposes that the new rule take effect January 1, 2007. The last deposit insurance collection under the present system (made on September 30, 2006, in the middle of the semiannual period before the new system becomes effective) would represent payment for insurance coverage through December 31, 2006. The first deposit insurance collection under the new system (made on June 30, 2007, at the end of the second quarter under the new system) would represent payment for insurance coverage from January 1 through March 31, 2007. No deposit insurance assessments would be based upon September 30 or December 31, 2006 reported assessment bases. However, institutions would continue to make the scheduled quarterly FICO payments on January 2 and March 30, 2007, using, respectively, these two reported assessment bases. No changes to the way FICO payments are charged or collected are proposed.[9]

Generally Accepted Accounting Principles (GAAP) will allow the FDIC to estimate and recognize income in advance of receipt, which will diminish any effect on the Deposit Insurance Fund reserve ratio in the transition between systems.

Invoices would continue to be presented using FDICconnect, and institutions would continue to be required to designate and fund deposit accounts from which the FDIC could make direct debits. Invoices would, as at present, be made available no later than 15 days prior to the payment date on FDICconnect. However, the payment dates themselves, in relation to the coverage period, would shift in keeping with the proposal. Collections would be made at or near the end of the following quarter (i.e., June 30, September 30, December 30, and March 30). In this way, the proposed assessment system would synchronize the insurance coverage period with the reporting dates and the institutions' risk classifications.

The FDIC would set assessment rates for each risk classification no later than 30 days before the date of the invoice for the quarter, which would give the FDIC's Board of Directors the option of setting rates before the beginning of a quarter or after its completion. For example, the FDIC could set rates for the first quarter of the year in December of the prior year (or earlier if it so chose) or any time up to May 16 of the following year (30 days before the June 15 invoice date). However, the FDIC would not necessarily need to continually reconsider or update assessment rates. Once set, rates would remain in effect until changed by the FDIC's Board. Institutions would have at least 45 days notice of the applicable rates before assessment payments are due.

The FDIC invites comment on whether to adopt the proposed system of assessing in arrears or whether to keep the present assessment process of collecting premiums in advance.

B. Ratings Changes Effective When the Change Occurs

An insured institution at present retains its supervisory and capital group ratings throughout a semiannual period. Any change is reflected in the next semiannual period; in this way, an examination can remain the basis for an institution's assessment rating long after newer information has become available. The FDIC proposes that any changes to an institution's supervisory rating be reflected when the change occurs.[10] If an examination (or targeted examination) led to a change in an institution's CAMELS composite rating that would affect the institution's insurance risk classification, the institution's risk classification would change as of the date the examination or targeted examination began, if such a date existed.[11] Otherwise, it would change as of the date the institution was notified of its rating change by its primary federal regulator (or state authority), assuming in either case that the FDIC, after taking into account other information that could affect the rating, agreed with the classification implied by the examination, or it would change as of the date that the FDIC determines that the change in the supervisory rating occurred.[12] In this way, assessments for prior quarters might increase or decrease if an examination is started during a quarter but not completed until some time after the quarter ends, which could result in institutions being billed additional amounts for earlier quarters or refunded amounts already paid for earlier quarters. Interest as provided at 12 CFR 327.7 would be charged on additional amounts billed and would be paid on any amounts refunded.

For example, an institution's primary federal regulator might begin an examination of an institution one month into a quarter. If the examination results in an upgrade to the institution's CAMELS composite rating that would affect the institution's risk classification, the institution would obtain the benefit of the improved risk rating for the last two months of the quarter, rather than waiting until the next period. In a similar situation, if the institution were downgraded, the effect would be an increased assessment for the last two months.

The FDIC proposes that this new rule take effect January 1, 2007.

[7] The FDIC is proposing that supervisory rating changes would become effective as they occur. In connection with rulemaking on risk differentiation and assessment rates, the FDIC is contemplating proposing that an institution's capital evaluation be determined based upon information in its report of condition as of the last day of each quarter.

[8] That is, the date of the report of condition on which the assessment base is determined.

[9] Pursuant to statute and a memorandum of understanding with the Financing Corporation (FICO), the FDIC collects FICO assessments from insured depository institutions based upon quarterly report dates. See 12 U.S.C. 1441(f)(2). FICO payments represent funds remitted to FICO to ensure sufficient funding to distribute interest payments for the outstanding FICO obligations. FICO collections will continue during the transition period and will not be affected by the FDIC's proposals. (The method for determining assessment bases would change for institutions that report average daily assessment bases, but the date of the assessment base on which FICO payments are based would not change.)

[10] As discussed in an earlier footnote, the FDIC is contemplating proposing in another rulemaking that capital evaluations be determined based upon information in reports of condition as of the last day of the quarter. The FDIC is also contemplating proposing that, as at present, the FDIC continue to have the discretion to determine an institution's risk rating.

[11] Small institutions generally have an examination start date; very infrequently, however, a smaller bank's CAMELS rating can change without an exam, or there may be no exam start date. Large institutions, on the other hand—especially those with resident examiners—often have no exam start date.

[12] An examination that began before the proposed amendments are implemented (*i.e.*, before January 1, 2007) would be deemed to have begun on the first day of the first assessment period subject to the amendments.

C. Minor Modifications to the Present Assessment Base

At present, an institution's assessment base is principally derived from total domestic deposits. The current definition of the assessment base is detailed in 12 CFR 327.5. Generally, the definition is deposit liabilities as defined by section 3(l) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(l)) with some adjustments. However, because the total deposits that institutions report in their reports of condition do not coincide with the section 3(l) definition, institutions report several adjustments elsewhere in their reports of condition; these adjustments are used to determine the assessment base.

For example, banks are specifically instructed to exclude Uninvested Trust Funds from deposit liabilities as reported on Schedule RC–E of their Reports of Income and Condition (Call Reports). However, these funds are considered deposits as defined by section 3(l) and are therefore included in the assessment base. Line item 3 on Schedule RC–O of the Call Report was included to facilitate the reporting of these funds. For this line item and for the many others, banks simply report the amount of each item that was excluded from the RC–E calculation. Other line items require the restoration of amounts that were netted for reporting purposes on Schedule RC–E. For example, when banks were instructed to file Call Reports in accordance with Generally Accepted Accounting Principles (GAAP), they were permitted to offset deposit liabilities against assets in certain circumstances. In order to comply with the statutory definition of deposits, lines 12a and 12b were added to Schedule RC–O to recapture those amounts.

The FDIC proposes retaining the current assessment base as applied in practice with minor modifications. The definition would be reworded in concert with a proposed simplification of the associated reporting requirements on insured institutions' reports of condition.[13] The assessment base definition would continue to be deposit liabilities as defined by section 3(l) of the FDI Act with enumerated allowable adjustments. These adjustments would include drafts drawn on other depository institutions, which meet the definition of deposits per section 3(l) of the FDI Act but are specifically excluded from the assessment base in section 7(a)(4) of the FDI Act (12 U.S.C. 1817(a)(4)). Similarly, although depository institution investment contracts meet the definition of deposits as defined by section 3(l), they are presently excluded from the assessment base under section 327.5 and would continue to be excluded, as would pass through reserves. Certain reciprocal bank balances would also be excluded. Unposted debits and unposted credits would be excluded from the definition of the assessment base for institutions that report average daily balances because these debits and credits are captured in the next day's deposits (and thus reflected in the averages). For consistency and because they should not materially affect assessment bases, unposted debits and unposted credits would be excluded from the definition of the assessment base for institutions that report quarter end balances. The FDIC, however, is concerned that excluding unposted credits from the assessment base could lead to manipulation of assessment bases by institutions that report quarter end balances and requests comment on this issue.

The current definition of the assessment base as detailed in 12 CFR 327.5 has been driven by reporting requirements that have evolved over time. These requirements have changed because of the evolving reporting needs of all of the Federal regulators. As a result, the FDIC's regulatory definition of the assessment base has required periodic updates when reporting requirements in reports of condition are changed for other purposes.[14] By rewording the definition of the assessment base to deposit liabilities as defined by section 3(*l*) of the FDI Act with allowable exclusions, the FDIC will not be required to update its regulation periodically in response to outside factors.

The FDIC proposes that the new rule take effect on January 1, 2007.

The FDIC invites comment on whether this proposal should be adopted or whether the current regulatory language and regulation should remain in place.

D. Average Daily Deposit Balance for Institutions With Assets of $300 Million or More

Currently, an insured institution's assessment base is computed using quarter-end deposit balances. Most schedules of the Call Report and the TFR are based on quarter-end data, but there are drawbacks to using quarter-end balances for assessment determinations. Under the current system, deposits at quarter-end are used as a proxy for deposits for an entire quarter, but balances on a single day in a quarter may not accurately reflect an institution's typical deposit level. For example, if an institution receives an unusually large deposit at the end of a quarter and holds it only briefly, the institution's assessment base and deposit insurance assessment may increase disproportionately to the amount of deposits it typically holds. A misdirected wire transfer received at the end of a quarter can create a similar result. Using quarter-end balances creates incentives to temporarily reduce deposit levels at the end of a quarter for the sole purpose of avoiding assessments. Institutions of various sizes have raised these issues with the FDIC.

Instead of using quarter-end deposits, therefore, the FDIC proposes using average daily balances over the quarter, which should give a more accurate depiction of an institution's deposits. This proposal, when combined with the FDIC's previous proposals, will provide a more realistic and timely depiction of actual events.

Institutions do not at present report average daily balances on Call Reports and TFRs. Reporting average assessment bases will therefore necessitate changes to Call Reports and TFRs requiring the approval of the FFIEC and time to implement. Until these changes to the Call Report and TFR are made, the FDIC proposes continuing to determine

[13] At present, 26 items are required in the Reports of Condition and Income (Call Reports) to determine a bank's assessment base and 11 items are required in the Thrift Financial Report (TFRs) to determine a thrift's assessment base. The FDIC is contemplating proposing changes to the way the assessment base is reported that could reduce these items to as few as two. Essentially, instead of starting with deposits as reported in the report of condition and making adjustments, banks would start with a balance that approximates the statutory definition of deposits. The FDIC believes that this balance is typically found within most insured institutions' deposit systems. In this way, institutions would be required to track far fewer adjustments. In any case, this approach should impose no additional burden on insured institutions since the items required to be reported would remain essentially the same under the revised regulatory definition. The changes to reporting requirements should also allow institutions to report daily average deposits more easily, since they will not have to track and average adjustment items separately. As now, the Call Report and TFR instructions would continue to specify the items required to meet the requirements of section 3(l) for reporting purposes. The FDIC is contemplating proposing that appropriate changes to reports of condition become effective March 31, 2007, and will coordinate with the Federal Financial Institutions Examination Council (FFIEC) on the necessary changes to the reports of condition.

[14] In fact, the regulatory definition has not kept pace with these reporting changes. In practice, however, the assessment base is calculated as if the regulatory definition had kept pace.

assessment bases using quarter end balances.

In addition, for one year after the necessary changes to the Call Report and TFR have been made, the FDIC proposes giving each existing institution the option of using average balances to determine its assessment base. Thereafter, institutions with $300 million or more in assets would be required to report average daily balances. To avoid burdening smaller institutions, which might have to modify their accounting and reporting systems, existing institutions with less than $300 million in assets would continue to be offered the option of using average daily balances to determine their assessment bases.[15]

If its assessment base were growing, a smaller institution would pay smaller assessments if it reported daily averages rather than quarter-end balances, all else equal. Nevertheless, a smaller institution that elected to report quarter-end balances could continue to do so, so long as its assets, as reported in its Call Report or TFR did not equal or exceed $300 million in two consecutive reports. Otherwise, the institution would be required to begin reporting average daily balances for the quarter that begins six months after the end of the quarter in which the institution reported that its assets equaled or exceeded $300 million for the second consecutive time. An institution with less than $300 million in assets would be allowed to switch from reporting quarter-end balances to reporting average daily balances for an upcoming quarter.

Any institution, once having begun to report average daily balances, either voluntarily or because required to, would not be allowed to switch back to reporting quarter-end balances. Any institution that becomes insured after the necessary modifications to the Call Report and TRF have been made would be required to report average daily balances for assessment purposes.

E. Eliminate the Float Deduction

The largest overall adjustments to the current assessment base are deductions for float, deposits reported as such for assessment purposes that were created by deposits of cash items (checks) for which the institution has not itself received credit or payment. These deductions are currently a 16⅔ percent float deduction for demand deposits and a 1 percent float deduction for time and savings deposits. Two basic rationales exist for allowing institutions to deduct float. First, without a float deduction, institutions would be assessed for balances created by deposits of checks for which they had not actually been paid. Second, crediting an uncollected cash item (a check) to a deposit account can temporarily create double counting in the aggregate assessment base—once at the institution that credited the cash item to the deposit account, and again at the payee insured institution on which the cash item is drawn. Deducting float from deposits when calculating the assessment base reduces this double counting.

Before 1960, institutions computed actual float and deducted it from deposits when computing their assessment bases. This proved to be onerous at the time. In 1960, Congress by statute established the standardized float deductions in an effort to simplify and streamline the assessment-base calculation. Section 7(b) of the FDI Act defined the deposit insurance assessment base until passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which removed the statutory definition. Since then, the FDIC's regulations alone have defined the assessment base. The current definition, at 12 CFR 327.5, generally tracks the former statutory definition.

The basis for the percentages chosen by Congress is not clear. Even if the percentages were a realistic approximation of average bank float when they were selected over 40 years ago, legal, technological and payment systems changes—such as Check 21—that have accelerated check clearing should have reduced float, everything else equal, and made the existing standard float deductions obsolete, at least in theory.[16]

The FDIC does not collect information on actual float from institutions. However, commercial banks and FDIC-supervised savings banks that have $300 million or more in total assets or that have foreign offices report an item on the Call Report called ''Cash items in process of collection.'' This item appears to include actual float, but includes other amounts as well.[17]

Cash items in the process of collection as a percent of domestic deposits for commercial banks with total assets greater than or equal to $300 million has been decreasing. Over the long term, the ratio of cash items to total domestic deposits has fallen significantly, as Table 1 illustrates:

TABLE 1.—RATIO OF CASH ITEMS TO TOTAL DOMESTIC DEPOSITS [18]

Year-end	Cash items as a percent of total domestic deposits
1985	7.35
1990	5.19
1995	4.97
2000	4.18
2005	2.93

The FDIC proposes eliminating the float deductions on the grounds that, based on available information, the standard float deductions appear to be obsolete and arbitrary, actual float appears to be small and decreasing as the result of legal, technological and payment systems changes, and requiring institutions to calculate actual float would appear to increase regulatory burden.

Eliminating the float deductions would favor some institutions over others. Institutions with larger percentages of time and savings deposits would see the least increase in their assessment bases; conversely, those with large percentages of demand deposits would see the greatest increases in their assessment bases. However, eliminating the float deductions would only minimally affect the relative distribution of the aggregate assessment base among institutions of different asset sizes and between banks and thrifts (although it would have a

[15] In those instances where a parent bank or savings association files its Call Report or TFR on a consolidated basis by including a subsidiary bank(s) or savings association(s), all institutions included in the consolidated reporting must file in the same manner. For example, if the parent bank submits a consolidated Call Report and must report daily averages on the Call Report, then all subsidiary banks that have been consolidated must also report daily averages on their respective Call Reports. Each institution's daily averages must be determined separately.

[16] Congress enacted Check 21 on October 28, 2004. Check 21 allows banks to electronically transfer check images instead of physically transferring paper checks. The Federal Reserve Board, What You Should Know About Your Checks, *http://www.federalreserve.gov/pubs/check21/shouldknow.htm* (updated Feb. 16, 2005). As a result, the transmission and processing of electronic checks can be done faster than transferring paper checks through the clearing process. A recent Federal Reserve payment survey indicates that, for the first time, bank-to-bank electronic payments have exceeded payments by check. Treasury and Risk Management, Just Another Step Along the Way to a Checkless Economy, *http://www.treasuryandrisk.com*, September 2005. With Check 21, the volume of paper checks processed is expected to continue to decline with more payments processed electronically resulting in a smaller float.

[17] For example, this item includes, among other things: (1) redeemed United States savings bonds and food stamps; and (2) brokers' security drafts and commodity or bill-of-lading drafts payable immediately upon presentation in the U.S. The full Call Report instructions for ''Cash items in process of collection'' are included in Attachment A.

[18] Table 1 includes all Call Report filers with $300 million or more in assets.

greater effect on the assessment bases of some individual institutions).[19] While eliminating the float deductions would increase assessment bases and affect the distribution of the assessment burden among institutions, it should not, in itself, increase assessments. The assessment rates that the FDIC will propose in the new pricing system will take into account the elimination of the float deduction.

Based upon available information, the FDIC proposes to eliminate the float deduction, with the new rule taking effect January 1, 2007. However, in light of the alternatives discussed below, the FDIC believes that comment would be particularly helpful in evaluating this proposal, especially on how much float remains, how accurate the present float deductions are, and how burdensome calculation of actual float would be. The FDIC invites comment on the following two alternatives, as well as on the proposal to eliminate the float deduction.

Deduct Actual Float

One alternative to eliminating the float deduction would be to deduct actual float to determine the assessment base.[20] While legal, technological and payment systems changes that have accelerated check clearing appear to have reduced float, there is evidence that actual float has not been completely eliminated as indicated in Table 1 above.

Deducting actual float rather than the standard float deductions to arrive at the assessment base would favor some institutions over other institutions. Institutions with float percentages on demand deposits that exceed 16⅔ percent would have a larger assessment base deduction than they currently have. Institutions with float percentages on demand deposits less than 16⅔ percent would have a smaller assessment base deduction than they currently have.

The smallest banks (and all savings associations, which file TFRs) do not report cash items in process of collection separately. All other banks separately report cash items in process of collection, and among these banks the assessment bases of medium-sized banks would, as a whole, increase by the greatest percentage if institutions deducted actual float rather than 16⅔ percent. It appears unlikely that using actual float would result in a major change in the relative distribution of the aggregate assessment base among institutions of different sizes, at least among the medium to largest institutions. However, the FDIC has no proxy for actual float at smaller banks or for Office of Thrift Supervision (OTS) supervised savings institutions of any size, and thus cannot estimate the distributional effects on these institutions as a group.[21]

Deducting actual float rather than the standard float deductions to arrive at the assessment base would require that institutions report actual float. Institutions that determine their assessment base using average daily balances would be required to report average daily float. This would necessitate a new information requirement for float data.[22] Before 1960, institutions computed actual float and deducted it from deposits when computing their assessment bases. Because this proved to be onerous at one time, Congress established the standardized float deductions by statute. Asking institutions to again report actual float could create significant regulatory burden. In addition, if actual float were deducted, institutions that report their assessment bases using average daily balances would be required to report their float deduction the same way.

Retain the Existing Float Deduction

The FDIC considered retaining the current float deduction. The current deduction has largely been in place for over 40 years and is well known. This option would impose no conversion costs and would neither increase nor decrease record keeping or reporting costs at present.[23] Current standardized float deductions, however, probably do not reflect real float for most institutions.

F. Modify the Terminating Transfer Rule

At present, complex rules apply to terminating transfers [24] to ensure that the assessment of a terminating institution is paid. Determining and collecting assessments after the end of each quarter and using average daily assessment bases make these complex rules obsolete and unnecessary. An acquiring institution (or institutions) would remain liable for the assessment owed by a terminating institution, but the assessment base of the disappearing institution would be zero for the remainder of the quarter after the terminating transfer.

The proposed terminating transfer provision would deal with a few remaining situations. When a terminating transfer occurs, if the terminating institution does not file a report of condition for the quarter in which the terminating transfer occurred or for the prior quarter, calculation of its quarterly certified statement invoices for those quarters would be based on its assessment base from its most recently filed report of condition. For the quarter before the terminating transfer occurred, the acquired institution's assessment premium would be determined using its rate, but for the quarter in which the terminating transfer occurs, the acquired institution's assessment premium would be pro rated according to the portion of the quarter in which it existed and assessed at the rate of the acquiring institution.

Under the proposal, once institutions begin reporting average daily deposits, the average assessment base of the acquiring institution will properly reflect the terminating transfer and will increase after the terminating transfer. For an acquiring institution that does not report average daily deposits, however, the FDIC proposes that its assessment base as reported at the end of the quarter be reduced to reflect that

[19] See Attachment B for further analysis of the effect of eliminating the float deductions.

[20] One possible basic definition of actual float would be limited to the actual amount of cash items in process of collection: (1) included in the assessment base; and (2) for which the institution has not been paid. As soon as an institution received payment or credit for a cash item, the item would no longer be eligible for the float deduction. A variation on this definition would limit float to cash items in process of collection: (1) included in the assessment base; (2) due from another insured depository institution, a clearinghouse, or the Federal Reserve System; and (3) for which the institution has not been paid. A third alternative would be similar to the second alternative except that the actual amount of cash items in the process of collection would have to be credited to customer deposit accounts. Other definitions are possible and any definition adopted would probably be complex. Comments are particularly sought on the definition that should be used if actual float were deducted in determining the assessment base.

[21] See Attachment B for further analysis of the effect of deducting actual float.

[22] The Call Report item "Cash items in process of collection" could not be used to determine the actual float deduction for individual institutions. Because "Cash items in process of collection" contains items other than float, it may overstate actual float. For a few institutions, "Cash items in process of collection," exceeds the institutions' assessment bases. (These institutions' "Cash items" are not included in the approximation of actual float in the text.) Conversely, given the small size of the "Cash items in process of collection" reported by many institutions, this item may understate float at some institutions.

[23] For assessment base reporting, the FDIC would need to retain a breakout of demand deposits and time and savings deposits.

[24] Generally speaking, a *terminating transfer* occurs when an institution assumes another institution's liability for deposits—often through merger or consolidation—when the terminating institution essentially goes out of business. Neither the assumption of liability for deposits from the estate of a failed institution nor a transaction in which the FDIC contributes its own resources in order to induce a surviving institution to assume liabilities of a terminating institution is a terminating transfer.

the acquiring institution did not hold the acquired institution's assessment base for the full quarter. Thus, for example, an institution that reports end-of-quarter balances might acquire another institution by merger one month (one-third of the way) into a quarter. In that case, the acquiring institution's assessment base for that quarter would be decreased by one-third of the acquired institution's assessment base.

The FDIC proposes that this rule become effective January 1, 2007.

G. Assess Newly Insured Institutions for the Quarter They Become Insured

At present, a newly insured institution is not liable for assessments for the semiannual period in which it becomes insured, but is liable for assessments for the following semiannual period. The institution's assessment base as of the day before the following semiannual period begins is deemed to be its assessment base for the entire semiannual period. These special rules are needed because, at present, assessments are based upon assessment bases that an institution has reported in the past. A newly insured institution reports an assessment base at the end of the quarter in which it becomes insured but that assessment base is not used to calculate its assessment until the following semiannual period. Further, if an institution becomes insured in the second half of a semiannual period, it will have no reported assessment base on which to calculate the first installment of its premium for the next semiannual period.

Under the FDIC's proposals, each quarterly assessment will be based upon the assessment base that an institution reports at the end of that quarter. Thus, a newly insured institution will have reported an assessment base for the quarter in which it becomes insured and the special assessment rules for newly insured institutions will no longer be needed.

The FDIC proposes that the special assessment rules for newly chartered institutions be eliminated, that the normal rules for determining assessment bases apply to newly chartered institutions and that these new rules go into effect January 1, 2007.

H. Allow 90 Days Each Quarter To File a Request for Review or Request for Revision

The current deadline for an institution to request a review of its assessment risk classification is 90 days from the invoice date for the first quarterly installment of a semiannual period. Under the FDIC's proposal, each quarterly assessment will be separately computed in the future. Consequently, a conforming change is needed to the rules for requesting review, so that institutions would have 90 days from the date of each quarterly certified statement invoice to file a request for review. Institutions would also have 90 days from the date of any subsequent invoice that adjusted the assessment of an earlier assessment period to request a review.

A parallel amendment would be made so that requests for revision of an institution's quarterly assessment payment computation would be made within 90 days of the quarterly assessment invoice for which revision is requested (rather than the present 60 days).

The FDIC proposes that these amendments go into effect January 1, 2007.

I. Conforming Changes to the Certified Statement Rules

The Reform Act eliminated the requirement that the deposit insurance assessment system be semiannual and provided a new three-year statute of limitations for assessments. Accordingly, the FDIC proposes to revise the provisions of 12 CFR 327.2 to clarify that the certified statement is the quarterly certified statement invoice and to provide for the retention of the quarterly certified statement invoice by insured institutions for three years, rather than five years under the prior law.

The FDIC proposes that these amendments take effect January 1, 2007.

J. Eliminate the Prepayment and Double Payment Options

When the present assessment system was proposed more than 10 years ago, the original quarterly dates for payment of assessments were: March 30, June 30, September 30, and December 30. The FDIC recognized that the December 1995 collection date could present a one-time problem for institutions using cash-basis accounting, since these institutions would, in effect, be paying assessments for five quarters in 1995. The FDIC believed that few institutions would be adversely affected. Soon after the new system was adopted, however, the FDIC began to receive information that more institutions than had originally been identified would be adversely affected by the December collection date. As a result, the FDIC amended the regulation in 1995 to move the collection date to January 2, but allowed institutions to elect to pay on December 30, thus establishing the prepayment date.

The FDIC proposes eliminating the prepayment option. With implementation of the revamped assessment system, a transition period will be created in which institutions will not be subject to deposit insurance assessment premiums after the September 30, 2006 payment date until June 30, 2007. Consequently, reestablishing the original December 30 payment date should have no adverse consequences for institutions that use cash-basis accounting. No institution would make more than four insurance payments in calendar year 2006; those using the December 30, 2005 payment date would make only three payments in 2006. All institutions would make four payments annually thereafter. This change will keep all assessment payments within each calendar year.[25]

In addition, insured institutions presently have the regulatory option of making double payments on any payment date except January 2. Under the proposed system, this option would also be eliminated. The double payment option has its origins in the 1995 amendment, when the payment date was modified from December 30, 1995 to January 2, 1996. The double payment option was adopted to provide cash basis institutions the opportunity to pay the full amount of their semiannual assessment premium on December 30 so as to have the complete benefit of this modification. The transition period from September 30, 2006 to June 30, 2007 and four payments annually beginning in 2007 should eliminate the need for the double payment option. Moreover, the FDIC will no longer be charging semiannual premiums.

The FDIC proposes that these amendments take effect January 1, 2007. Comment from interested parties is elicited on the elimination of the prepayment and double payment options.

III. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. 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?

[25] The allowance for payment on the following business day—should January 2 fall on a non-business day—will be eliminated as well.

• 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

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 rule provides operational procedures governing assessments and relates directly to the rates imposed on insured depository institutions for deposit insurance, by providing for the determination of assessment bases to which the rates will apply. Consequently, no regulatory flexibility analysis is required.

Moreover, if adopted in final form, the proposed rule would not have a significant economic impact on a substantial number of small institutions within the meaning of those terms as used in the RFA. The proposed rule would provide the operational format for the FDIC's assessment system for the collection of deposit insurance assessments. Most of the processes within this proposed regulation are analogous to existing FDIC assessment processes; variances occur largely in timing, not in the processes themselves; no additional reporting requirements or record retention requirements are created by the proposed rules.

The provisions dealing with determining assessment bases using average daily balances include an opt-out for insured institutions with assets of less than $300 million, which would permit small institutions under the RFA (i.e., those with $165 million or less in assets) to continue (as they do now) reporting quarter end balances. Newly insured institutions with $165 million or less in assets, however, would be required to report average daily balances. Most small, newly insured institutions (for the period from 2001 through 2005, the average number of small institutions that became insured each year was approximately 126) will ordinarily implement systems permitting calculation of average daily balances and therefore will not be significantly burdened by this requirement.

Similarly, elimination of the float deduction in calculating assessment bases would not have a significant economic impact on a substantial number of small ($165 million in assets or less) insured depository institutions within the meaning of the RFA. Based on December 31, 2005 reports of condition, small institutions represented 5.09 percent of the total assessment base, with large institutions (i.e., those with more than $165 million in assets) representing 94.91 percent. Without the existing float deduction, those percentages would have been 5.14 and 94.86, respectively, a change of only .05 percent. By way of example, if a flat 2 basis point annual charge had been assessed on the December 31, 2005 assessment base without the float deduction (i.e., with the float deduction added back to the assessment base), the amount collected would have been approximately $1.267 billion. To collect the same amount from the industry on the same assessment base, but allowing the float deduction, approximately a 2.05 basis point charge would have been required, since the assessment base would have been smaller. The average difference in assessment charged a small institution for one year if the float deduction were eliminated (charging 2 basis points) versus allowing the float deduction (charging 2.05 basis points) would be about $110. The actual increase in assessments charged small institutions for one year if the float deduction were eliminated (charging 2 basis points) versus allowing the float deduction (charging 2.05 basis points) would be greater than or equal to $1,000 for only 38 out of 5,362 small institutions.[26] The largest resulting increase for any small institution would be about $2,500. In addition, the actual amount collected would in many cases be reduced by one-time credit use while these credits last. Accordingly, pursuant to section 605 of the RFA, the FDIC is not required to do an initial regulatory flexibility analysis of the proposed rule.

[26] Of the 8,832 insured depository institutions, there were 5,362 small insured depository institutions (i.e., those with $165 million or less in assets) as of December 31, 2005.

Commenters are invited to provide the FDIC with any information they may have about the likely quantitative effects of the proposal on small insured depository institutions.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Any paperwork created as the result of the conversion to reporting average daily assessment balances will be submitted to the Office of Management and Budget (OMB) for review and approval as an adjustment to the Consolidated Reports of Condition and Income (call reports), an existing collection of information approved by OMB under Control No. 3064–0052.

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 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

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

PART 327—ASSESSMENTS

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

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

2. Revise §§ 327.1 through 327.8 of Subpart A to read as follows:

§ 327.1 Purpose and scope.

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

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

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

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

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

(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 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 Chief 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(c).

(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, or an amended quarterly certified statement invoice, 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 rate multiplier on the quarterly certified statement invoice shall be amended only if it is inconsistent with the assessment risk classification assigned to the institution by the Corporation for the assessment period in question pursuant to § 327.4(a). Agreement with the rate multiplier shall not be deemed to constitute agreement with the assessment risk classification assigned.

§ 327.3 Payment of assessments.

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

(2) *Notice of designated deposit account.* For the purpose of making such payments, each insured depository institution shall designate a deposit account for direct debit by the Corporation. No later than 30 days prior to the next payment date specified in paragraph (b)(2) of this section, each institution shall provide written notice to the Corporation 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.

(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.

(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 classification, 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 multiplier applied by the Corporation is inconsistent with the assessment risk classification assigned 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 classification, which are covered by § 327.4(c).

(3) *Requirements.* Any such request for revision must be submitted within 90 days of the date of the quarterly assessment invoice for which revision is requested. The request for revision shall be submitted to the Chief of the Assessments Section and shall provide documentation sufficient to support the revision 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 shall promptly notify the institution in writing of his or her determination of whether revision is warranted.

(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.

§ 327.4 Assessment rates.

(a) *Assessment risk classification.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.9, each insured depository institution will be assigned an ''assessment risk classification.'' Notice of an institution's current assessment risk classification will be provided to the institution with each quarterly certified statement invoice. Adjusted assessment risk classifications for prior periods may also be provided by the Corporation. Notice of the procedures applicable to requests for review will be included with the assessment risk classification.

(b) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk classification assigned 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. If the classification assigned to an institution in the notice is subsequently changed, any excess assessment paid by the institution will be credited by the Corporation, with interest, and any additional assessment owed shall be paid by the institution, with interest, in the next assessment payment after such subsequent assignment or change. Interest payable under this paragraph shall be determined in accordance with § 327.7.

(c) *Requests for review.* An institution that believes any assessment risk classification provided by the Corporation pursuant to paragraph (a) if this section is incorrect and seeks to change it must submit a written request for review of that assessment risk classification. Any such request must be submitted within 90 days of the date of the assessment risk classification being challenged pursuant to paragraph (a) of this section. 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 reclassification 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 reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (a) of this section.

(d) *Disclosure restrictions.* The portion of an assessment risk classification assigned 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 classification.* The assignment of a particular assessment risk classification to a depository institution under this part 327 is for purposes of implementing and operating a risk-based assessment system. Unless permitted by the Corporation or otherwise required by law, no institution may state in any advertisement or promotional material the assessment risk classification assigned to it pursuant to this part.

(f) *Effective date for changes to risk classification.* Any change in risk classification that results from a change in an institution's supervisory rating shall be applied to the institution's assessment:

(1) If an examination causes the change in an institution's supervisory rating and an examination start date exists, as of the examination start date;

(2) If an examination causes the change in an institution's supervisory rating and no examination start date exists, as of the date the institution's supervisory rating (CAMELS) change is transmitted to the institution; or

(3) Otherwise, as of the date that the FDIC determines that the change in the supervisory rating occurred.

§ 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 determine its assessment base using average daily balances; otherwise,

(2) An insured depository institution reporting assets of $300 million or more on the first report of condition allowing for average daily balances shall within one year determine its assessment base using average daily balances;

(3) An insured depository institution reporting less than $300 million in assets on the first report of condition allowing for average daily balances ‘‘

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

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

(iii) Shall use average daily balances as the permanent method for determining its assessment base for any quarter beginning six months after the institution reported that its assets equaled or exceeded $300 million for two consecutive quarters; and

(4) In any event, an insured depository institution that is a subsidiary of another insured depository institution that determines its assessment base using average daily balances and files its report of condition on a consolidated basis by including a subsidiary bank(s) or savings association(s) shall use average daily balances as the permanent method for determining its assessment base; assessment bases shall be determined separately for each consolidated institution.

(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; 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 foreign bank or foreign office of another U.S. 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; and

(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)).

(c) *Newly insured institutions.* A newly insured institution shall pay an assessment for any assessment period during which it became a newly 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 or for 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 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. 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) *Terminating transfer—Assessment base computation.* In a terminating transfer, if an acquiring institution's assessment base is computed as a quarter-end balance pursuant to § 327.5, its assessment base for the assessment period in which the terminating transfer occurred shall be reduced by an amount equal to the percentage of the assessment period prior to the terminating transfer multiplied by the amount of the deposits acquired from the terminating institution.

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

(1) *Payment of assessments; quarterly certified statement invoices.* The terminating depository institution shall continue to file and certify its quarterly certified statement invoice and pay assessments for the assessment period its deposits are insured. Such terminating institution shall not be required to file and certify its quarterly certified statement invoice and pay further assessments after the depository

institution 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, has ceased to have authority to transact a banking business and to have existence, except for the purpose of, and to the extent permitted by law for, winding up its affairs.

(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 the authority or right of the depository institution to do a banking business has terminated and the method whereby the termination has been affected (i.e., whether the termination has been effected by the surrender of the charter, the cancellation of its authority or license to do a banking business by the supervisory authority, or otherwise).

(c) *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 § 303.5 of this chapter.

§ 327.7 Payment of interest on assessment underpayments and overpayments.

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

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

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

(ii) Interest on an amount specified in paragraph (a)(3)(i) of this section shall begin to accrue on the day following the regular payment date, as provided for in § 327.3(c)(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 paid.

(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(c)(2), and ends on the immediately following regular payment date.

(b) *Rates after the first payment date in 1996.* (1) On and after January 3, 1996, 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 (whether regular or alternate) immediately prior to the beginning of the quarterly assessment interval. The relevant interest rate will also apply to any amounts owed for previous overpayments or underpayments (including any interest thereon) that remain outstanding, after any adjustments to such overpayments or underpayments have been made thereon, at the end of the regular payment date immediately prior to the beginning of the quarterly assessment interval.

§ 327.8 Definitions.

For the purpose of this part 327:

(a) *Deposits*—(1) *Deposit.* The term *deposit* has the meaning specified in section 3(*l*) of the Federal Deposit Insurance Act. In particular, the term ''deposit'' includes any liability—without regard for whether the liability is a liability of an insured bank or of an insured savings association—that is of a kind which, had the liability been a liability of an insured bank immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, would have constituted a deposit in such bank within the meaning of section 3(*l*) of the Federal Deposit Insurance Act as such section 3(*l*) was then in effect.

(2) *Demand deposits.* The term *demand deposits* refers to deposits specified in § 329.1(b) of this chapter, except that any reference to ''bank'' in such section shall be deemed to refer to ''depository institution''.

(3) *Time and savings deposits.* The term *time and savings deposits* refers to any deposits other than demand deposits.

(4) *Exception.* (i) 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, shall not be reported as deposits on the quarterly report of condition. The deposit amounts covered by the exception are to be deducted from the loan amounts for which these deposits have been accumulated and assigned or pledged to effectuate payment.

(ii) Time and savings deposits that are pledged as collateral to secure loans are not ''deposits accumulated for the payment of personal loans'' and are to be reported in the same manner as if they were not securing a loan.

(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) As used in § 327.6(a) and (b), the following terms are given the following meanings:

(1) *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.

(2) *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.

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

Note: The following attachments will not appear in the Code of Federal Regulations.

Attachment A—Call Report Instructions for Cash Items in Process of Collection

Cash items in process of collection include:

(1) Checks or drafts in process of collection that are drawn on another depository institution (or on a Federal Reserve Bank) and that are payable immediately upon presentation in the United States. This includes:

(a) Checks or drafts drawn on other institutions that have already been forwarded for collection but for which the reporting bank has not yet been given credit (''cash letters'').

(b) Checks or drafts on hand that will be presented for payment or forwarded for collection on the following business day.

(c) Checks or drafts that have been deposited with the reporting bank's correspondent and for which the reporting bank has already been given credit, but for which the amount credited is not subject to immediate withdrawal (''ledger credit'' items).

However, if the reporting bank has been given immediate credit by its correspondent for checks or drafts presented for payment or forwarded for collection and if the funds on deposit are subject to immediate withdrawal, the amount of such checks or drafts is considered part of the reporting bank's balances due from depository institutions.

(2) Government checks drawn on the Treasurer of the United States or any other government agency that are payable immediately upon presentation and that are in process of collection.

(3) Such other items in process of collection that are payable immediately upon presentation and that are customarily cleared or collected as cash items by depository institutions in the United States, such as:

(a) Redeemed United States savings bonds and food stamps.

(b) Amounts associated with automated payment arrangements in connection with payroll deposits, federal recurring payments, and other items that are credited to a depositor's account prior to the payment date to ensure that the funds are available on the payment date.

(c) Federal Reserve deferred account balances until credit has been received in accordance with the appropriate time schedules established by the Federal Reserve Banks. At that time, such balances are considered part of the reporting bank's balances due from depository institutions.

(d) Checks or drafts drawn on another depository institution that have been deposited in one office of the reporting bank and forwarded for collection to another office of the reporting bank.

(e) Brokers' security drafts and commodity or bill-of-lading drafts payable immediately upon presentation in the U.S. (See the Glossary entries for ''broker's security draft'' and ''commodity or bill-of-lading draft'' for the definitions of these terms.)

Exclude from cash items in process of collection:

(1) Cash items for which the reporting bank has already received credit, provided that the funds on deposit are subject to immediate withdrawal. The amount of such cash items is considered part of the reporting bank's balances due from depository institutions.

(2) Credit or debit card sales slips in process of collection (report as noncash items in Schedule RC–F, item 5, ''Other'' assets). However, when the reporting bank has been notified that it has been given credit, the amount of such sales slips is considered part of the reporting bank's balances due from depository institutions.

(3) Cash items not conforming to the definition of in process of collection, whether or not cleared through Federal Reserve Banks (report in Schedule RC–F, item 5, ''Other'' assets).

(4) Commodity or bill-of-lading drafts (including arrival drafts) not yet payable (because the merchandise against which the draft was drawn has not yet arrived), whether or not deposit credit has been given. (If deposit credit has been given, report as loans in the appropriate item of Schedule RC–C, part I; if the drafts were received on a collection basis, they should be excluded entirely from the bank's balance sheet, Schedule RC, until the funds have actually been collected.)

Attachment B—Additional Float Analysis

Eliminate the Float Deduction

If the standard float deductions were eliminated, holding all else equal, the aggregate assessment base would have increased by about 2.7 percent, as of December 31, 2005. Table 2 illustrates how individual assessment bases would have changed if the standard float deductions were eliminated as of that date. Institutions in Table 2 are ranked by percentage change in their assessment bases, from least change on the left to greatest change on the right. The table shows, for example, that the median (50th percentile) change would have been a 3 percent increase. Table 2 also demonstrates that the assessment bases of the vast majority of institutions would have increased between 1.3 and 6.1 percent, but the assessment bases of a few institutions would have increased by much larger percentages. (The largest change for a single institution would have been a 20 percent increase.)

TABLE 2.—PERCENTAGE INCREASE IN ASSESSMENT BASES AT VARIOUS PERCENTILES IF THE CURRENT FLOAT DEDUCTION WERE ELIMINATED

Percentile	1	5	10	20	30	40	50	60	70	80	90	95	99
Percent change in assessment base	1.0%	1.3%	1.7%	2.2%	2.6%	2.9%	3.0%	3.5%	3.9%	4.4%	5.2%	6.1%	9.3%

The 100 institutions whose assessment bases would have increased by the greatest percentage include several bankers' banks and trust banks and other banks of many different sizes, but no thrifts or extremely large institutions. Small to medium-sized institutions (including many thrifts) predominate among the 100 institutions whose assessment bases would have increased by the smallest percentage; however, some large institutions are also represented.

Table 3 compares the percentage of the industry aggregate assessment base held by institutions grouped by asset size, with and without float deductions, as of December 31, 2005. Based on this analysis, eliminating the float deductions would only minimally affect the relative distribution of the aggregate assessment base among institutions of different asset sizes (although it would have a greater effect on the assessment bases of some individual institutions).

TABLE 3.—CURRENT FLOAT/NO FLOAT COMPARISON BY INSTITUTION ASSET SIZE

Percentage share of industry assessment base	All insured institutions				
	Very small <$100m (percent)	Small $100–$300m (percent)	Medium $300–$1b (percent)	Large $1b–$100b (percent)	Very large >$100b (percent)
With Float Deduction	2.60	6.51	9.24	37.20	44.45
Without Float Deduction	2.62	6.56	9.25	37.18	44.40
Percent Change	0.97	0.75	0.08	−0.06	−0.13

Table 4 compares the percentage of the industry aggregate assessment base held by charter type (commercial banks versus thrifts), with and without float deductions, as of December 31, 2005. With the current standard float deductions (16 percent for demand deposits, 1 percent for time and savings deposits), institutions that hold a larger percentage of demand deposits'typically, commercial banks'hold a relatively smaller percentage of the aggregate assessment base. Nevertheless, given Table 4, eliminating the float deductions would only minimally affect the relative distribution of the aggregate assessment base between banks and thrifts (although, again, it would have a greater effect on the assessment bases of some individual institutions).

TABLE 4.—CURRENT FLOAT/NO FLOAT COMPARISON BY CHARTER TYPE

[In percent]

Percentage share of industry assessment base	Insured commercial banks	Insured savings institutions
With Float Deduction	82.50	17.50
Without Float Deduction	82.63	17.37
Percent Change	0.16	−0.76

Deduct Actual Float

Using data as of December 31, 2005, Table 5 illustrates how individual assessment bases would have changed if institutions deducted the cash items in process of collection Call Report item as a proxy for actual float. Institutions in Table 5 are ranked by percentage change in their assessment bases, from greatest decrease on the left to greatest increase on the right. The table shows, for example, that the median (50th percentile) change would have been a 1.6 percent increase. Table 5 also demonstrates that the assessment bases of the vast majority of banks would have changed between −1.3 and 4.2 percent. (However, the assessment bases of a few banks would have increased or decreased by much larger percentages.)

TABLE 5.—PERCENTAGE CHANGE IN ASSESSMENT BASES AT VARIOUS PERCENTILES IF CASH ITEMS (AS A PROXY FOR ACTUAL FLOAT) WERE DEDUCTED

Percentile	1	5	10	20	30	40	50	60	70	80	90	95	99
Percent change in assessment base	−5.8%	−1.3%	−0.5%	0.2%	0.7%	1.2%	1.6%	2.0%	2.4%	2.8%	3.5%	4.2%	6.0

Medium-sized banks predominate among those institutions whose assessment bases would have increased by the greatest percentage. Many large banks are included among the institutions whose assessment bases would have decreased by the greatest percentage.

Again using data from December 31, 2005, Table 6 compares the percentage of the aggregate assessment base held by medium-sized, large, and very large banks (collectively, banks with assets of at least $300 million) under the current standard float deduction and the actual float deduction, using the cash items in process of collection Call Report item as a proxy for actual float. Based on this analysis, it appears unlikely that using actual float would result in a major change in the relative distribution of the aggregate assessment base among institutions of different sizes, at least among the medium to largest institutions. However, the FDIC has no proxy for actual float at smaller banks or for OTS-supervised savings institutions of any size.

TABLE 6.—COMPARISON OF CURRENT FLOAT DEDUCTION TO CASH ITEMS (AS A PROXY FOR ACTUAL FLOAT) DEDUCTION FOR MEDIUM-SIZED, LARGE, AND VERY LARGE BANKS

Percentage Share of Industry Assessment Base**	Banks*		
	Medium $300m–$1b (percent)	Large $1b–$100b (percent)	Very Large >$100b (percent)
With Current Standard Float Deduction	9.78	48.62	41.60
With Estimated Actual Float Deduction	9.97	48.90	41.13
Percent Change	1.91	0.58	−1.12

* Banks include commercial banks and FDIC-supervised savings banks.
** Percentages are of the aggregate base of medium, large, and very large commercial and savings banks only.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

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

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–4657 Filed 5–17–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–ADO7

Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend 12 CFR 327 to implement the dividend requirements in the recently enacted Federal Deposit Insurance Reform Act of 2005 (''Reform Act'') and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (''Amendments Act'') for an initial two-year period. The proposed rule would sunset on December 31, 2008. If this proposal is adopted, during 2007, the FDIC would plan to undertake a second notice-and-comment rulemaking beginning with an Advanced Notice of Proposed Rulemaking to explore alternative methods for distributing future dividends after this initial two-year period.

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

The Reform Act requires the FDIC to prescribe final regulations, within 270 days of enactment, to implement the dividend requirements, including regulations governing the method for the calculation, declaration, and payment of dividends and administrative appeals of individual dividend amounts. See sections 2107(a) and 2109(a)(3) of the Reform Act.[1]

Section 7(e)(2) of the Federal Deposit Insurance Act (''FDI Act''), as amended by the Reform Act, requires that the FDIC, under most circumstances, declare dividends from the Deposit Insurance Fund (''DIF'' or ''fund'') when the reserve ratio at the end of a calendar year exceeds 1.35 percent, but is no greater than 1.5 percent. In that event, the FDIC must generally declare one-half of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions. However, the FDIC's Board of Directors (''Board'') may suspend or limit dividends to be paid, if the Board determines in writing, after taking a number of statutory factors into account, that:

1. The DIF faces a significant risk of losses over the next year; and
2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed to grow without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent or to exceed 1.5 percent.[2]

In addition, the statute requires that the FDIC, absent certain limited circumstances (discussed in footnote 2), declare a dividend from the DIF when the reserve ratio at the end of a calendar year exceeds 1.5 percent. In that event, the FDIC must declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent

[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. 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 one-time assessment credit, 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 one-assessment credit 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 dividends. Additional rulemakings on the designated reserve ratio and risk-based assessments are expected to be proposed in the near future.

[2] This provision would allow the FDIC's Board to suspend or limit dividends in circumstances where the reserve ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.