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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064-AC31

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Board of Directors of the FDIC (Board) is amending its regulation governing assessments to change the reporting date used to determine the capital component of the assessment risk classifications assigned by the FDIC to insured depository institutions. This change moves that date closer by one calendar quarter to the semiannual assessment period for which the capital component is assigned, and it permits the FDIC to use more up-to-date information in determining institutions' assessment risk classifications. The new date coincides with the date currently used to determine the supervisory component of the assessment risk classification.

To permit the use of more current capital information, the Board is further amending the assessments regulation to shorten from 30 days to 15 days the prior notice the FDIC sends to institutions advising them of their assessment risk classifications for the following semiannual assessment period. The Board is adopting the same reduction for the invoice sent by the FDIC each quarter showing the amount of the assessment payment due for the next quarterly collection. At the other end of the process, the Board is increasing from 30 days to 90 days the time within which an institution may request review of its assessment risk classification.

Additionally, to reflect a shift of certain assessment functions within the FDIC, the Board is revising two of the references to FDIC offices in the regulation. Also, as proposed, the amendment corrects a typographical error in the form of a misstated cross-reference to another FDIC regulation.

Finally, in response to concerns raised by comments that the FDIC

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received on the proposal, the final rule is additionally amended to increase from 15 to 30 days the time between announcement of limited changes in deposit insurance rates and the date of the assessment notice sent to insured institutions by the FDIC.

EFFECTIVE DATE: The final rule is effective April 1, 2000.

FOR FURTHER INFORMATION CONTACT: James W. Thornton, Senior Banking Analyst, Division of Insurance, (202) 898-6707; or Claude A. Rollin, Senior Counsel, Legal Division, (202) 898-8741, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On September 8, 1999, the Board issued for public comment a proposal to make several revisions to its assessments regulation. 64 FR 48719 (September 8, 1999). The primary change proposed by the Board involved the reporting date for data used in determining the capital component of the assessment risk classifications that the FDIC assigns semiannually to FDIC-insured institutions. At present, the FDIC's risk-based assessments regulation specifies that the capital component of the assessment risk classification assigned to an institution for a semiannual assessment period will be determined on the basis of data reported by the institution in its Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (collectively, call report) for the quarter ending six months earlier (12 CFR 327.4(a)(1)). The Board proposed to amend the regulation by basing capital-group determinations on data reported by institutions in their call reports for the period ending three months before the beginning of the semiannual period to which that data would apply.

To allow use of the more current capital data in assigning assessment risk classifications, the Board also proposed to shorten--from 30 days to 15 days--the time between the date institutions are notified of their assessment risk classifications for the upcoming assessment period and the date the assessment is collected for the first quarter of that upcoming period. The same reduction was proposed, for both the first and second quarters of each semiannual assessment period, in the time between the date of the quarterly assessment invoice and date the invoiced amount is collected.

As the Board explained in its proposal, moving the capital reporting date forward by 90 days would leave the FDIC as little as 15 to 30 days to receive the reported data, scan the reports, input the information into the FDIC's system, perform capital-group calculations for more than 10,000 institutions, and prepare and mail the assessment notices. 64 FR 48720. Because that is not sufficient time for completing this process, the alternatives are to leave the capital reporting date as it is or mail the assessment notices somewhat later. As the Board noted, the proposal anticipated that reduction of the notice period from 30 to 15 days would not have a significantly adverse impact on insured institutions, as institutions typically know (or can anticipate with reasonable certainty) the assessment risk classification they will be assigned for the next assessment period. Id.

With regard to the assessment the FDIC collects on behalf of the Financing Corporation (FICO), institutions are also able, under normal circumstances, to estimate with reasonable accuracy the assessment amount due for each upcoming payment date. However, the proposal noted the FDIC's intent, in the event of significant developments that could cause material changes in the FICO assessment rate, to provide notice of the changes as early as possible through such means as mailings to insured institutions. Id.

Another timing change proposed by the Board was an increase in the period during which an institution may seek review and revision of its assessment risk classification. Under the existing regulation, an institution may file a review request within 30 days after the date of the FDIC notice informing the institution of its assessment risk classification. The proposal would expand that period to 90 days.

The two remaining changes proposed by the Board were office redesignations to reflect the shift of certain assessment functions within the FDIC, and correction of a typographical error in the form of a misstated cross-reference.

Comments Received

The FDIC received nine comment letters in response to the proposal. Three of the letters were from depository institutions, two from state associations of bankers, three from national associations of bankers, and one from a state banking regulator. In general, these commenters supported the proposal. However, one commenter--a state association of bankers--neither supported nor opposed the proposal itself, but expressed its views on the proposal's implications for agricultural banks. This comment letter is not included in the discussion immediately below but rather is addressed separately, following the discussion below.

The remaining eight commenters expressed unanimous support for the use of more current capital data. The seven commenters addressing the proposed extension of the deadline for filing requests for review of assessment risk classifications all supported that proposal. Of the two commenters specifically addressing either or both of the proposals to correct the typographical error and to revise two of the references in the regulation to FDIC offices, both supported those changes as well. Thus, the Board has decided to adopt each of these four amendments as proposed.

The remaining element of the proposal is reduction of the assessment notice period from 30 to 15 days. In the proposal, the Board specifically requested comment on any adverse impact the shorter notice period might have. Comment was further requested on any alternative means of permitting the use of more current capital data without shortening the notice period.

The eight commenters either generally supported or did not separately address the proposed reduction. None of the commenters offered an alternative to the reduction. Two of the commenters expressly recognized a necessary connection between the use of more current capital data and a reduction in the assessment notice period.

Six commenters concluded that the proposed reduction in the notice period would not have a significant adverse impact. However, two of the eight expressed certain concerns. These two commenters--both of which are national associations of bankers--agreed that the proposed reduction generally would not present a problem. However, one noted that a shorter notice period could potentially present problems if assessment rates increase or become more complex, or in the event of volatile economic conditions. The other commenter suggested that the proposal be revised to require the FDIC to notify institutions of any changes in the assessment rate schedule at least 30 days before the assessment notice date, and that the FDIC be required to notify an institution of any changes in its supervisory category no later than 30 days prior to each assessment collection date. This same commenter further recommended that the FDIC provide notice of any material changes in the FICO assessment rate at least 30 days before the relevant assessment payment date, including any advance notice of

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material changes in the rate expected for subsequent quarters.

The Board appreciates the concerns expressed regarding the shortened notice period. At the same time, the Board believes that--as was suggested in the proposal and as more than one commenter expressly recognized--a reduction in the notice period is necessary if more current capital data is to be used. The eight commenters addressing the proposal unanimously supported the use of more up-to-date capital data, and only limited concerns were expressed by commenters regarding the reduced notice period. Accordingly, the Board has decided to adopt the proposed notice reduction.

With regard to the concern that a 15-day notice period might not be sufficient for institutions for which there is a change in the supervisory category from one semiannual assessment period to the next,

the FDIC is willing to consider what refinements might be warranted and feasible to address any significant problems. To this end, the FDIC will monitor implementation of the new notice schedule in June 2000 to determine any adverse impact. The results will be reviewed and alternative means of addressing any significant problems will be considered.

In response to the concern raised by one commenter regarding material changes in the FICO assessment, the Board reiterates its intention, as noted in the proposal, that in instances in which significant developments are likely to result in material changes in FICO assessment rates, the FDIC will provide notice as early as possible, through mailings to insured institutions or similar means. 64 FR 48720.

The remaining issue raised by commenters regarding the reduced assessment notice period concerned notice of changes in the assessment rate schedule. At present, the assessments regulation requires that any change in the assessment rate schedule be announced by the FDIC at least 15 days before the date the assessment notice is to be provided to institutions for the first quarter of each semiannual assessment period.\1\ Thus, for example, under the existing regulation, an adjustment for the assessment period beginning July 1 would be announced by no later than May 16, which is 15 days before the existing assessment notice date of May 31.

\1\ 12 CFR 327.9(c)(4). This provision applies only to adjustment (either increase or decrease) of the rate schedule up to a maximum of five basis points. Any change that exceeds this level would first be announced in the form of a proposal on which public comment would be invited.

Because, in this example, the final rule moves the applicable assessment notice date to June 15, the amendment as proposed would have had the effect of moving the deadline for the rate-change announcement to May 31. However, if the announcement period were increased from 15 to 30 days prior to the assessment notice date, that change, in conjunction with the reduction of the assessment notice period to 15 days, would restore the announcement deadline to May 16, which is the existing date.

Under these circumstances, the Board believes a revision of the existing announcement date is warranted. This change would serve merely to continue the existing situation, by adapting the announcement date to accommodate the new change in the assessment notice date. Accordingly, the Board is further amending the assessments regulation to require that any adjustment in the assessment rate schedule under this provision of the regulation be announced at least 30 days before the date the assessment notice is to be provided to institutions for the first quarter of each semiannual assessment period.

As indicated above, one of the nine comment letters received by the FDIC in response to the proposal neither supported nor opposed any aspect of the proposal itself but expressed its views of the proposal's implications for agricultural banks. As noted in the letter, the focus of the comments ``is the need to address the adverse impacts of substantial increases in assessments if well-managed ag banks experience significant capital reductions because of ag loan losses''. The commenter ``does not challenge the concept that deposit assessments should be founded on the most current available data'' but does note that one of the effects of using more current information is that the assessments of a bank with declining capital is a more rapid increase in risk-based deposit insurance assessments. The commenter suggested that the assessment process be reviewed to determine whether additional revisions are necessary to reflect the likelihood that increased deposit assessments may increase, rather than reduce, the risk that

some banks will fail.

The commenter further suggested that the FDIC consider providing a means by which banks can benefit from funds paid as increased assessments in connection with loan losses from economic contraction rather than from poor management practices.

In response, the Board notes that refinements to the risk-based assessment system are continually under consideration and that these comments will be reviewed and carefully considered in connection with that on-going process.

The Final Rule

For the reasons stated above, the Board is adopting the amendments as proposed, with one addition. That addition is the revision of Sec. 327.9 to increase from 15 to 30 days the time by which an announcement of a limited adjustment to the assessment rate schedule must precede the date of the assessment notice sent to FDIC-insured institutions prior to the beginning of a semiannual assessment period.

The date changes made by the final rule will be implemented with the assessment period beginning July 1, 2000. The following chart illustrates the new dates, as compared to the existing dates, using that initial assessment period as an example.

	Semiannual Assessment Period Begi	
	Controlling call report date	Deadline for announcing limited rate change
Old Dates.....	12-31-1999	5-16-2000
New Dates.....	3-31-2000	5-16-2000

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Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). No new or increased reporting, recordkeeping, or other compliance requirements are imposed by the rule. Of the amendments adopted by the Board, only one--lengthening the time for filing requests for review of assessment risk classifications--addresses actions to be initiated by insured institutions. The remaining amendments address actions to be undertaken by the FDIC. The amendments addressing actions to be initiated by institutions relax an existing time restriction, and it is expected that any impact on insured institutions, of whatever size, will be favorable rather than adverse.

Assessment of Impact of Federal Regulation on Families

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

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, 12 CFR part 327 is amended as follows:

PART 327--ASSESSMENTS

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

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817-1819; Pub. L. 104-208, 110 Stat. 3009-479 (12 U.S.C. 1812).

Sec. 327.3 [Amended]

2. Section 327.3 is amended by removing the phrase ``30 days'' and adding in its place the phrase ``15 days'' in paragraphs (c)(1) and (d)(1), respectively.

3. Section 327.4 is amended by removing the citation ``309.5(c)(8)'' in paragraph (e) and adding in its place the citation ``309.5(g)(8)'', and revising paragraphs (a)(1) introductory text and (d) to read as follows:

Sec. 327.4 Annual assessment rate.

(a) * * *

(1) Capital factors. Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the following July and as of September 30 for the assessment period beginning the following January 1.

* * * * *

(d) Requests for review. An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 90 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (a) of this section. The request shall be submitted to the Corporation's Director of the Division of Insurance in Washington, D.C., 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 (or designee) or the Director of the Division of Supervision (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.

Sec. 327.9 [Amended]

4. Section 327.9 is amended by removing the phrase ``15 days'' and adding in its place the phrase ``30 days'' in paragraph (c)(4).

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December, 1999.

Federal Deposit Insurance Corporation.
James D. LaPierre,
Deputy Executive Secretary.
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