''Second offense.'' and adding ''Subsequent offenses.'' in its place.

■ e. Paragraph (c)(2)(ii) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ f. Paragraph (c)(2)(ii) is amended by removing $27,500 and adding $32,000 in its place.

■ g. Paragraph (c)(2)(iii)(B) is amended by removing $27,500 and adding $32,000 in its place.

■ h. Paragraph (c)(2)(iii)(B) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ i. Paragraph (c)(2)(iii)(C) is amended by removing $1,250,000 and adding $1,375,000 in its place.

■ j. Paragraph (c)(2)(iii)(C) is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ k. Paragraph (c)(3) introductory text is amended by removing ''December 31, 2004'' and adding ''December 31, 2008'' in its place.

■ l. Paragraph (c)(3)(i) introductory text is amended by removing $6,500 and adding $7,500 in its place, by removing $32,500 and adding $37,500 in its place, and by removing $1,250,000 wherever it appears and adding $1,375,000 in its place.

■ m. Paragraph (c)(3)(ii) is amended by removing $27,000 and adding $32,000 in its place and by removing $1,250,000 and adding $1,375,000 in its place.

■ n. Paragraph (c)(3)(iii) is amended by removing $6,500 and adding $7,500 in its place.

■ o. Paragraph (c)(3)(vi) is amended by removing $11,000 and adding $16,000 in its place.

■ p. Paragraph (c)(3)(ix) is amended by removing $6,500 and adding $7,500 in its place, by removing $32,500 and adding $37,500 in its place, and by removing $1,250,000 wherever it appears and adding $1,375,000 in its place.

■ q. Paragraph (c)(3)(xiv) is amended by removing $6,500 and adding $7,500 in its place, by removing $65,000 wherever it appears and adding $70,000 in its place, by removing $325,000 and adding $350,000 in its place, by removing $130,000 and adding $140,000 in its place, and by removing $625,000 and adding $675,000 in its place.

■ r. Paragraph (c)(3)(xv) is amended by removing $6,500 and adding $7,500 in its place.

■ s. Paragraph (c)(3)(xvi) is amended by removing $125,000 and adding $135,000 in its place.

■ t. A new paragraph (c)(3)(xvii) is added as set forth below:

§ 308.132 Assessment of penalties.

* * * * *

(c) * * *

(2) * * *

(i) * * * Pursuant to the Debt Collection Improvement Act of 1996, for violations of paragraph (c)(2)(i) which occur after December 31, 2008, the following maximum Tier One penalty amounts contained in paragraphs (c)(2)(i)(A) and (B) of this section shall apply for each day that the violation continues.

* * * * *

(3) * * *

(xvii) *Civil money penalties assessed for violation of one-year restriction on Federal examiners of financial institutions.* Pursuant to section 10(k) of the Federal Deposit Insurance Act (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to $250,000 against any covered former Federal examiner of a financial institution who, in violation of section 1820(k) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k), without the written waiver or permission by the appropriate Federal banking agency or authority under section 1820(k)(5). Pursuant to the Debt Collection Improvement Act of 1996, for any violation of section 10(k) which occurs after December 31, 2008, the maximum penalty amount will increase to $275,000.

By order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–28407 Filed 12–1–08; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD27

Assessment Dividends

AGENCY: Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement the assessment dividend requirements in the Federal Deposit Insurance Reform Act of 2005 (the Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (the Amendments Act). The final rule will take effect on January 1, 2009. It is the follow-up to the temporary final rule on assessment dividends that the FDIC issued in October 2006, which expires on December 31, 2008.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Munsell W. St.Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Missy Craig, Senior Program Analyst, Division of Insurance and Research, (202) 898–8724; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167; Joseph A. DiNuzzo, Counsel, Legal Division, (202) 898–7349; or Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION:

I. Background

A. Reform Act Requirements

Section 7(e)(2) of the Federal Deposit Insurance Act (the FDI Act), as amended by the Reform Act, requires the FDIC, under most circumstances, to declare dividends from the Deposit Insurance Fund (the fund or the DIF) when the DIF reserve ratio (the Reserve Ratio) at the end of a calendar year equals or exceeds 1.35 percent. When the Reserve Ratio equals or exceeds 1.35 percent, and is not higher than 1.50 percent, the FDIC generally must 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. The FDIC Board of Directors (the Board) may suspend or limit dividends to be paid, however, if it determines in writing, after taking a number of statutory factors into account, that: [1]

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

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[1] The statutory factors that the Board must consider are:

1. National and regional conditions and their impact on insured depository institutions;

2. Potential problems affecting insured depository institutions or a specific group or type of depository institution;

3. The degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and

4. Any other factors that the Board determines are appropriate.

12 U.S.C. 1817(e)(2)(F).

Reserve Ratio is between 1.35 and 1.50 percent or to exceed 1.50 percent.[2]

When the Reserve Ratio exceeds 1.50 percent at the end of a calendar quarter, the FDI Act requires the FDIC, absent certain limited circumstances (discussed in footnote 2), to declare a dividend equal to the excess of the amount required to maintain the Reserve Ratio at 1.50 percent as dividends to be paid to insured depository institutions.

If the Board decides to suspend or limit dividends, it must submit, within 270 days of making the determination, a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Committee on Financial Services of the House of Representatives. The report must include a detailed explanation for the determination and a discussion of the factors required to be considered.[3]

The FDI Act directs the FDIC to consider each insured depository institution's relative contribution to the DIF (or any predecessor deposit insurance fund) when calculating such institution's share of any dividend. More specifically, when allocating dividends, the Board must consider:

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date;
2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund);[4]
3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and
4. Such other factors as the Board deems appropriate.

The Reform Act expressly requires the FDIC to prescribe by regulation the method for calculating, declaring and paying dividends. The dividend regulation must include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of dividends it is awarded. Under the Reform Act, any review by the FDIC pursuant to these administrative procedures is final and not subject to judicial review.

B. The Temporary Final Rule on Assessment Dividends

In October 2006, the FDIC issued a temporary final rule to implement the dividend requirements of the Reform Act (the Temporary Final Rule).[5]

The Temporary Final Rule, which expires on December 31, 2008, provides definitions and details on how an institution may request FDIC review of a determination of the institution's dividend and how an institution may appeal the FDIC's response to that request. In the Temporary Final Rule, the FDIC adopted a simple system for allocating any dividends that might be declared during the two-year duration of the regulation. Any dividends awarded before January 1, 2009, will be distributed simply in proportion to an institution's 1996 assessment base ratio, as determined pursuant to the one-time assessment credit rule.[6]

C. The Advance Notice of Proposed Rulemaking and Notice of Proposed Rulemaking

At the time it adopted the Temporary Final Rule, the FDIC stated its intention to initiate a second, more comprehensive notice-and-comment rulemaking on dividends beginning with an advanced notice of proposed rulemaking to explore alternative methods for distributing future dividends after the temporary dividend rules expires on December 31, 2008. The publication of the assessment dividend advance notice of rulemaking in September 2007 (the ANPR) commenced that process.[7] Subsequently in March 2008, based upon comments received on the ANPR, the FDIC issued a proposed rule on the distribution of future dividends (the NPR).[8]

II. The Final Rule

The FDIC is adopting a final rule identical to the proposed rule, with a few exceptions described below.

The FDIC received three comment letters on the proposed rule: two from banking trade associations and one from a savings association. The savings association generally supported the proposed rule. One trade association stated that the proposal generally met the specifications that the association had suggested in its comments on the ANPR, although the association would not endorse the NPR. The other trade association supported many specific provisions of the proposed rule. Each of the comments had some specific suggestions that are discussed further below.

Annual Determination of Whether Dividends Are Required/Declaration of Dividends

The process under the final rule for the annual determination of dividends and declaration of dividends is identical with the process under the proposed rule. The FDIC will determine annually whether the reserve ratio at the end of the prior year equaled or exceeded 1.35 percent of estimated insured deposits or 1.50 percent, thereby triggering a dividend requirement. If a dividend is triggered, the FDIC will determine, based on statutory factors, whether payment of dividends should be limited or suspended. If the FDIC does not limit or suspend payment, or does not renew such a determination, the aggregate amount of the dividend under the final rule will be determined as provided by the Reform Act. The FDIC will declare any dividend on or before May 10th of the year following the year in which the reserve ratio exceeded 1.35 percent or 1.50 percent.[9]

The FDIC received one specific comment on this part of the proposal. One of the trade associations endorsed an accelerated annual process for determination and distribution of dividends.

Allocation of Dividends

The final rule adopts the proposed rule's methodology for allocation of dividends. The total dividend in any year will be divided into two parts. One of the two parts will be allocated based on the ratio of each institution's (including any predecessors') 1996 assessment base compared to the total of all existing eligible institutions' 1996

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[2] This provision allows the FDIC's Board to suspend or limit dividends in circumstances where the Reserve Ratio exceeds 1.5 percent, if the Board makes a determination to continue a suspension or limitation that it imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

[3] *See* section 5 of the Amendments Act. Public Law 109–173, 119 Stat. 3601, which was signed into law by the President on February 15, 2006.

[4] This factor is limited to deposit insurance assessments paid to the DIF (or previously to the Bank Insurance Fund (the BIF) or the Savings Association Insurance Fund (the SAIF)) and does not include assessments paid to the Financing Corporation (FICO) used to pay interest on outstanding FICO bonds, although the FDIC collects those assessments on behalf of FICO. Beginning in 1997, the FDIC collected separate FICO assessments from both SAIF and BIF members.

[5] 71 FR 61385 (October 18, 2006).

[6] 12 CFR 327.53. No dividend has or will be issued under the Temporary Final Rule.

[7] 72 FR 53181 (September 18, 2007).

[8] 73 FR 15459 (Mar. 24, 2008).

[9] The two banking trade associations generally promoted conservative fund management as the optimal strategy for solving the dividend allocation issue. They both stated that FDIC fund management should ensure that the fund be kept beneath the 1.35 percent statutory level so that dividends were not triggered. Low, smooth, steady premiums that prevent a dividend trigger would obviate the issue of how to equitably distribute dividends between the older and newer segments of the banking industry. One of the associations stated that such a policy would benefit the insurance fund, the industry in general, and consumers.

assessment bases (an institution's 1996 assessment base share). The other part of the total dividend will be allocated based on each institution's (including any predecessors') ratio of cumulative eligible premiums over the previous five years to the total of cumulative eligible premiums paid by all existing institutions (or their predecessors) over the previous five years (an institution's eligible premium share). The part of any potential dividend that will be allocated based upon 1996 assessment base shares will decline steadily from 100 percent to zero over 15 years; the part of any potential dividend that will be allocated based upon eligible premium shares will increase steadily over the same 15-year period from zero to 100 percent. After the 15-year period, any dividend will be allocated solely based on eligible premium shares.

The 15-year period will run from the end of 2006 to the end of 2021 and will govern dividends based upon the reserve ratio at the end of the years 2008 through 2021. Actual dividends, if any, will be allocated and paid the following year. Table A shows the change in the allocation of potential dividends over time.

TABLE A—TOTAL DIF DIVIDEND DISTRIBUTION TABLE

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

The FDIC received three comments on the proposed method of allocating dividends. One banking trade association supported the balanced consideration of alternative dividend allocation schemes, taking into account the significant premiums paid in the early 1990s to recapitalize the FDIC. The second banking trade association stated that the FDIC proposal was a reasonable compromise between the fund balance method and the payments method described in the ANPR and that the proposed rule generally responded to their wishes that the method be simple but detailed enough so that community banks understood it, and that it not be subject to sudden or unexpected changes.[10] It suggested one additional change: That the 15-year phase-out period begin in 2009 rather than 2006 as banks were operating under the existing rule on dividends for the years 2006 through 2008.

The commenting savings association generally supported the provisions of the proposed rule but recommended that the FDIC use a 10-year rather than a 15-year transition period. The bank stated that parity dictated a 10-year phase-in period since a 10-year period elapsed with no general collection of premiums, and it would be punitive to other organizations to continue to count an institution's assessment credits after they have been used to offset premiums.

The FDIC continues to believe that the 15-year phase-out transition period, beginning in 2006, is a reasonable compromise between the legitimate points of view of older and newer banking institutions and thus recommends adopting the allocation method proposed in the NPR.

Eligible Premiums

As under the proposed rule, an eligible premium will be defined as that part of an assessment that was charged at no more than the maximum rate then applicable to a Risk Category I institution. Whether an institution paid its assessment in cash or offset it with assessment credits will not affect its eligible premium. An institution's eligible premium will include eligible premiums paid by a predecessor.

The final rule clarifies that eligible premiums would not include any assessments or fees paid by insured depository institutions for the Temporary Liquidity Guarantee Program or any emergency special assessments paid by insured depository institutions pursuant to the systemic risk provisions of the Federal Deposit Insurance Act, whether related to the Temporary Liquidity Guarantee Program or not.[11]

The FDIC received three comments on this part of the proposal. The banking trade associations supported the proposal. The commenting savings association suggested that the FDIC only count payments made with ''real dollars'' rather than assessment credits in calculating eligible premiums.

[10] The ANPR sought comment on two general approaches to allocating dividends—the fund balance method and the payments method. The two allocation methods potentially differed most significantly in the way they balanced two of the statutory factors that the Board must consider—an institutions' relative 1996 assessment bases and assessments paid after 1996—and, thus, in the way each method would treat older versus newer institutions. The terms ''older'' and ''newer,'' however, do not simply refer to age. An institution that had a large 1996 assessment base compared to its current assessment base is considered an older institution, and an institution that had no assessment base in 1996 or only a small assessment base compared to its present assessment base is considered a newer institution.

[11] The systemic risk emergency special assessment provision is Section 13(c)(4)(G) of the FDI Act, 12 U.S.C. 1823(c)(4)(G).

The FDIC continues to believe that allowing an eligible premium to include premiums offset with assessment credits is also part of the reasonable compromise between the legitimate points of view of older and newer banking institutions and thus recommends adopting the definition of an eligible premium proposed in the NPR. In any event, most assessment credits have already been used. Staff estimates that at the end of 2008 only four percent of the original assessment credits will remain. Given the small likelihood of a dividend within the next several years, including premiums offset with assessment credits within the definition of an eligible premium will have little practical effect for most institutions.

Definition of a ''Predecessor'' Insured Depository Institution

Under the final rule, consistent with the requirements of the Reform Act, the allocation of dividends to an insured depository institution will in part be based on the 1996 assessment base ratio of, and the post-1996 assessments paid by, insured depository institutions of which the insured depository institution is the successor. As in the Temporary Final Rule, the final rule defines a predecessor insured depository institution by cross referencing the definition of successor insured depository institution in the one-time assessment credit rule. (*See* 12 CFR 327, subpart B.) In effect, a predecessor institution is the mirror image of a successor institution. Notably, the definition of successor in the one-time credit regulation includes a de facto rule, applicable in transactions in which an insured depository institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of another insured depository institution.

The FDIC received one specific comment on this part of the proposal. The banking trade association that submitted the comment supported the proposal.

Notification and Payment of Dividends

The process for notifying institutions of their dividend amounts and paying dividends will be as proposed in the NPR, with one minor change. The FDIC will advise each institution of its dividend as soon as practicable after the Board's declaration of a dividend on or before May 10th. However, individual dividend amounts will be paid to institutions on June 30 (in connection with the deposit insurance assessment process), rather than within 45 days after the issuance of the special notice (or as soon as practicable thereafter) as proposed in the NPR.

This change is intended to simplify the distribution process. Dividends will be paid through the Automated Clearing House (ACH) and offset against assessment payments. If an institution owes additional assessments, there will be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owed additional dividend amounts, there will be a net credit (resulting in payment from the FDIC).

Under the final rule, the FDIC will freeze the payment of any disputed portion of dividends. Any adjustment to an individual institution's dividend resulting from its request for review will be handled through ACH in the same manner as existing procedures for underpayment or overpayment of assessments.

The proposed final rule states that the FDIC intends, beginning no later than 2010, to include with its quarterly assessment invoices the institution's 1996 assessment base share and its rolling five-year eligible premium share.

The FDIC received only one specific comment on this part of the proposal. The banking trade association that submitted the comment supported the ''acceleration of the annual process for determination and distribution of dividends, so that any dividends will be distributed in the first quarter following the year-end declaration.'' Staff notes that dividends cannot be declared at year-end, since the year-end fund reserve ratio will not be known until some time in the following February. However, under the final rule, dividends will be distributed in the same quarter as the declaration (when the Board declares a dividend in the second quarter, since payment will be made on June 30th), and will be always be distributed as least as soon as the quarter after the declaration.

Requests for Review

The final rule's provisions for challenging dividend shares and amounts are as proposed in the NPR and are similar to those in the Temporary Final Rule, except that they reflect the FDIC's intention to provide, beginning in 2010, quarterly dividend-related information with each assessment invoice. Under the final rule, if a dividend is declared before 2010, an institution will have 30 days from the date of the notice of its dividend to request review.

Once the quarterly invoice updates become available, an institution generally will have 90 days from the date of the invoice to request review of that dividend-related information, except in a year in which a dividend is declared. If the FDIC declares a dividend, the institution will have 30 days from the date of its notice of dividend amount to request review either of that amount or of any dividend-related information in its March invoice for that year; the institution will not have the full 90-day period following the March invoice to request review.

The rule requires that, when quarterly dividend-related information becomes available in 2010, an institution will have to request review of its dividend-related information within 90 days of the first invoice that fails to reflect accurate information. If it does not submit a timely request for review, it will be barred from subsequently requesting review of that information.

The requirement that insured depository institutions monitor their dividend-related information quarterly and promptly request review is necessitated by the proposed timing for the payment of dividends. In the absence of such a strict quarterly requirement, the FDIC would have needed to reconsider both the timing of dividend payment and possibly the look-back period for calculating institutions' dividend shares, which at 5 years is longer than the 3-year recordkeeping requirement in the FDI Act and longer than the 3-year statute of limitations for bringing an action on assessment underpayments and overpayments.

The rule requires that at the time of the request for review the requesting institution must notify all institutions that will be directly and materially affected, and that it provide those institutions with copies of the request for review, supporting documentation, and FDIC procedures for requests for review. The FDIC will make reasonable efforts to determine that these institutions had been identified and notified.

Institutions will then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. If an institution notified through this process does not submit a timely response, that institution will be foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process. The FDIC may request additional information as part of its review, and the institution from which such information is requested will be required to supply that information within 21 days of the date of the FDIC's request.

The rule requires a written response from the FDIC's Director of the Division of Finance (the Director), or his or her designee, notifying the requesting institution and any materially affected institutions of the determination of the Director as to whether the requested change is warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for review; (2) within 60 days of the date of the last response to the notification if additional institutions are notified by the requesting institution or the FDIC; or (3) within 60 days of its receipt of the additional information, whichever date is latest.

If a requesting institution disagrees with the determination of the Director, that institution may appeal to the FDIC's Assessment Appeals Committee (the AAC). Notice of the procedures applicable to appeals to the AAC will be included with the Director's written determination. Under the final rule, an appeal to the AAC must be filed within 30 calendar days of the date of the Director's written determination. The AAC's determination will be final and not subject to judicial review.

The FDIC will freeze temporarily the distribution of any dividend amount in dispute for the institutions involved in the challenge until the challenge is resolved.

The FDIC received specific comments on this part of the proposal from only one source. The banking trade association that submitted the comment supported "quarterly notification of each bank's share of future dividends" and "clarification of the dispute resolution process to be consistent with that for risk-based premium classification."

The association also requested that the quarterly notification provide enough information for banks to understand how their dividend shares were computed. Given that a bank will be provided with a relatively short time period of 90 days to challenge its share, the notification needed to provide sufficient data so that a bank could readily check its allocation, and the notification should provide the deadline for filing a challenge. Staff concurs with this request. It is staff's intention that the quarterly notification will provide the necessary data.

Additional Comments on the Proposed Rule

One of the banking trade associations also recommended that the FDIC establish a rule regarding the transferability of claims on future dividends; specifically, it recommended that the FDIC permit sales of dividend shares and promulgate rules clarifying the regulatory implications. The FDIC agrees that these claims should be transferable and has so provided in the final rule. However, the transfer of these claims will remain a matter of contract solely between the interested parties. The FDIC will pay dividends to institutions according to the FDIC's records without regard to whether claims on dividends have been transferred. Thus, the FDIC will not track sales or recognize assignments for payment purposes, since doing so would be labor-intensive and require a substantial amount of resources. As the FDIC expects that only a very limited number of institutions will be interested in transferring claims to future dividends, it would be inequitable to make the entire banking industry subsidize the costs of tracking sales and recognizing assignments.

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 received no comments on how to make this rule easier to understand.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires a federal agency publishing a final rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes a bank holding company, commercial bank or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will provide the procedures for the FDIC's declaration, distribution, and payment of dividends to insured depository institutions under the circumstances set forth in the FDI Act. While each insured depository institution will have the opportunity to request review of the amount of its dividend each time a dividend is declared, the final rule will rely on information already collected and maintained by the FDIC in the regular course of business. The final rule will not directly or indirectly impose any reporting, recordkeeping or compliance requirements on insured depository institutions.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 *et seq.*) are contained in the final rule.

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

The FDIC has determined that the final 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.

Authority and Issuance

■ For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended by revising subpart C of part 327 to read as follows:

PART 327—ASSESSMENTS

Subpart C—Implementation of Dividend Requirements

Sec.
327.50 Purpose and scope.
327.51 Definitions.
327.52 Annual dividend determination.
327.53 Allocation and payment of dividends.
327.54 Requests for review.

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

§ 327.50 Purpose and scope.

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

(b) Purpose. This subpart C of part 327 provides the rules for:

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

(2) The FDIC's determination of the amount of each insured depository

institution's share of any declared dividend;

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

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

§ 327.51 Definitions.

For purposes of this subpart:

(a) *Assessment base share* means an *insured depository institution's 1996 assessment base ratio* divided by the total of all existing, eligible insured depository institution's shares of the 1996 assessment base (rounded to 14 decimal places).

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

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

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

(2) An eligible premium does not include any assessments or fees paid by insured depository institutions for the Temporary Liquidity Guarantee Program. An eligible premium also does not include any emergency special assessments paid by insured depository institutions pursuant to section 13(c)(4)(G) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c)(4)(G), whether to repay any loss to the FDIC as a consequence of the Temporary Liquidity Guarantee Program or for any other reason.

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

(f) An *insured depository institution's 1996 assessment base ratio* means an institution's 1996 assessment base ratio, as determined pursuant to § 327.33 of this part, adjusted as necessary to reflect subsequent transactions in which the institution succeeds to another institution's assessment base ratio, or a transfer of the assessment base ratio pursuant to § 327.34. The 1996 assessment base ratio shall be rounded to seven decimal places.

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

§ 327.52 Annual dividend determination.

(a) If the DIF reserve ratio as of December 31st of 2008 or any later year equals or exceeds 1.35 percent, then on or before May 10th of the following year, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.50 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF exceeds 1.50 percent of estimated insured deposits, the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.50 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

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

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

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

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.50 percent; or

(B) To exceed 1.50 percent.

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

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

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

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

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

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

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

(1) Make a new finding justifying the renewal of the suspension or limitation under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

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

§ 327.53 Allocation and payment of dividends.

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

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

TOTAL DIF DIVIDEND DISTRIBUTION TABLE

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

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

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

(c) The FDIC shall pay individual dividend amounts, unless they are the subject of a request for review under § 327.54, to insured depository institutions on June 30 of the year the dividend is declared. The FDIC shall notify institutions whether dividends will offset the next collection of assessments at the time of the invoice. An institution's dividend amount will be settled with that institution's assessment. Any excess dividend amount will be a net credit to the institution and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A of this part. If the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited by the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution's dividend amount is subject to review under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC shall withhold the payment of the disputed portion of the dividend amount involved in the request for review. Adjustments to an individual institution's dividend amount based on the final determination of a request for review will be handled in the same manner as assessment underpayments and overpayments.

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

§ 327.54 Requests for review.

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

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

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

(2) The institution believes that the 1996 assessment base ratio attributed to the institution is inaccurate or has not been adjusted to include the 1996 assessment base ratio of an institution acquired by merger or transfer pursuant to §§ 327.33 and 327.34 of this part and § 327.51(g), and the institution has not had a prior opportunity to request review or appeal under subpart B of this part or paragraph (a) of this section; or

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

(c) Any such request for review under paragraph (b) of this section must be submitted within 30 days of the date of the special notice of dividend for which a change is requested. The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for

review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

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

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

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

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

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

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

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

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

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

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

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–28405 Filed 12–1–08; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1251; Directorate Identifier 2008–SW–61–AD; Amendment 39–15756; AD 2008–22–53]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document supersedes AD 2008–18–52 and publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (AD) 2008–22–53 which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model MD900 helicopters by individual letters. This AD requires turning ON both Vertical Stabilizer Control System (VSCS) switches and turning OFF the autopilot (AP/SAS) switch; pulling certain AP/SAS circuit breakers; installing a placard near the AP/SAS master switch; installing an airspeed limitation placard on the instrument panel; and making changes to the Rotorcraft Flight Manual (RFM). This AD is prompted by 4 occurrences in which the left VSCS adapter tubes failed on the MD900 helicopters and the vertical stabilizer became uncontrollable, resulting in reduced yaw control of the helicopter. There were no injuries, but in one occurrence, due to the high speed quick yaw, the helicopter lost a window and a door. The actions specified by this AD are intended to prevent loss of yaw control and subsequent loss of control of the helicopter.

DATES: Effective December 17, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2008–22–53, issued on October 23, 2008, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 2, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, FAA, Los Angeles Aircraft Certification Office, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210.

SUPPLEMENTARY INFORMATION: On August 20, 2008, we issued Emergency AD 2008–18–51 for 500N, 600N, and MD900 helicopters. Emergency AD 2008–18–51 was prompted by reports that 2 MD900 helicopters experienced failed VSCS adapter tubes. In one case, the helicopter experienced an uncommanded yaw, resulting in loss of a window and a door. The Emergency AD required several actions related to the Yaw Stability Augmentation System (YSAS) for the Model 500N and 600N