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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

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Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: Pursuant to the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the FDIC's authority under section 7 of the Federal Deposit Insurance Act (FDI Act), the FDIC is imposing a surcharge on the quarterly assessments of insured depository institutions with total consolidated assets of $10 billion or more. The surcharge will equal an annual rate of 4.5 basis points applied to the institution's assessment base (with certain adjustments). If the Deposit Insurance Fund (DIF or fund) reserve ratio reaches 1.15 percent before July 1, 2016, surcharges will begin July 1, 2016. If the reserve ratio has not reached 1.15 percent by that date, surcharges will begin the first day of the calendar quarter after the reserve ratio reaches 1.15 percent. (Lower regular quarterly deposit insurance assessment (regular assessment) rates will take effect the quarter after the reserve ratio reaches 1.15 percent.) Surcharges will continue through the quarter that the reserve ratio first reaches or exceeds 1.35 percent, but not later than December 31, 2018. The FDIC expects that surcharges will commence in the second half of 2016 and that they should be sufficient to raise the DIF reserve ratio to 1.35 percent in approximately eight quarters, *i.e.,* before the end of 2018. If the reserve ratio does not reach 1.35 percent by December 31, 2018 (provided it is at least 1.15 percent), the FDIC will impose a shortfall assessment on March 31, 2019, on insured depository institutions with total consolidated assets of $10 billion or more. The FDIC will provide assessment credits (credits) to insured depository institutions with total consolidated assets of less than $10 billion for the portion of their regular assessments that contribute to growth in the reserve ratio between 1.15 percent and 1.35 percent. The FDIC will apply the credits each quarter that the reserve ratio is at least 1.38 percent to offset the regular deposit insurance assessments of institutions with credits.

DATES: This rule will become effective on July 1, 2016.

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SUPPLEMENTARY INFORMATION:

I. Notice of Proposed Rulemaking and Comments

On October 22, 2015, the FDIC's Board of Directors (Board) authorized publication of a notice of proposed rulemaking (NPR) to impose a surcharge on the quarterly assessments of insured depository institutions with total consolidated assets of $10 billion or more.

The NPR was published in the **Federal Register** on November 6, 2015.[1] The FDIC sought comment on every aspect of the proposed rule and on alternatives. The FDIC received a total of eight letters. Of these letters, four were from trade groups and four were from banks. Comments are discussed in the relevant sections below.

II. Policy Objectives

The FDIC maintains a fund in order to assure the agency's capacity to meet its obligations as insurer of deposits and receiver of failed banks.[2] The FDIC considers the adequacy of the DIF in terms of the reserve ratio, which is equal to the DIF balance divided by estimated insured deposits. A higher minimum reserve ratio reduces the risk that losses from bank failures during a downturn will exhaust the DIF and reduces the risk of large, procyclical increases in deposit insurance assessments to maintain a positive DIF balance.

The Dodd-Frank Act, enacted on July 21, 2010, contained several provisions to strengthen the DIF.[3] Among other things, it: (1) Raised the minimum reserve ratio for the DIF to 1.35 percent (from the former minimum of 1.15 percent);[4] (2) required that the reserve ratio reach 1.35 percent by September 30, 2020;[5] and (3) required that, in setting assessments, the FDIC ''offset the effect of [the increase in the minimum reserve ratio] on insured depository institutions with total consolidated assets of less than $10,000,000,000.''[6]

Both the Dodd-Frank Act and the FDI Act grant the FDIC broad authority to implement the requirement to achieve the 1.35 percent minimum reserve ratio. In particular, under the Dodd-Frank Act, the FDIC is authorized to take such steps as may be necessary for the reserve ratio to reach 1.35 percent by September 30, 2020.[7] Furthermore, under the FDIC's special assessment authority in section 7(b)(5) of the FDI Act, the FDIC may impose special assessments in an amount determined to be necessary for any purpose that the FDIC may deem necessary.[8]

In the FDIC's view, the Dodd-Frank Act requirement to raise the reserve ratio to the minimum of 1.35 percent by September 30, 2020 reflects the importance of building the DIF in a timely manner to withstand future economic shocks. Increasing the reserve ratio faster reduces the likelihood of procyclical assessments, a key policy

[1] See 80 FR 68780 (Nov. 6, 2015).

[2] As used in this final rule, the term ''bank'' has the same meaning as ''insured depository institution'' as defined in section 3 of the FDI Act, 12 U.S.C. 1813(c)(2).

[3] Public Law 111–203, 334, 124 Stat. 1376, 1539 (12 U.S.C. 1817(note)).

[4] 12 U.S.C. 1817(b)(3)(B). The Dodd-Frank Act also removed the upper limit on the designated reserve ratio (which was formerly capped at 1.5 percent).

[5] 12 U.S.C. 1817(note).

[6] 12 U.S.C. 1817(note). The Dodd-Frank Act also: (1) eliminated the requirement that the FDIC provide dividends from the fund when the reserve ratio is between 1.35 percent and 1.5 percent; (2) eliminated the requirement that the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits be paid as dividends; and (3) granted the FDIC's authority to declare dividends when the reserve ratio at the end of a calendar year is at least 1.5 percent, but granted the FDIC sole discretion in determining whether to suspend or limit the declaration of payment or dividends, 12 U.S.C. 1817(e)(2)(A)–(B).

[7] 12 U.S.C. 1817(note).

[8] 12 U.S.C. 1817(b)(5).

goal of the FDIC that is supported in the academic literature and acknowledged by banks.[9]

The purpose of the final rule is to meet the Dodd-Frank Act requirements in a manner that appropriately balances several considerations, including the goal of reaching the minimum reserve ratio reasonably promptly in order to strengthen the fund and reduce the risk of pro-cyclical assessments, the goal of maintaining stable and predictable assessments for banks over time, and the projected effects on bank capital and earnings. The primary mechanism described below for meeting the statutory requirements—surcharges on regular assessments—will ensure that the reserve ratio reaches 1.35 percent without inordinate delay (likely in 2018) and will ensure that assessments are allocated equitably among banks responsible for the cost of reaching the minimum reserve ratio.

III. Background

The Dodd-Frank Act gave the FDIC greater discretion to manage the DIF than it had previously, including greater discretion in setting the target reserve ratio, or designated reserve ratio (DRR), which the FDIC must set annually.[10] The Board has set a 2 percent DRR for each year starting with 2011.[11] The Board views the 2 percent DRR as a long-term goal.

By statute, the FDIC also operates under a Restoration Plan while the reserve ratio remains below 1.35 percent.[12] The Restoration Plan, originally adopted in 2008 and subsequently revised, is designed to ensure that the reserve ratio will reach 1.35 percent by September 30, 2020.[13]

In February 2011, the FDIC adopted a final rule that, among other things, contained a schedule of deposit insurance assessment rates that apply to regular assessments that banks pay. The FDIC noted when it adopted these rates that, because of the requirement making banks with $10 billion or more in assets responsible for increasing the reserve ratio from 1.15 percent to 1.35 percent, ''assessment rates applicable to all insured depository institutions need only be set high enough to reach 1.15 percent'' before the statutory deadline of September 30, 2020.[14] The February 2011 final rule left to a later date the method for assessing banks with $10 billion or more in assets for the amount needed to reach 1.35 percent.[15]

In the February 2011 final rule, the FDIC also adopted a schedule of lower regular assessment rates that will go into effect once the reserve ratio of the DIF reaches 1.15 percent.[16] These lower regular assessment rates will apply to all banks' regular assessments. Regular assessments paid under the schedule of lower rates are intended to raise the reserve ratio gradually to the long-term goal of 2 percent.

The FDIC expects that, under the current assessment rate schedule, the DIF reserve ratio will reach 1.15 percent in the first half of 2016.

IV. Description of the Final Rule

A. Surcharges

Surcharge Rate and Duration

As proposed in the NPR, to implement the requirements of the Dodd-Frank Act, and pursuant to the FDIC's authority in section 7 of the FDI Act,[17] the FDIC is adding a surcharge to the regular assessments of banks with $10 billion or more in assets. Also as proposed in the NPR, the surcharge will begin the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent and will continue until the reserve ratio first reaches or exceeds 1.35 percent, but no later than the fourth quarter of 2018.[18] For each quarter, the FDIC will notify banks that will be subject to the surcharge and inform those banks of the amount of the surcharge within the timeframe that applies to notification of regular assessment amounts.[19]

As proposed in the NPR, the annual surcharge rate will be 4.5 basis points, which the FDIC expects will be sufficient to raise the reserve ratio from 1.15 percent to 1.35 percent in 8 quarters, before the end of 2018.

Comments Received

The FDIC received several comments on the surcharge rate and estimated surcharge period. In a joint comment letter, three trade groups stated that a ''strong'' majority of large banks that they surveyed favored an alternative discussed in the NPR of charging lower surcharges over a longer period and imposing a shortfall assessment only if the reserve ratio has not reached 1.35 percent by a date nearer the statutory deadline. Specifically, the trade groups proposed an annual surcharge of no more than 2.25 basis points to reach 1.35 percent in 14 quarters, and a shortfall, if needed, to be assessed in the first quarter of 2020.[20] A few other commenters supported the three trade groups' proposal.

One commenter supported an alternative discussed in the NPR of foregoing surcharges entirely and, if the reserve ratio does not reach 1.35 percent by a deadline sometime near the statutory deadline, imposing a delayed

[9] In 2011, the FDIC Board of Directors adopted a comprehensive, long-range management plan for the DIF that is designed to reduce procyclicality in the deposit insurance assessment system. Input from bank executives and industry trade group representatives favored steady, predictable assessments and found high assessment rates during crises objectionable. In addition, economic literature points to the role of regulatory policy in minimizing procyclical effects. See, for example: 75 FR 66272 and George G. Pennacchi, 2004. ''Risk-Based Capital Standards, Deposit Insurance and Procyclicality,'' FDIC Center for Financial Research Working Paper No. 2004–05.

[10] 12 U.S.C. 1817(b)(3)(A)(i).

[11] A DRR of 2 percent was based on a historical analysis as well as on the statutory factors that the FDIC must consider when setting the DRR. In its historical analysis, the FDIC analyzed historical fund losses and used simulated income data from 1950 to 2010 to determine how high the reserve ratio would have to have been before the onset of the two banking crises that occurred during this period to maintain a positive fund balance and stable assessment rates.

[12] 12 U.S.C. 1817(b)(3)(E).

[13] 75 FR 66293 (Oct. 27, 2010).

[14] See 76 FR 10673, 10683 (Feb. 25, 2011).

[15] 76 FR at 10683. The Restoration Plan originally stated that the FDIC would pursue rulemaking on the offset in 2011, 75 FR 66293 (Oct. 27, 2010), but in 2011 the Board decided to postpone rulemaking until a later date.

[16] 76 FR at 10717; see also 12 CFR 327.10(b). The FDIC adopted this schedule of lower assessment rates following its historical analysis of the long-term assessment rates that would be needed to ensure that the DIF would remain positive without raising assessment rates even during a banking crisis of the magnitude of the two banking crises of the past 30 years. On June 16, 2015, the Board adopted a notice of proposed rulemaking that would revise the risk-based pricing methodology for established small institutions. See 80 FR 40838 (July 13, 2015). On January 21, 2016, the Board adopted a second notice of proposed rulemaking that would revise parts of the proposal adopted by the Board in 2015. The revised proposal would leave the overall range of initial assessment rates and the assessment revenue expected to be generated unchanged from the current assessment system for established small institutions. See 81 FR 6108 (Feb. 4, 2016).

[17] 12 U.S.C. 1817.

[18] As discussed below, this rule will become effective on July 1, 2016. If the reserve ratio reaches 1.15 percent before that date, surcharges will begin July 1, 2016. If the reserve ratio has not reached 1.15 percent by that date, surcharges will begin the first day of the calendar quarter after the reserve ratio reaches 1.15 percent.

[19] As with regular assessments, surcharges will be paid one quarter in arrears, based on the bank's previous quarter data and will be due on the 30th day of the last month of the quarter. (If the payment date is not a business day, the collection date will be the previous business day.) Thus, for example, if the surcharge is in effect for the first quarter of 2017, the FDIC will notify banks that are subject to the surcharge of the amount of each bank's surcharge obligation no later than June 15, 2017, 15 days before the first quarter 2017 surcharge payment due date of June 30, 2017 (which is also the payment due date for first quarter 2017 regular assessments). The notice may be included in the banks' invoices for their regular assessment.

[20] The trade groups noted that leaving the current assessment rate schedule in place when the reserve ratio reaches 1.15 percent would be roughly equivalent to an annual surcharge of no more than 2.25 basis points to reach 1.35 percent in 14 quarters.

shortfall assessment at the end of the following quarter.

On the other hand, the joint comment letter submitted by the three trade groups did note that a few large banks surveyed supported the proposed surcharge rate and timeline in the NPR, while a few others favored a one-time assessment once the reserve ratio first reaches 1.15 percent (an alternative also discussed in the NPR). One bank in its comment letter also preferred a one-time assessment just after the reserve ratio first reaches or exceeds 1.15 percent in order to raise the reserve ratio closer to 1.35 percent (but not all the way to 1.35 percent) sooner than would occur under the proposal. Another trade group preferred charging surcharges over a shorter timeframe—four quarters—but found that the proposal in the NPR and a one-time assessment just after the reserve ratio first reaches or exceeds 1.15 percent were also reasonable options.

In the FDIC's view, the final rule strikes an appropriate balance among these options after considering: (1) The statutory deadline for reaching the minimum reserve ratio; (2) the importance of strengthening the fund's ability to withstand a spike in losses; (3) the goal of reducing the risk of larger assessments for the entire industry in a future period of stress; and (4) the effects on the capital and earnings of surcharged banks.

The FDIC expects that surcharges will result in the reserve ratio reaching 1.35 percent in 2018. Reaching the statutory target reasonably promptly and in advance of the statutory deadline has benefits. First, it strengthens the fund so that it can better withstand an unanticipated spike in losses from bank failures or the failure of one or more large banks.

Second, it reduces the risk of the banking industry facing unexpected, large assessment rate increases in a future period of stress. Once the reserve ratio reaches 1.35 percent, the September 30, 2020 deadline in the Dodd-Frank Act will have been met and will no longer apply. If the reserve ratio later falls below 1.35 percent, even if that occurs before September 30, 2020, the FDIC will have a minimum of eight years to return the reserve ratio to 1.35 percent, reducing the likelihood of a large increase in assessment rates.[21] In contrast, if a spike in losses occurs before the reserve ratio reaches 1.35 percent, the Dodd-Frank Act deadline will remain in place, which could require that the entire banking industry—including banks with less than $10 billion in assets, if the reserve ratio falls below 1.15 percent—pay for the increase in the reserve ratio within a relatively short time. The final rule, therefore, reduces the risk of higher assessments being imposed at a time when the industry might not be as healthy and prosperous and could less afford to pay.

In addition, large banks will account for future surcharges in the quarterly report of condition and income (Call Report) and other banking regulatory reports based on generally accepted accounting principles (GAAP) as quarterly expenses, as they do for regular assessments, effectively spreading the cost of the requirement over approximately eight quarters in a simple, predictable manner.

In contrast, a longer surcharge period or a delayed one-time assessment without surcharges would reduce the fund's ability to withstand a spike in losses and increase the risk of larger assessments for the entire industry in a future period of stress.

Five comment letters also stated that, rather than imposing a separate surcharge at a uniform rate, the FDIC should implement surcharges in a risk-based manner.[22] One commenter argued that a risk-based surcharge would provide incentives to manage risk. Some commenters suggested foregoing a surcharge and instead leaving in place the current risk-based assessment rate schedule when the reserve ratio reaches 1.15 percent, rather than the lower one that is scheduled to go into effect. One commenter also recommended that surcharges be integrated into risk-based assessments in a way that maintains banks' incentives to hold long-term unsecured debt.[23]

The final rule uses a flat-rate surcharge. As one commenter acknowledged, while the FDI Act requires that regular assessments be risk-based, no such requirement exists for special assessments.[24] In fact, the most recent special assessment, imposed in 2009, was also a flat rate assessment, and, in 1996, Congress imposed a flat-rate special assessment on banks that held deposits insured by the Savings Association Insurance Fund.[25] In addition, nothing in the Dodd-Frank Act requires a risk-based assessment to raise the minimum reserve ratio from 1.15 percent to 1.35 percent.

Banks subject to the surcharge will continue to pay risk-based regular deposit insurance assessments. As a result, they will still have the incentives they now have to prudently manage risk and to issue long-term unsecured debt.

Moreover, because banks' risk profiles change over time, aggregate assessments using a risk-based surcharge would be more prone to vary than will a flat-rate surcharge. This variance would reduce the predictability of surcharge revenue and create additional uncertainty regarding the needed rates and the time required for the reserve ratio to reach 1.35 percent. Banks themselves would have less predictable surcharge assessments.

Banks Subject to the Surcharge

As proposed in the NPR, the banks subject to the surcharge (large banks) will be determined each quarter based on whether the bank was a ''large institution'' or ''highly complex institution'' for purposes of that quarter's regular assessments.[26] Generally, this includes institutions with total assets of $10 billion or more; however, an insured branch of a foreign bank whose assets as reported in its

[21] See generally 12 U.S.C. 1817(b)(3)(E)(ii).

[22] Suggested methods for implementing a risk-based surcharge included a surcharge based on a multiple of a bank's initial base assessment rate, a variable-rate surcharge, or imposing the surcharge only on the weakest or riskiest banks.

[23] A bank's total base assessment rate can vary from its initial base assessment rate as the result of three possible adjustments. One of these adjustments, the unsecured debt adjustment, lowers a bank's assessment rate based on the bank's ratio of long-term unsecured debt to the bank's assessment base. 12 CFR 327.9(d).

[24] Compare 12 U.S.C. 1817(b)(1), requiring a risk-based deposit insurance assessment system, with 12 U.S.C. 1817(b)(5), which allows the FDIC to impose special assessments and contains no requirement that they be risk-based.

[25] See 74 FR 25639 (May 29, 2009); 61 FR 53834 (Oct. 16, 1996).

[26] In general, a ''large institution'' is an insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) or a small institution that reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters. 12 CFR 327.8(f). If an institution classified as large reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter. 12 CFR 327.8(e). In general, a ''highly complex institution'' is: (1) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters that is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters; or (2) a processing bank or trust company. If an institution classified as highly complex fails to meet the definition of a highly complex institution for four consecutive quarters (or reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters), the FDIC will reclassify the institution beginning the following quarter. 12 CFR 327.8(g). In general, a ''small institution'' is an insured depository institution with assets of less than $10 billion as of December 31, 2006, or an insured branch of a foreign institution. 12 CFR 327.8(e).

most recent quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks equaled or exceeded $10 billion will also be considered a large bank and will be subject to the surcharge.[27 28]

Comments Received

The FDIC received two comments from trade groups on which banks should be subject to the surcharge. One commenter suggested that the surcharge should not apply to mid-size banks and should only apply to highly complex banks, while another commenter proposed that the surcharge be restricted to only the largest banks, those considered ''too big to fail,'' or those controlling a large share of industry assets. As an alternative to their suggestions, both commenters proposed that the FDIC increase the $10 billion deduction from large banks' assessment bases for the surcharge (discussed below), for example, to $25 billion or $50 billion, which would effectively exempt banks with total assets under these threshold amounts from surcharges.

The FDIC has identified no compelling basis to distinguish between large banks based on any particular asset size or other profile. Further, the final rule is consistent with the statutory language. The Dodd-Frank Act requires the FDIC to ''offset the effect of [the increase in the minimum reserve ratio] on insured depository institutions with total consolidated assets of less than $10,000,000,000,'' and unlike other parts of the Act, there is no indication that section 334(e) should apply only to banks of a certain size or that engage in certain activities. The apparent purpose of the Act's requirement was to insulate banks with less than $10 billion in total assets from the cost of the increase in the minimum reserve ratio. The final rule appropriately meets this requirement.

The FDIC is cognizant of the concerns of large banks near the $10 billion threshold. As a practical matter, the $10 billion deduction from large banks' assessment bases for the surcharge has the effect of shifting the burden of the surcharges towards larger banks. While, as discussed later, the purpose of the $10 billion deduction is to avoid a ''cliff effect'' for banks near the $10 billion asset threshold, it has the concomitant effect of benefitting large banks closer in size to the $10 billion asset threshold relatively more than larger banks, since the relative effect of the $10 billion deduction decreases as asset size increases. As reflected in Table 1, based on data as of December 31, 2015, the simple average effective surcharge rate (the surcharge rate if applied to a bank's regular quarterly deposit insurance assessment base) for banks with assets between $10 billion and $50 billion will be approximately half the simple average effective rate for banks with assets greater than $100 billion. In fact, with lower regular assessment rates scheduled to take effect when the reserve ratio reaches 1.15 percent, more than half (36 out of 67) of large banks with total assets between $10 billion and $50 billion and roughly one-third of all large banks are expected to pay an effective assessment rate, even with the surcharge, that is lower than their current assessment rate.

TABLE 1—EFFECTIVE ANNUAL ASSESSMENT RATES BY SIZE GROUP

[Based on data as of December 31, 2015]

Assets (in $ billions)	Number of banks	Average effective surcharge rate *
$10 to $50	67	2.11
$50 to $100	15	3.73
Over $100	26	4.23
All Large	108	2.85

* The average is a simple average.

Banks' Assessment Bases for the Surcharge

Pursuant to the broad authorities under the Dodd-Frank Act and the FDI Act, including the authority to determine the assessment amount, which includes defining an appropriate assessment base for the surcharge (the surcharge base), each large bank's surcharge base for any given quarter will equal its regular quarterly deposit insurance assessment base (regular assessment base) for that quarter with certain adjustments.[29]

The first adjustment under the final rule differs from the NPR, but is similar to an alternative method of determining the surcharge base on which the NPR requested comment. The NPR would have added the entire regular assessment bases of affiliated small banks to the surcharge bases of large bank affiliates, but sought comment on an alternative that would add only the amount of any increase in the regular assessment bases of affiliated small banks. In response to a joint comment letter from three trade groups and after balancing all the considerations expressed in the NPR, the FDIC has decided to add to a large bank's surcharge base each quarter only the cumulative net increase in the aggregate regular assessment bases of affiliated small banks above the aggregate regular assessment bases as of December 31, 2015 of affiliated small banks as of that date that is in excess of an effective annual rate of 10 percent.[30 31]

The cumulative net increase in excess of an effective annual rate of 10 percent in the aggregate regular assessment bases of affiliated small banks will be calculated by compounding a quarterly rate of approximately 2.41 percent from December 31, 2015. Thus, for example, at the end of September 2016 (3 quarters after December 31, 2015), assuming that surcharges are in effect, the final rule will add to a large bank's surcharge base for that quarter any cumulative net increase in the aggregate regular assessment bases of affiliated small banks in excess of approximately 7.41 percent (approximately 2.41 percent per quarter compounded for 3 quarters). Similarly, at the end of March 2017 (5 quarters after December 31, 2015), assuming that surcharges are in effect, the final rule will add to a large bank's surcharge base for that quarter any cumulative net increase in the aggregate regular assessment bases of affiliated small banks in excess of approximately

[27] Assets for foreign banks are reported in FFIEC 002 report (Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks), Schedule RAL, line 3, column A.

[28] For purposes of the final rule, a large bank also includes a small institution if, while surcharges were in effect, the small institution was the surviving institution or resulting institution in a merger or consolidation with a large bank or if the small institution acquired all or substantially all of the assets or assumed all or substantially all of the deposits of a large bank.

[29] Public Law 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817(note)); 12 U.S.C. 1817(b)(5). For purposes of regular assessments, the Dodd-Frank Act defines the assessment base with respect to an insured depository institution as an amount equal to the average consolidated total assets of the insured depository institution during the assessment period; minus the sum of the average tangible equity of the insured depository institution during the assessment period, and in the case of an insured depository institution that is a custodial bank (as defined by the FDIC, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in . . . (12 U.S.C. 24)), an amount that the FDIC determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the [Federal Deposit Insurance] Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank. 12 U.S.C. 1817(note).

[30] As used in this final rule, the term ''affiliate'' has the same meaning as defined in section 3 of the FDI Act, 12 U.S.C. 3(w)(6), which references the Bank Holding Company Act (''any company that controls, is controlled by, or is under common control with another company''). 12 U.S.C. 1841(k).

The term ''small bank'' is synonymous with the term ''small institution'' as it is defined in 12 CFR 327.8(e) and used in existing portions of 12 CFR part 327 for purposes of regular assessments, except that it excludes: (1) An insured branch of a foreign bank whose assets as reported in its most recent most recent quarterly Call Report equal or exceed $10 billion; and (2) a small institution that, while surcharges are in effect, is the surviving or resulting institution in a merger or consolidation with a large bank or that acquired of all or substantially all of the assets or assumed all or substantially all of the deposits of a large bank.

[31] The final rule measures the net increase in affiliated small banks' assessment bases from December 31, 2015, which is the latest possible date that ensures that banks do not engage in avoidance behavior between issuance of the final rule and its effective date.

Adding cumulative growth in excess of an effective annual rate of 10 percent in the regular assessment bases of affiliated small banks to the assessment bases of their large bank affiliates limits the ability of large banks to reduce their surcharges (and potentially shift costs to other large banks) either by transferring assets and liabilities to existing or new affiliated small banks or by growing the businesses of affiliated small banks instead of the large bank without unduly constraining the normal growth of the affiliated small banks.[32]

Including only the amount of any cumulative net increase that is in excess of an effective annual rate of 10 percent in the aggregate regular assessment bases of affiliated small banks, rather than their entire assessment bases as proposed in the NPR, will have only a very small effect on total surcharge revenue and is unlikely to increase the number of quarters that surcharges are in effect.

The second adjustment is as proposed in the NPR. It deducts $10 billion from a large bank's regular assessment base (as increased by the first adjustment) to produce the surcharge base. Deducting $10 billion from each large bank's assessment base for the surcharge avoids a ''cliff effect'' for banks near the $10 billion asset threshold, thereby ensuring equitable treatment. Otherwise, a bank with just over $10 billion in assets would pay significant surcharges, while a bank with $9.9 billion in assets would pay none. The $10 billion reduction reduces incentives for banks to limit their growth to stay below $10 billion in assets, or to reduce their size to below $10 billion in assets, solely to avoid surcharges.

In a banking organization that includes more than one large bank, both (1) the $10 billion deduction, and (2) the cumulative net increase in affiliated small banks' regular assessment bases exceeding a 10 percent effective annual rate will be apportioned among all large banks in the banking organization in proportion to each large bank's regular assessment base for that quarter.[33] Appendix 1 gives examples of the calculation of the surcharge base for a banking organization that has more than one large bank and for a banking organization that has both large and small banks.

Comments Received

The FDIC received one joint comment letter from three trade groups related to the first adjustment. As proposed in the NPR, the first adjustment would have added the entire regular assessment bases of affiliated small banks to the surcharge bases of large bank affiliates. The joint comment letter opposed adding any portion of the assessment bases of small bank affiliates to large banks, but argued that, if any addition were to occur, it should be limited to no more than any increase in the assessment bases of small bank affiliates above ''normal growth'' after surcharges begin.[34] As described above, the final rule uses the net increase in excess of a 10 percent effective annual rate in the aggregate regular assessment bases of affiliated small banks above their aggregate regular assessment bases as of December 31, 2015.

The FDIC received three comments related to the second adjustment, the deduction of $10 billion from a large bank's assessment base and apportioning the deduction among all large banks in the banking organization. Two commenters proposed a larger deduction (discussed above). A joint comment letter submitted by three trade groups proposed that bank holding companies with multiple large banks be allowed to deduct $10 billion for each large bank, arguing that limiting large banks in a bank holding company to a single $10 billion deduction ''discriminates against banking organizations with multiple affiliated large banks.''

The provisions in the final rule regarding the second deduction are unchanged from those proposed in the NPR. Allocation of the $10 billion deduction among affiliated large banks ensures that banking organizations of a similar size (in terms of large bank assessment bases) pay a similar surcharge. Thus, a banking organization with multiple large banks will not have an advantage over other similarly sized banking organizations that have only one large bank because, instead of deducting $10 billion from each large bank in the organization, the deduction will be apportioned among the multiple affiliated large banks.

Moreover, allowing each large bank in a banking organization to take a $10 billion deduction could, in effect, penalize the large majority of banking organizations that do not have more than one large bank by increasing the risk that surcharges would last longer than envisioned under the proposal.

B. Shortfall Assessment

The FDIC expects that surcharges combined with regular assessments will raise the reserve ratio to 1.35 percent before December 31, 2018. It is possible, however, that unforeseen events could result in higher DIF losses or faster insured deposit growth than expected, or that banks may take steps to reduce or avoid quarterly surcharges. While not expected, these events or actions could prevent the reserve ratio from reaching 1.35 percent by the end of 2018. In this case, provided the reserve ratio is at least 1.15 percent, the FDIC will impose a shortfall assessment on large banks.[35]

12.65 percent (approximately 2.41 percent per quarter compounded for 5 quarters).

A net increase in affiliated small banks' assessment bases includes any increase resulting from a merger or consolidation with an unaffiliated insured depository institution. A net decrease in the aggregate regular assessment bases of affiliated small banks below their aggregate regular assessment bases as of December 31, 2015 will not reduce the surcharge bases of affiliated large banks.

To prevent assessment avoidance, if a banking organization with at least one large bank but no small banks acquires or establishes a small bank after December 31, 2015, the entire assessment base of the small bank will be apportioned among the surcharge bases of large banks in the holding company in the manner discussed below. Also, if a large bank in a banking organization with multiple large bank affiliates becomes a small bank during the surcharge period, its entire assessment base will be apportioned among the surcharge bases of its large bank affiliates in the manner discussed below.

As of December 31, 2015, 19 banking organizations had both large and small banks.

[32] As noted in the NPR, however, some large banks may be able to shift the burden of the surcharge by transferring assets and liabilities to a nonbank affiliate, or by shrinking or limiting growth.

[33] As of December 31, 2015, 9 banking organizations had multiple affiliated large banks.

[34] The joint comment letter argued that the proposed addition of the entire regular assessment bases of affiliated small banks to the surcharge bases of large bank affiliates ''would abrogate the intent of [Sec.] 334 [of the Dodd-Frank Act] by imposing de facto assessment surcharges on small banks affiliated with large banks, albeit indirectly by assessing their larger affiliates,'' and, therefore, these small banks would not receive a full offset for their contribution towards raising the reserve ratio from 1.15 percent to 1.35 percent. In fact, however, small bank affiliates of large banks will not pay any surcharge assessment and will be entitled to credits on the same basis as all other small banks.

The joint comment letter also argued that Sec. 334 of the Dodd-Frank Act does not authorize the FDIC to augment large banks' assessment bases with those of their small bank affiliates. In fact, however, the Dodd-Frank Act and the FDI Act give the FDIC broad authority to determine the amount of any special assessments, including the surcharges, and thus an appropriate assessment base for the surcharge. See Public Law 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817(note)); 12 U.S.C. 1817(b)(5). The FDI Act contains no provisions mandating any particular assessment base for a special assessment.

[35] In the unlikely event that the reserve ratio is below 1.15 percent on December 31, 2018, the FDIC will impose a shortfall assessment at the end of the calendar quarter immediately following the first calendar quarter after December, 31, 2018, in which the reserve ratio first reaches or exceeds 1.15 percent. The aggregate amount of such a shortfall assessment will equal 0.2 percent of estimated insured deposits at the end of the calendar quarter in which the reserve ratio first reaches or exceeds 1.15 percent. If surcharges have been in effect (that

Continued

The provisions in the final rule regarding the shortfall assessment are as proposed in the NPR. If the reserve ratio has not reached 1.35 percent by the end of 2018, the FDIC will impose a shortfall assessment on large banks on March 31, 2019 and collect it on June 30, 2019.[36] The aggregate amount of the shortfall assessment will equal 1.35 percent of estimated insured deposits on December 31, 2018 minus the actual fund balance on that date.

If a shortfall assessment is needed, it will be imposed on any bank that was a large bank in any quarter during the period that surcharges are in effect (the surcharge period). Each large bank's share of any shortfall assessment will be proportional to the average of its surcharge bases (the average surcharge base) during the surcharge period. If a bank was not a large bank during a quarter of the surcharge period, its surcharge base will be deemed to equal zero for that quarter.[37]

If a bank of any size acquires—through merger or consolidation—a large bank that had paid surcharges for one or more quarters, the acquiring bank will be subject to a shortfall assessment and its average surcharge base will be increased by the average surcharge base of the acquired bank.[38]

A large bank's share of the total shortfall assessment will equal its average surcharge base divided by the sum of the average surcharge bases of all large banks subject to the shortfall assessment. Using an average of surcharge bases ensures that anomalous growth or shrinkage in a large bank's assessment base will not subject it to a disproportionately large or small share of any shortfall assessment.

Comments Received

In addition to the comments discussed above regarding the duration of the surcharge and timing of any required corresponding shortfall assessment, the FDIC received two other comments on the shortfall assessment. One commenter suggested that the shortfall assessment, in addition to the surcharges, should only be applied to ''highly complex'' banks. Another commenter stated that the shortfall assessment and surcharges should be risk-based.

For the reasons discussed previously in connection with the surcharge assessment, the shortfall assessment in the final rule is as proposed in the NPR. If a shortfall assessment is necessary, the expected revenue based on the calculation method adopted will be much more predictable than the expected revenue from a risk-based method. In previous special assessments, the FDIC used a uniform rate, rather than a risk-based rate, and large banks will continue to pay risk-based regular assessments. Moreover, as also noted above, neither the statute nor its legislative history suggest that only highly complex banks should be responsible for raising the reserve ratio from 1.15 percent to 1.35 percent. The statute requires that the FDIC offset the effect of the increase in the minimum reserve ratio on banks with less than $10 billion in consolidated assets.

C. Payment Mechanism for the Surcharge and Any Shortfall Assessment

Each large bank is required to take any actions necessary to allow the FDIC to debit its share of the surcharge from the bank's designated deposit account used for payment of its regular assessment. Similarly, each large bank subject to any shortfall assessment is required to take any actions necessary to allow the FDIC to debit its share of the shortfall assessment from the bank's designated deposit account used for payment of its regular assessment. Before the dates that payments are due, each bank must ensure that sufficient funds to pay its obligations are available in the designated account for direct debit by the FDIC. Failure to take any such action or to fund the account will constitute nonpayment of the assessment. Penalties for nonpayment will be as provided for nonpayment of a bank's regular assessment.[39]

Comments Received

The FDIC received no comments on this part of the proposal. The final rule adopts this part of the proposal without change.

D. Additional Provisions Regarding Mergers, Consolidations and Terminations of Deposit Insurance

Under existing regulations, a bank that is not the resulting or surviving bank in a merger or consolidation must file a Call Report for every assessment period prior to the assessment period in which the merger or consolidation occurs. The surviving or resulting bank is responsible for ensuring that these Call Reports are filed. The surviving or resulting bank is also responsible and liable for any unpaid assessments on behalf of the bank that is not the resulting or surviving bank.[40] Unpaid assessments also include any unpaid surcharges and shares of a shortfall assessment under the final rule.

Thus, for example, a large bank's first quarter 2017 surcharge (assuming that the surcharge is in effect then), which will be collected on June 30, 2017, will include the large bank's own first quarter 2017 surcharge plus any unpaid first quarter 2017 or earlier surcharges owed by any large bank it acquired between April 1, 2017 and June 30, 2017 by merger or through the acquisition of all or substantially all of the acquired bank's assets. The acquired bank will be required to file Call Reports through the first quarter of 2017 and the acquiring bank will be responsible for ensuring that these Call Reports were filed.

Existing regulations also provide that, for an assessment period in which a merger or consolidation occurs, total consolidated assets for the surviving or resulting bank include the total consolidated assets of all banks that are parties to the merger or consolidation as if the merger or consolidation occurred on the first day of the assessment period. Tier 1 capital (which is deducted from total consolidated assets to determine a bank's regular assessment base) is to be reported in the

is, if the reserve ratio reaches but then falls below 1.15 percent before December 31, 2018), the shortfall assessment will be imposed on the banks described in the text using average surcharge bases as described in the text. If surcharges have never been in effect: (1) The banks subject to the shortfall assessment will be the banks that were large banks as of the calendar quarter in which the reserve ratio first reached or exceeded 1.15 percent; and (2) an individual large bank's share of the shortfall assessment will be proportional to the average of what its surcharge bases would have been over the four calendar quarters ending with the calendar quarter in which the reserve ratio first reaches or exceeds 1.15 percent. The shortfall assessment will be collected on the 30th day of the last month of the quarter after the assessment was imposed. If that date is not a business day, the collection date will be the previous business day.

If the reserve ratio remains or is projected to remain below 1.15 percent for a prolonged period after 2018 (and never reaches 1.35 percent), the FDIC Board may have to consider increases to regular assessment rates on all banks (in addition to the shortfall assessment on banks with $10 billion or more in assets) in order to achieve the minimum reserve ratio of 1.35 percent by the September 30, 2020 statutory deadline.

[36] The FDIC will notify each bank subject to a shortfall assessment of its share of the shortfall assessment no later than 15 days before payment is due.

[37] Thus, for example, if a large bank were subject to a shortfall assessment because it had been subject to a surcharge for only one quarter of the surcharge period, the bank's surcharge base for seven quarters would be deemed to be zero and its average surcharge base would be its single positive surcharge base divided by eight (assuming that the surcharge period had lasted eight quarters).

[38] With respect to surcharges and shares of any shortfall assessment, a surviving or resulting bank in a merger or consolidation includes any bank that acquires all or substantially all of another bank's assets or assumes all or substantially all of another bank's deposits.

[39] See 12 CFR 308.132(c)(3)(v).

[40] 12 CFR 327.6(a).

same manner.[41] These provisions will also apply to surcharges and shares of any shortfall assessment under the final rule.

Existing regulations also provide that, when the insured status of a bank is terminated and the deposit liabilities of the bank are not assumed by another bank, the bank whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured, but not thereafter.[42] These provisions will also apply to surcharges and shares of any shortfall assessment under the final rule.

Finally, in the case of one or more transactions in which one bank voluntarily terminates its deposit insurance under the FDI Act and sells certain assets and liabilities to one or more other banks, each bank must report the increase or decrease in assets and liabilities on the Call Report that is due after the transaction date and the banks will be assessed accordingly under existing FDIC assessment regulations. The bank whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured. The same process will also apply to surcharges and shares of any shortfall assessment under the final rule.

Comments Received

The FDIC received no comments on this part of the proposal. The final rule adopts this part of the proposal without change.

E. Credits for Small Banks [43]

While the reserve ratio remains between 1.15 percent and 1.35 percent, some portion of the deposit insurance assessments paid by small banks will contribute to increasing the reserve ratio. To meet the Dodd-Frank Act requirement to offset the effect on small banks of raising the reserve ratio from 1.15 percent to 1.35 percent, the FDIC will provide assessment credits to these banks for the portion of their assessments that contribute to the increase from 1.15 percent to 1.35 percent.[44] The provisions in the final rule governing how credits are calculated and awarded are as proposed in the NPR. The FDIC will apply credits to reduce future regular deposit insurance assessments.

Aggregate Amount of Credits

As proposed in the NPR, to determine the aggregate amount of credits awarded small banks, the FDIC will first calculate 0.2 percent of estimated insured deposits (the difference between 1.35 percent and 1.15 percent) on the date that the reserve ratio first reaches or exceeds 1.35 percent.[45] The amount that small banks contributed to this increase in the DIF through regular assessments—and the resulting aggregate amount of credits to be awarded small banks—will equal the small banks' portion of all large and small bank regular assessments during the ''credit calculation period'' times an amount equal to the increase in the DIF calculated above less surcharges. (The ''credit calculation period'' covers the period beginning the quarter after the reserve ratio first reaches or exceeds 1.15 percent through the quarter that the reserve ratio first reaches or exceeds 1.35 percent (or December 31, 2018, if the reserve ratio has not reached 1.35 percent by then).) Surcharges will be subtracted from the increase in the DIF calculated above before determining the amount by which small banks contributed to that increase because surcharges are intended to increase the reserve ratio above 1.15 percent, not to maintain it at 1.15 percent.[46]

This method of determining the aggregate small bank credit implicitly assumes that all non-assessment revenue (for example, investment income) during the credit calculation period will be used to maintain the fund at a 1.15 percent reserve ratio and that regular assessment revenue will be used to maintain the fund at that reserve ratio only to the extent that other revenue is insufficient. Essentially, the method attributes reserve ratio growth to assessment revenue as much as possible and, with one exception, maximizes the amount of the aggregate small bank assessment credit. The exception is the assumption that all surcharge payments contribute to growth of the reserve ratio (to the extent of that growth), which is consistent with the purpose of the surcharge payments.

The FDIC projects that the aggregate amount of credits will total approximately $1 billion, but the actual amount of credits may differ.

Comments Received

The FDIC received only one comment on the proposed method of determining the aggregate amount of small bank credits. That comment, from a trade group, supported the proposal.

Individual Small Banks' Credits

As proposed in the NPR, credits will be awarded to any bank, including a small bank affiliate of a large bank, that was a small bank at some time during the credit calculation period. An individual small bank's share of the aggregate credit (a small bank's credit share) will be proportional to its credit base, defined as the average of its regular assessment bases during the credit calculation period.[47 48] If, before the DIF reserve ratio reaches 1.35 percent, a small bank acquires another small bank through merger or consolidation, the acquiring small bank's regular assessment bases for purposes of determining its credit base will include the acquired bank's regular assessment bases for those quarters during the credit calculation period that were before the merger or consolidation. No small bank can receive more in credits than it (and any small bank acquired through merger or consolidation) paid during the credit calculation period in regular assessments while it is a small bank not subject to the surcharge.

By making a small bank's credit share proportional to its credit base rather than, for example, its actual assessments paid, the final rule reduces the chances that a riskier bank assessed at higher than average rates will receive credits for these higher rates. The final rule thus reduces the incentive for banks to take on higher risk.

[41] 12 CFR 327.6(b).

[42] 12 CFR 327.6(c).

[43] Large banks will not receive a refund or credit if surcharges bring the reserve ratio above 1.35 percent. Thus, for example, if the reserve ratio is 1.34 percent at the end of September 2018 and is 1.37 percent at the end of December 2018, large banks will not receive a refund or credit for the two basis points in the reserve ratio above 1.35 percent. Similarly, large banks will not receive a refund or credit if a shortfall assessment brings the reserve ratio above 1.35 percent.

[44] Small banks will not be entitled to any credits for the quarter in which a shortfall is assessed because large banks will be responsible for the entire remaining amount needed to raise the reserve ratio to 1.35 percent.

[45] If the reserve ratio does not reach 1.35 percent by December 31, 2018, the amount calculated will be the increase in the DIF needed to raise the DIF reserve ratio from 1.15 percent to the actual reserve ratio on December 31, 2018; that amount equals the DIF balance on December 31, 2018 minus 1.15 percent of estimated insured deposits on that date.

[46] If total assessments, including surcharges, during the credit calculation period are less than or equal to the increase in the DIF calculated above, the aggregate amount of credits to be awarded small banks will equal the aggregate amount of regular assessments paid by small banks during the credit calculation period.

[47] When determining the credit base, a small bank's assessment base is deemed to equal zero for any quarter in which it is a large bank.

[48] Call Report amendments after the payment date for the final quarter of the surcharge period do not affect a bank's credit share.

Comments Received

The FDIC received no comments on this part of the proposal.

Successors

If any bank acquires a bank with credits through merger or consolidation after the DIF reserve ratio reaches 1.35 percent, the acquiring bank will acquire the credits of the acquired small bank. Other than through merger or consolidation, credits are not transferable.[49] Also, credits held by a bank that fails or ceases being an insured depository institution will expire. These provisions are as proposed in the NPR.

Use of Credits

After the reserve ratio reaches 1.38 percent (and provided that it remains at or above 1.38 percent), the FDIC will automatically apply a small bank's credits to reduce its regular deposit insurance assessment up to the full amount of the bank's credits or assessment, whichever is less.[50 51 52] In response to comments, this portion of the final rule differs from the proposal in two ways. First, the final rule allows credit use as long as the reserve ratio is at or above 1.38 percent, rather than when it is at or above 1.40 percent as proposed in the NPR. Under the FDI Act, the Board is required to adopt a restoration plan if the reserve ratio falls below 1.35 percent. Allowing credit use only when the reserve ratio is at or above 1.38 percent should provide sufficient cushion for the DIF to remain above 1.35 percent in the event of rapid growth in insured deposits and ensure that credit use alone will not result in the reserve ratio falling below 1.35 percent. Allowing credit use before the reserve ratio reaches this level, however, would create a greater risk of the reserve ratio falling below 1.35 percent, triggering the need for a restoration plan.[53]

Second, the final rule provides that credits available to an institution may be used to offset the institution's entire quarterly insurance assessment, rather than limiting credit use to an annual rate of 2 basis points as proposed in the NPR.

Notices of Credits

As soon as practicable after the DIF reserve ratio reaches 1.35 percent, the FDIC will notify each small bank of the FDIC's preliminary estimate of the small bank's credit and the manner in which the credit was calculated (the notice). The estimate will be based on information derived from the FDIC's official system of records. The FDIC will provide the notice through FDICconnect or other means in accordance with existing practices for assessment invoices.[54]

After the initial notice, periodic updated notices will be provided to reflect adjustments that may be made as the result of credit use, requests for review of credit amounts, or any subsequent merger or consolidation.

Requests for Review and Appeals

The final rule includes provisions that allow a small bank that disagrees with the FDIC's computation of, or basis for, its credits to request review or appeal. These provisions are unchanged from those proposed in the NPR.

The FDIC received no comments on this part of the proposal.

V. Economic Effects

The FDIC estimates that it will collect approximately $10 billion in surcharges and award approximately $1 billion in credits to small banks, although actual amounts may vary from these estimates. The FDIC projects that a shortfall assessment will be unnecessary.

As discussed above, the benefits of the final rule will be to quickly strengthen the fund's ability to withstand an unanticipated spike in losses and reduce the risk of larger assessments for the entire industry. Under the final rule, the cost of raising the minimum reserve ratio will be spread over approximately eight quarters and calculated in a simple, predictable manner.

A. Accounting Treatment

Based on FDIC analysis, banks subject to the surcharge will not account for future surcharges or a possible shortfall assessment as a present liability or a recognized loss contingency in the Call Report and other banking regulatory reports based on GAAP because the surcharges do not relate to a current condition or event giving rise to a liability under Financial Accounting Standards Board Accounting Standards Codification Topic 450, *Contingencies.* Surcharges will become recognized loss contingencies in a then current quarter if (i) the bank is in existence during that quarter; and (ii) the bank is a large bank as of that quarter and, therefore, subject to the surcharge. Surcharges are based on the bank's regular assessment bases in future periods, and recognized in regulatory reports for those periods, just as regular assessments are now (where each assessment is accounted for as a

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[49] A joint comment letter from three trade groups recommended that the FDIC allow a small bank to sell or transfer its credits. The final rule does not adopt this recommendation because of the small amount of expected credits, the short period they are expected to last, and the low number of banks that used transfer provisions in the past. The credits to be awarded pursuant to this final rule are expected to be relatively small (approximately $1 billion in credits compared to approximately $4.7 billion in credits awarded pursuant to the Federal Deposit Insurance Reform Act of 2005 (Reform Act). See 71 FR 61374 (Oct. 18, 2006) implementing one-time assessment credits awarded pursuant to the Reform Act. Credits awarded under the Reform Act also lasted considerably longer than the credits to be awarded under the final rule are expected to last. Over 50 percent of banks still had credits remaining under the Reform Act after five quarters and over 20 percent had credits remaining after eight quarters, while virtually all banks are expected to use up credits awarded under the final rule in five quarters or less. In addition, although the credits awarded under the Reform Act were transferrable, 71 FR at 61377, only one-half percent of banks (36 banks) actually transferred them (other than through merger). Similarly, although the FDIC allowed banks to transfer unused portions of approximately $45.7 billion in assessments that were prepaid at the end of 2009, 74 FR, 59056, 59060 (Nov. 17, 2009), only 20 banks actually transferred any of their prepaid assessment amounts (again, other than through merger). While credits are not transferrable under the final rule, the final rule provides that all banks may use credits to fully offset their assessments, and the final rule provides that credits may be used earlier than proposed in the NPR—when the reserve ratio reaches 1.38 percent, rather than 1.40 percent.

[50] The amount of credits applied each quarter will not be recalculated as the result of subsequent amendments to the quarterly Call Reports or the quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. Credit amounts may not be used to pay Financing Corporation (FICO) assessments. See section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f).

[51] A joint comment from three trade groups expressed concern that credits could be viewed as assets on a bank's balance sheet and, therefore, included in the bank's assessment base. The commenters recommended that the FDIC revise ''the assessments pricing formula'' for small institutions so that credits are not assessed. Assessment credits awarded pursuant to the Reform Act were not recognized as assets for accounting purposes. See 71 FR 61374 (Oct. 18, 2006). Even if the credits to be awarded pursuant to this final rule are recognized as assets under GAAP, the FDIC would not adopt the commenters' recommendation. Revising assessments in this manner so that credits are not assessed is equivalent to excluding credits from small institutions' assessment bases. Except as specifically authorized by statute, the FDIC does not exclude assets, even securities issued or guaranteed by the U.S. government or its agencies, from banks' assessment bases. Moreover, as discussed in a previous footnote, the credits to be awarded under the final rule are expected to be relatively small, are expected to last only two to five quarters for most small banks, and would have only a minimal effect on small institutions' assessments even if treated as assets.

[52] Any credits in excess of a bank's assessment will be used to fully offset a bank's entire deposit insurance assessments in future quarters until credits are exhausted, as long as the reserve ratio exceeds 1.38 percent.

[53] Also, allowing credit use before the reserve ratio reaches 1.35 percent, as one trade group suggested, would delay the reserve ratio's reaching 1.35 percent and would add complexity because credits would have to be estimated and later adjusted, since the actual amount of credits will not be known until the reserve ratio reaches 1.35 percent.

[54] See generally 12 CFR 327.2(b).

liability and expensed for the quarter it is assessed). A shortfall assessment will be a recognized loss contingency if (i) the reserve ratio has not reached 1.35 percent by the end of 2018; and (ii) the bank has been subject to a surcharge.

B. Capital and Earnings Analysis

Consistent with section 7(b)(2)(B) of the FDI Act, the analysis that follows estimates the effects of a 4.5 basis point surcharge on the equity capital and earnings of large banks.[55] Because small banks will not pay surcharges, surcharges will affect neither their capital nor their earnings; however, the analysis also estimates the effect of credits on small bank earnings.

The FDIC has estimated the effect of a 4.5 basis-point surcharge on large banks' earnings in two ways. First, as a percentage of *adjusted earnings,* to take into account the savings projected to result from lower assessment rates implemented in the future when the reserve ratio reaches 1.15 percent. Second, as a percentage of *current earnings.* Current earnings are assumed to equal pre-tax income before extraordinary and other items from January 1, 2015 through December 31, 2015. Adjusted earnings are current earnings plus the savings to be gained by large banks from lower future assessments that will result from the lower assessment rate schedule that will apply to regular assessments once the reserve ratio reaches 1.15 percent.

Assumptions and Data

The analysis is based on large banks as of December 31, 2015. As of that date, there were 108 large banks. Banks are merger-adjusted, except for failed bank acquisitions, for purposes of determining income.

Although the surcharge is expected to continue for 8 quarters, the analysis examines the effect of the surcharge over one year. Each large bank's surcharge base is calculated as of December 31, 2015. Data from January 1, 2015 through December 31, 2015 are used to calculate each large bank's current earnings and adjusted earnings. Capital for each large bank is the amount reported as of December 31, 2015. The analysis assumes that current earnings equal pre-tax income before extraordinary and other items from January 1, 2015 through December 31, 2015. Using this measure eliminates the potentially transitory effects of extraordinary items and taxes on profitability. In calculating the effect on capital and banks' ability to maintain a leverage ratio of at least 4 percent (the minimum capital requirement [56]), however, the analysis considers the effective after-tax cost of assessments.[57] The analysis assumes that the large banks do not transfer the surcharge to customers in the form of changes in borrowing rates, deposit rates, or service fees.

Projected Effects

For all or almost all large banks, the effective surcharge annual rate measured against large banks' regular assessment base will be less than the nominal surcharge rate of 4.5 basis points because of the $10 billion deduction. The FDIC projects that the net effect of lower assessment rates that go into effect when the reserve ratio reaches 1.15 percent and the imposition of the surcharge will result in lower assessments for approximately one-third of all large banks. Specifically, the analysis estimates that 37 of the 108 large banks will pay lower assessments in the future than they pay currently.

The analysis reveals no significant capital effects from the surcharge. All large institutions continue to maintain a 4 percent leverage ratio, at a minimum, both before and after the imposition of the surcharge.[58]

The annual surcharge also represents only a small percentage of bank earnings for most large banks. In the aggregate, the annual surcharge absorbs 2.33 percent of total large bank adjusted earnings and 2.36 percent of total large bank current earnings.

Table 2.A shows that as of December 31, 2015, for 83 percent of all large banks (86 large banks) the surcharge represents 3 percent or less of adjusted annual earnings. For 92 percent (96 large banks), the surcharge represents 5 percent or less of adjusted annual earnings. Only 8 large banks' adjusted annual earnings are affected by more than 5 percent, with the maximum effect on any single bank being 9.6 percent.

TABLE 2.A—THE EFFECT OF THE FINAL RULE ON ADJUSTED EARNINGS OF INDIVIDUAL LARGE BANKS

Large banks				
Surcharge relative to adjusted earnings	Population		Assets	
	Number	Percentage of total large banks	Total ($ in billions)	Percentage of total large banks
Equal to 0%	2	2	21	0
Between 0% and 1%	23	22	604	5
Between 1% and 2%	32	31	1,925	15
Between 2% and 3%	29	28	6,608	51
Between 3% and 4%	6	6	2,473	19
Between 4% and 5%	4	4	444	3
Over 5%	8	8	828	6
All Large Banks	104	100	12,904	100

Notes:

(1) Effect of Surcharge on Current Earnings: Mean = 2.17%; Median = 1.88%; Max = 9.61%; Min = 0.00%.

(2) Four large banks were excluded from the original population of 108. One large bank is an insured branch of a foreign bank and does not report income in its quarterly financial filings and the other three large banks reported negative income. Figures may not add to totals due to rounding.

[55] Equity capital is defined as tier 1 capital for this purpose.

[56] See 12 CFR 324.10(a).

[57] Since deposit insurance assessments are a tax-deductible operating expense, increases in assessment expenses can lower taxable income and decreases in the assessment rate can raise taxable income.

[58] Of the 108 large banks, 107 continue to maintain a leverage ratio of at least 4 percent. The other large bank is an insured branch of a foreign bank and does not report income in its quarterly financial filings, so its regulatory capital ratios cannot be calculated.

When evaluating the effect of the surcharge on current earnings (that is, excluding the gains projected from lower future regular assessments), the effect of surcharges is slightly greater, as expected, but the results are not materially different. Table 2.B shows that, for 82 percent of large banks as of December 31, 2015, (85 large banks), the surcharge represents 3 percent or less of current earnings. For 91 percent (95 large banks), the surcharge represents 5 percent or less of current earnings. Only 9 large banks' current earnings are affected by more than 5 percent, with the maximum effect on any single bank being 10.11 percent.

TABLE 2.B—THE EFFECT OF THE FINAL RULE ON CURRENT EARNINGS OF INDIVIDUAL LARGE BANKS

Large banks				
Surcharge relative to current earnings	Population		Assets	
	Number	Percentage of total large banks	Total ($ in billions)	Percentage of total large banks
Equal to 0	2	2	21	0
Between 0% and 1%	23	22	604	5
Between 1% and 2%	31	30	1,906	15
Between 2% and 3%	29	28	6,568	51
Between 3% and 4%	7	7	2,532	20
Between 4% and 5%	3	3	171	1
Over 5%	9	9	1,101	9
All Large Banks	104	100	12,904	100

Notes:
(1) Effect of Surcharge on Current Earnings: Mean = 2.23%; Median = 1.90%; Max = 10.11%; Min = 0.00%.
(2) Four large banks were excluded from the original population of 108. One large bank is an insured branch of a foreign bank and does not report income in its quarterly financial filings and the other three large banks reported negative income. Figures may not add to totals due to rounding.

Finally, credits will result in a small increase in the income of small banks. Small bank annual earnings are estimated to increase between 2.5 and 2.7 percent due to these credits.

The FDIC received five comments noting the effects of the surcharge on banks' capital and earnings, including the effects of banks' ability to pay dividends or to grow. As discussed above, however, FDIC analysis reveals no significant capital effects on large banks from the surcharge. On average, the annual surcharge would absorb about 2.4 percent of large bank annual income.

VI. Alternatives Considered

In the NPR, the FDIC solicited comments on several alternatives.

Under the first alternative presented, the FDIC would forego surcharges and instead impose a one-time assessment, similar to a shortfall assessment, at the end of the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent. As previously discussed, the FDIC received two comments supporting this alternative. These comments are discussed earlier.

The second alternative would also forego surcharges and, if the reserve ratio does not reach 1.35 percent by a date sometime near the statutory deadline, impose a shortfall assessment at the end of the following quarter, to be collected at the end of the next quarter. The FDIC received one comment supporting this alternative, and a few banks surveyed by three trade groups submitting a joint comment letter also supported this alternative. These comments are also previously discussed.

The FDIC solicited comment on additional alternatives that are essentially variations of certain aspects of the surcharge proposal, including the method of determining the surcharge base, the method of allocating credits, and the length of the surcharge period. Comments in response to these alternatives are discussed in the relevant sections.

VII. Effective Date

This rule will become effective on July 1, 2016. If the reserve ratio reaches 1.15 percent before that date, surcharges will begin July 1, 2016. If the reserve ratio has not reached 1.15 percent by that date, surcharges will begin the first day of the calendar quarter after the reserve ratio reaches 1.15 percent.

VIII. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that an agency, in connection with a notice of final rulemaking, prepare a final regulatory flexibility analysis describing the impact of the rule on small entities or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[59] 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 the term ''rule'' for purposes of the RFA.[60] This final rule relates directly to the rates imposed on insured depository institutions for deposit insurance. For this reason, the requirements of the RFA do not apply. Nonetheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis.

As of December 31, 2015, of 6,191 FDIC-insured institutions,[61] there were 4,921 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.,* those with $550 million or less in assets).[62] As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, the purpose of this final rule is to meet the Dodd-Frank Act requirements to increase the DIF reserve ratio from 1.15 to 1.35 by September 30, 2020, and offset the effect of that increase on banks

[59] See 5 U.S.C. 604, 605(b).

[60] 5 U.S.C. 601.

[61] The total at December 31, 2015, includes 6,182 insured commercial banks and savings institutions and 9 insured U.S. branches of foreign banks.

[62] Throughout this RFA analysis, a ''small institution'' or ''small insured depository institution'' refers to an institution with assets of $550 million or less. As of December 31, 2015, one insured branch of a foreign bank had less than $550 million in assets and is included in the small insured depository institution total.

with less than $10 billion in total consolidated assets. The final rule meets those requirements in a manner that appropriately balances several considerations, including the goal of reaching the statutory minimum reserve ratio reasonably promptly in order to strengthen the fund and reduce the risk of pro-cyclical assessments, the goal of maintaining stable and predictable assessments for banks over time, and the projected effects on bank capital and earnings. Both the Dodd-Frank Act and the FDI Act grant the FDIC broad authority to implement the requirement to offset the effect of the increase in the minimum reserve ratio on banks with less than $10 billion in total assets.

The final rule affects small entities to the extent that they are eligible for credits in exchange for their contributions toward raising the DIF reserve ratio from 1.15 percent to 1.35 percent. The FDIC will apply these credits to future regular assessments, resulting in estimated average savings of 2.4 to 2.6 percent of annual earnings for small insured depository institutions.

The final rule does not directly impose any ''reporting'' or ''recordkeeping'' requirements, and the compliance requirements for the final rule would not exceed (and, in fact, would be the same as) existing compliance requirements for the current risk-based deposit insurance assessment system for small banks.[63] The FDIC is unaware of any duplicative, overlapping or conflicting federal rules.[64] The final rule will not have a significant economic impact on a substantial number of small entities within the meaning of those terms as used in the RFA and the FDIC so certifies.[65]

B. Small Business Regulatory Enforcement Fairness Act

The final rule has been determined to be a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) by the Office of Management and Budget.

C. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act requires that the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[66] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[67] In accordance with these provisions and as discussed above, the FDIC considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. Thus, the final rule will be effective no earlier than the first day of a calendar quarter that begins after publication of the rule.

[63] 5 U.S.C. 604.

[64] 5 U.S.C. 605.

[65] 5 U.S.C. 605.

[66] 12 U.S.C. 4802(a).

[67] 12 U.S.C. 4802(b).

D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995, 44 U.S.C. 3501–3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

This final rule does not revise FDIC's Assessments Information Collection 3064–0057, Quarterly Certified Statement Invoice for Deposit Insurance Assessment. The FDIC will continue to obtain the information necessary to calculate the surcharge assessment and assessment credits from the Call Report. Therefore, no submission to OMB need be made.

E. 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).

F. 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 rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand. No comments addressing this issue were received.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth above, the FDIC amends part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for 12 CFR part 327 continues to read as follows:

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

■ 2. Revise § 327.11 to read as follows:

§ 327.11 Surcharges and assessments required to raise the reserve ratio of the DIF to 1.35 percent.

(a) *Surcharge*—(1) *Institutions subject to surcharge.* The following insured depository institutions are subject to the surcharge described in this paragraph:

(i) Large institutions, as defined in § 327.8(f);

(ii) Highly complex institutions, as defined in § 327.8(g); and

(iii) Insured branches of foreign banks whose assets are equal to or exceed $10 billion, as reported in Schedule RAL of the branch's most recent quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

(2) *Surcharge period.* The surcharge period shall begin the later of the first day of the assessment period following the assessment period in which the reserve ratio of the DIF first reaches or exceeds 1.15 percent, or the assessment period beginning on July 1, 2016. The surcharge period shall continue through the earlier of the assessment period ending December 31, 2018, or the end of the assessment period in which the reserve ratio of the DIF first reaches or exceeds 1.35 percent.

(3) *Notification of surcharge.* The FDIC shall notify each insured depository institution subject to the surcharge of the amount of such surcharge no later than 15 days before such surcharge is due, as described in paragraph (a)(4) of this section.

(4) *Payment of any surcharge.* Each insured depository institution subject to

the surcharge shall pay to the Corporation any surcharge imposed under paragraph (a) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7. The payment date for any surcharge shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the assessment period in which the surcharge was imposed.

(5) *Calculation of surcharge.* An insured depository institution's surcharge for each assessment period during the surcharge period shall be determined by multiplying 1.125 basis points times the institution's surcharge base for the assessment period.

(i) *Surcharge base—Insured depository institution that has no affiliated insured depository institution subject to the surcharge.* The surcharge base for an assessment period for an insured depository institution subject to the surcharge that has no affiliated insured depository institution subject to the surcharge shall equal:

(A) The institution's deposit insurance assessment base for the assessment period, determined according to § 327.5; plus

(B) The greater of the increase amount determined according to paragraph (a)(5)(iii) of this section or zero; minus

(C) $10 billion; provided, however, that an institution's surcharge base for an assessment period cannot be negative.

(ii) *Surcharge base—insured depository institution that has one or more affiliated insured depository institutions subject to the surcharge.* The surcharge base for an assessment period for an insured depository institution subject to the surcharge that has one or more affiliated insured depository institutions subject to the surcharge shall equal:

(A) The institution's deposit insurance assessment base for the assessment period, determined according to § 327.5; plus

(B) The greater of the institution's portion, determined according to paragraph (a)(5)(v) of this section, of the increase amount determined according to paragraph (a)(5)(iii) of this section or zero; minus

(C) The institution's portion, determined according to paragraph (a)(5)(v) of this section, of $10 billion; provided, however, that an institution's surcharge base for an assessment period cannot be negative.

(iii) *Surcharge base—determination of increase amount.* The increase amount for an assessment period shall equal:

(A) The amount of the aggregate deposit insurance assessment bases for the assessment period, determined according to § 327.5, of all of the institution's affiliated insured depository institutions that are not subject to the surcharge, minus

(B) The product of the increase multiplier set out in paragraph (a)(5)(iv) of this section and the aggregate deposit insurance assessment bases, determined according to § 327.5, as of December 31, 2015, of all of the small institutions, as defined in § 327.8(e), that were the institution's affiliated insured depository institutions for the assessment period ending December 31, 2015.

(iv) *Increase multiplier for the assessment periods during the surcharge period.* During the surcharge period, the increase multiplier shall be the amount prescribed in the following schedule:

INCREASE MULTIPLIERS FOR THE ASSESSMENT PERIODS DURING THE SURCHARGE PERIOD

For the assessment period ending—	
September 30, 2016	1.0740995
December 31, 2016	1.1000000
March 31, 2017	1.1265251
June 30, 2017	1.1536897
September 30, 2017	1.1815094
December 31, 2017	1.2100000
March 31, 2018	1.2391776
June 30, 2018	1.2690587
September 30, 2018	1.2996604
December 31, 2018	1.3310000

(A) For the assessment period ending September 30, 2016, the increase multiplier shall be 1.0740995.

(B) For the assessment period ending December 31, 2016, the increase multiplier shall be 1.1000000.

(C) For the assessment period ending March 31, 2017, the increase multiplier shall be 1.1265251.

(D) For the assessment period ending June 30, 2017, the increase multiplier shall be 1.1536897.

(E) For the assessment period ending September 30, 2017, the increase multiplier shall be 1.1815094.

(F) For the assessment period ending December 31, 2017, the increase multiplier shall be 1.2100000.

(G) For the assessment period ending March 31, 2018, the increase multiplier shall be 1.2391776.

(H) For the assessment period ending June 30, 2018, the increase multiplier shall be 1.2690587.

(I) For the assessment period ending September 30, 2018, the increase multiplier shall be 1.2996604.

(J) For the assessment period ending December 31, 2018, the increase multiplier shall be 1.33100000.

(v) *Surcharge base—institution's portion.* For purposes of paragraphs (a)(5)(ii)(B) and (C) of this section, an institution's portion shall equal the ratio of the institution's deposit insurance assessment base for the assessment period, determined according to § 327.5, to the sum of the institution's deposit insurance assessment base for the assessment period, determined according to § 327.5, and the deposit insurance assessment bases for the assessment period, determined according to § 327.5, of all of the institution's affiliated insured depository institutions subject to the surcharge.

(vi) For the purposes of this section, an affiliated insured depository institution is an insured depository institution that meets the definition of ''affiliate'' in section 3 of the FDI Act, 12 U.S.C. 1813(w)(6).

(6) *Effect of mergers and consolidations on surcharge base.* (i) If an insured depository institution acquires another insured depository institution through merger or consolidation during the surcharge period, the acquirer's surcharge base will be calculated consistent with § 327.6 and § 327.11(a)(5). For the purposes of the surcharge, a merger or consolidation means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution, and includes transactions in which an insured depository institution either directly or indirectly acquires all or substantially all of the assets, or assumes all or substantially all of the deposit liabilities of any other insured depository institution where there is not a legal merger or consolidation of the two insured depository institutions.

(ii) If an insured depository institution not subject to the surcharge is the surviving or resulting institution in a merger or consolidation with an insured depository institution that is subject to the surcharge or acquires all or substantially all of the assets, or assumes all or substantially all of the deposit liabilities, of an insured depository institution subject to the surcharge, then the surviving or resulting insured deposit institution or the insured depository institution that acquires such assets or assumes such deposit liabilities is subject to the surcharge.

(b) *Shortfall assessment.*—(1) *Institutions subject to shortfall assessment.* Any insured depository institution that was subject to a surcharge under paragraph (a)(1) of this section, in any assessment period during the surcharge period described in paragraph (a)(2) of this section, shall be subject to the shortfall assessment described in this paragraph (b). If surcharges under paragraph (a) of this section have not been in effect, the insured depository institutions subject to the shortfall assessment described in this paragraph (b) will be the insured depository institutions described in paragraph (a)(1) of this section as of the assessment period in which the reserve ratio of the DIF reaches or exceeds 1.15 percent.

(2) *Notification of shortfall.* The FDIC shall notify each insured depository institution subject to the shortfall assessment of the amount of such institution's share of the shortfall assessment described in paragraph (b)(5) of this section no later than 15 days before such shortfall assessment is due, as described in paragraph (b)(3) of this section.

(3) *Payment of any shortfall assessment.* Each insured depository institution subject to the shortfall assessment shall pay to the Corporation such institution's share of any shortfall assessment as described in paragraph (b)(5) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7. The payment date for any shortfall assessment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the assessment period in which the shortfall assessment is imposed.

(4) *Amount of aggregate shortfall assessment.* (i) If the reserve ratio of the DIF is at least 1.15 percent but has not reached or exceeded 1.35 percent as of December 31, 2018, the shortfall assessment shall be imposed on March 31, 2019, and shall equal 1.35 percent of estimated insured deposits as of December 31, 2018, minus the actual DIF balance as of that date.

(ii) If the reserve ratio of the DIF is less than 1.15 percent and has not reached or exceeded 1.35 percent by December 31, 2018, the shortfall assessment shall be imposed at the end of the assessment period immediately following the assessment period that occurs after December 31, 2018, during which the reserve ratio first reaches or exceeds 1.15 percent and shall equal 0.2 percent of estimated insured deposits as of the end of the calendar quarter in which the reserve ratio first reaches or exceeds 1.15 percent.

(5) *Institutions' shares of aggregate shortfall assessment.* Each insured depository institution's share of the aggregate shortfall assessment shall be determined by apportioning the aggregate amount of the shortfall assessment among all institutions subject to the shortfall assessment in proportion to each institution's shortfall assessment base as described in this paragraph.

(i) *Shortfall assessment base if surcharges have been in effect.* If surcharges have been in effect, an institution's shortfall assessment base shall equal the average of the institution's surcharge bases during the surcharge period. For purposes of determining the average surcharge base, if an institution was not subject to the surcharge during any assessment period of the surcharge period, its surcharge base shall equal zero for that assessment period.

(ii) *Shortfall assessment base if surcharges have not been in effect.* If surcharges have not been in effect, an institution's shortfall assessment base shall equal the average of what its surcharge bases would have been over the four assessment periods ending with the assessment period in which the reserve ratio first reaches or exceeds 1.15 percent. If an institution would not have been subject to a surcharge during one of those assessment periods, its surcharge base shall equal zero for that assessment period.

(6) *Effect of mergers and consolidations on shortfall assessment.* (i) If an insured depository institution, through merger or consolidation, acquires another insured depository institution that paid surcharges for one or more assessment periods, the acquirer will be subject to a shortfall assessment and its average surcharge base will be increased by the average surcharge base of the acquired institution, consistent with paragraph (b)(5) of this section.

(ii) For the purposes of the shortfall assessment, a merger or consolidation means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution, and includes transactions in which an insured depository institution either directly or indirectly acquires all or substantially all of the assets, or assumes all or substantially all of the deposit liabilities of any other insured depository institution where there is not a legal merger or consolidation of the two insured depository institutions.

(c) *Assessment credits.* (1)(i) *Eligible Institutions.* For the purposes of this paragraph (c) an insured depository institution will be considered an eligible institution, if, for at least one assessment period during the credit calculation period, the institution was a credit accruing institution.

(ii) *Credit accruing institutions.* A credit accruing institution is an institution that, for a particular assessment period, is not:

(A) A large institution, as defined in § 327.8(f);

(B) A highly complex institution, as defined in § 327.8(g); or

(C) An insured branch of a foreign bank whose assets are equal to or exceed $10 billion, as reported in Schedule RAL of the branch's most recent quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

(2) *Credit calculation period.* The credit calculation period shall begin the first day of the assessment period after the reserve ratio of the DIF reaches or exceeds 1.15 percent, and shall continue through the earlier of the assessment period that the reserve ratio of the DIF reaches or exceeds 1.35 percent or the assessment period that ends December 31, 2018.

(3) *Determination of aggregate assessment credit awards to all eligible institutions.* The FDIC shall award an aggregate amount of assessment credits equal to the product of the *fraction of quarterly regular deposit insurance assessments paid by credit accruing institutions* during the credit calculation period and the amount by which the *DIF increase,* as determined under paragraph (c)(3)(ii) or (iii) of this section, exceeds total surcharges imposed under paragraph (b) of this section; provided, however, that the aggregate amount of assessment credits cannot exceed the aggregate amount of quarterly deposit insurance assessments paid by credit accruing institutions during the credit calculation period.

(i) *Fraction of quarterly regular deposit insurance assessments paid by credit accruing institutions.* The fraction of assessments paid by credit accruing institutions shall equal quarterly deposit insurance assessments, as determined under § 327.9, paid by such institutions for each assessment period during the credit calculation period, divided by the total amount of quarterly deposit insurance assessments paid by all insured depository institutions during the credit calculation period, excluding the aggregate amount of surcharges imposed under paragraph (b) of this section.

(ii) *DIF increase if the DIF reserve ratio has reached 1.35 percent by December 31, 2018.* If the DIF reserve ratio has reached 1.35 percent by December 31, 2018, the DIF increase shall equal 0.2 percent of estimated insured deposits as of the date that the DIF reserve ratio first reaches or exceeds 1.35 percent.

(iii) *DIF Increase if the DIF reserve ratio has not reached 1.35 percent by*

December 31, 2018. If the DIF reserve ratio has not reached 1.35 percent by December 31, 2018, the DIF increase shall equal the DIF balance on December 31, 2018, minus 1.15 percent of estimated insured deposits on that date.

(4) *Determination of individual eligible institutions' shares of aggregate assessment Credit.*—

(i) *Assessment credit share.* To determine an eligible institution's assessment credit share, the aggregate assessment credits awarded by the FDIC shall be apportioned among all eligible institutions in proportion to their respective assessment credit bases, as described in paragraph (c)(4)(ii) of this section.

(ii) *Assessment credit base.* An eligible institution's assessment credit base shall equal the average of its quarterly deposit insurance assessment bases, as determined under § 327.5, during the credit calculation period, as defined in paragraph (c)(2) of this section. An eligible institution's credit base shall be deemed to equal zero for any assessment period during which the institution was not a credit accruing institution.

(iii) *Limitation.* The assessment credits awarded to an eligible institution shall not exceed the total amount of quarterly deposit insurance assessments paid by that institution for assessment periods during the credit calculation period in which it was a credit accruing institution.

(5) *Effect of merger or consolidation on assessment credit base.* If an eligible institution acquires another eligible institution through merger or consolidation before the reserve ratio of the DIF reaches 1.35 percent, the acquirer's quarterly deposit insurance assessment base (for purposes of calculating the acquirer's assessment credit base) shall be deemed to include the acquired institution's deposit insurance assessment base for the assessment periods during the credit calculation period that were prior to the merger or consolidation and in which the acquired institution was a credit accruing institution.

(6) *Effect of call report amendments.* Amendments to the quarterly Reports of Condition and Income or the quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks that occur subsequent to the payment date for the final assessment period of the credit calculation period shall not affect an eligible institution's credit share.

(7) *Award and notice of assessment credits*—(i) *Award of assessment credits.* As soon as practicable after the earlier of either December 31, 2018, or the date on which the reserve ratio of the DIF reaches 1.35 percent, the FDIC shall notify an eligible institution of the FDIC's preliminary estimate of such institution's assessment credits and the manner in which the FDIC calculated such credits.

(ii) *Notice of assessment credits.* The FDIC shall provide eligible institutions with periodic updated notices reflecting adjustments to the institution's assessment credits resulting from requests for review or appeals, mergers or consolidations, or the FDIC's application of credits to an institution's quarterly deposit insurance assessments.

(8) *Requests for review and appeal of assessment credits.* Any institution that disagrees with the FDIC's computation of or basis for its assessment credits, as determined under this paragraph (c), may request review of the FDIC's determination or appeal that determination. Such requests for review or appeal shall be filed pursuant to the procedures set forth in paragraph (d) of this section.

(9) *Successors.* If an insured depository institution acquires an eligible institution through merger or consolidation after the reserve ratio of the DIF reaches 1.35 percent, the acquirer is successor to any assessment credits of the acquired institution.

(10) *Mergers and consolidation include only legal mergers and consolidation.* For the purposes of this paragraph (c), a merger or consolidation does not include transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution, but there is not a legal merger or consolidation of the two insured depository institutions.

(11) *Use of credits.* (i) The FDIC shall apply assessment credits awarded under paragraph (c) of this section to an institution's deposit insurance assessments, as calculated under § 327.9, only for assessment periods in which the reserve ratio of the DIF exceeds 1.38 percent.

(ii) The FDIC shall apply assessment credits to reduce an institution's quarterly deposit insurance assessments by each institution's remaining credits. The assessment credit applied to each institution's deposit insurance assessment for any assessment period shall not exceed the institution's total deposit insurance assessment for that assessment period.

(iii) The amount of credits applied each quarter will not be recalculated as a result of amendments to the quarterly Reports of Condition and Income or the quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks pertaining to any quarter in which credits have been applied.

(12) *Transfer or sale of credits.* Other than through merger or consolidation, credits may not be sold or transferred.

(d) *Request for review and appeals of assessment credits.* (1) An institution that disagrees with the basis for its assessment credits, or the Corporation's computation of its assessments credits under paragraph (c) of this section and seeks to change it must submit a written request for review and any supporting documentation to the FDIC's Director of the Division of Finance.

(2) *Timing.* (i) Any request for review under this paragraph must be submitted within 30 days from

(A) The initial notice provided by the FDIC to the insured depository institution under paragraph (c)(7) of this section stating the FDIC's preliminary estimate of an eligible institution's assessment credit and the manner in which the assessment credit was calculated; or

(B) Any updated notice provided by the FDIC to the insured depository institution under paragraph (c)(7) of this section.

(ii) Any requests submitted after the deadline in paragraph (d)(2)(i) of this section will be considered untimely filed and the institution will be subsequently barred from submitting a request for review of its assessment credit.

(3) *Process of review.* (i) Upon receipt of a request for review, the FDIC shall temporarily freeze the amount of the assessment credit being reviewed until a final determination is made by the Corporation.

(ii) The FDIC may request, as part of its review, additional information from the insured depository institution involved in the request and any such information must be submitted to the FDIC within 21 days of the FDIC's request;

(iii) The FDIC's Director of the Division of Finance, or his or her designee, will notify the requesting institution of his or her determination of whether a change is warranted within 60 days of receipt by the FDIC of the request for review, or if additional information had been requested from the FDIC, within 60 days of receipt of any such additional information.

(4) *Appeal.* If the requesting institution disagrees with the final determination from the Director of the Division of Finance, that institution may appeal its assessment credit

determination to the FDIC's Assessment Appeals Committee within 30 days from the date of the Director's written determination. Notice of the procedures applicable to an appeal before the Assessment Appeals Committee will be included in the Director's written determination.

(5) *Adjustments to assessment credits.* Once the Director of the Division of Finance, or the Assessment Appeals Committee, as appropriate, has notified the requesting bank of its final determination, the FDIC will make appropriate adjustments to assessment credit amounts consistent with that determination. Adjustments to an insured depository institution's assessment credit amounts will not be applied retroactively to reduce or increase the quarterly deposit insurance assessment for a prior assessment period.

■ 3. In § 327.35, revise paragraph (a) to read as follows:

§ 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an eligible insured depository institution's one-time credit shall be applied to the maximum extent allowable by law against that institution's quarterly assessment payment under subpart A of this part, after applying assessment credits awarded under § 327.11(c), until the institution's credit is exhausted.

* * * * *

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

Appendix 1

Example Calculations of Surcharge Bases in Banking Organizations With Multiple Large Banks and Affiliated Small Banks

Table 1.1 gives an example of the calculation of the surcharge base for a banking organization that comprises three large banks but no affiliated small banks.

TABLE 1.1—EXAMPLE APPLICATION OF $10 BILLION DEDUCTION WITHIN A BANKING ORGANIZATION

[$ in billions]

Affiliated large banks	Assessment base	Share of $10 billion deduction		Surcharge base
		%	$	
	A	B (A/$116)	C (B * $10)	A − C
#1	$25.00	21.6	$2.16	$22.84
#2	55.00	47.4	4.74	50.26
#3	36.00	31.0	3.10	32.90
Total	116.00	100	10.00	106.00

* Some figures are rounded for simplicity of presentation.

The next tables give an example of the calculation of the surcharge base for a banking organization that comprises three large banks and two affiliated small banks. Table 1.2 shows the applicable amounts by which affiliated small banks' December 31, 2015 regular assessment bases will be multiplied to determine growth at a 10 percent effective annual rate. (The amounts in the table are calculated by compounding a quarterly rate of approximately 2.41 percent from December 31, 2015, to achieve a 10 percent effective annual rate.) Table 1.3 shows the calculation of the gross amount of the first adjustment (the net increase in affiliated small banks' assessment bases after December 31, 2015). Table 1.4 shows the apportionment of the first adjustment and the second adjustment (the $10 billion deduction) among the large banks in the banking organization.

The first adjustment calculates the cumulative net increase from December 31, 2015, in affiliated small banks' aggregate assessment bases in excess of an effective annual rate of 10 percent. In the example shown in Table 1.3, affiliated small bank X had an assessment base of $2.00 billion as of December 31, 2015, and affiliated small bank Y had an assessment base of $6.00 billion, or $8.00 billion in aggregate. On March 31, 2017, affiliated small bank X has increased its assessment base to $6.01 billion, and affiliated small bank Y has decreased its assessment base to $5.00 billion, so the affiliated small banks' aggregate assessment base is $11.01 billion. The amount of growth in excess of an effective annual rate of 10 percent is calculated by first multiplying the amount corresponding with March 31, 2017 in Table 1.2 (1.1265251) by the affiliated small banks aggregate assessment base of $8.00 billion as of December 31, 2015, and then subtracting the product from the affiliated small banks' aggregate assessment base of $11.01 billion as of March 31, 2017. The resulting amount, $2.00 billion, is the gross amount of the first adjustment.

The second adjustment deducts $10 billion from large banks' assessment bases. Both adjustments are apportioned among all large bank affiliates in a holding company in proportion to each large bank's regular assessment base. As shown in Table 1.4, each affiliated large bank's share of the banking organization's assessment base (the large bank share) is calculated by dividing the affiliated large bank's assessment base by the sum of all affiliated large bank assessment bases. Next, each large bank's share is multiplied by the gross amount ($2.0 billion) of the first adjustment, as calculated in Table 1.3, and the product is added to each large bank's surcharge base. Finally, each large bank's share is multiplied by the $10 billion deduction, and the product is subtracted from each large bank's surcharge base as increased by the first adjustment. The remaining amount constitutes each large bank's surcharge base for the quarter.

TABLE 1.2—MULTIPLIER AMOUNTS

For the assessment period ending—	
September 30, 2016	1.0740995
December 31, 2016	1.1000000
March 31, 2017	1.1265251
June 30, 2017	1.1536897
September 30, 2017	1.1815094
December 31, 2017	1.2100000
March 31, 2018	1.2391776
June 30, 2018	1.2690587
September 30, 2018	1.2996604
December 31, 2018	1.3310000

TABLE 1.3—EXAMPLE CALCULATION OF THE GROSS AMOUNT OF THE FIRST ADJUSTMENT

[Net increase in affiliated small banks' assessment bases after December 31, 2015]

[$ in billions] *

Affiliated small banks	Assessment base		Growth under a 10% effective annual rate, compounded quarterly	Growth in excess of 10% effective annual rate
	Year-end 2015 A	First quarter 2017 B	C = A * 1.1265	D = B − C
X	$2.00	$6.01		
Y	6.00	5.00		
Total	8.00	11.01	$9.01	$2.00

* Some figures are rounded for simplicity of presentation.

TABLE 1.4—EXAMPLE APPORTIONMENT OF THE FIRST ADJUSTMENT AND THE SECOND ADJUSTMENT (THE $10 BILLION DEDUCTION) AMONG THE LARGE BANKS IN A BANKING ORGANIZATION

[$ in billions] *

Affiliated large banks	Assessment base E	Share of affiliated large banks' assessment bases (%) F (E/$113)	Share of affiliated small banks' assessment bases G (F * D)	Share of $10 billion deduction H (F * $10)	Surcharge base E + G − H
#1	$35.0	31.0	$0.62	$3.10	$32.52
#2	22.0	19.5	0.39	1.95	20.44
#3	56.0	49.6	0.99	4.96	52.04
Total	113.0	100.0	2.00	10.00	105.00

* Some figures are rounded for simplicity of presentation.

By order of the Board of Directors.

Dated at Washington, DC, this 15th day of March, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–06770 Filed 3–24–16; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2016–0013]

RIN 3170–AA59

Operations in Rural Areas Under the Truth in Lending Act (Regulation Z); Interim Final Rule

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: This interim final rule amends certain provisions of Regulation Z in light of title LXXXIX of the Fixing America's Surface Transportation Act, entitled the Helping Expand Lending Practices in Rural Communities Act, Public Law 114–94. The amendments to Regulation Z concern two matters: The eligibility of certain small creditors that operate in rural or underserved areas for special provisions that permit the origination of balloon-payment qualified mortgages and balloon-payment high cost mortgages and for an exemption from the requirement to establish an escrow account for higher-priced mortgage loans and the determination of whether an area is rural for the purposes of Regulation Z.

DATES: This final rule is effective on March 31, 2016. Comments may be submitted on or before April 25, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0013 or RIN 3170–AA59, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0013 or RIN 3170–AA59 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Consumer Financial Protection Bureau (Bureau) is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive