

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

RIN 3064-AE40

#### Assessments

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

**ACTION:** Notice of proposed rulemaking (NPR) and request for comment.

**SUMMARY:** Pursuant to the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and its authority under section 7 of the Federal Deposit Insurance Act (FDI Act), the FDIC proposes to impose a surcharge on the quarterly assessments of insured depository institutions with total consolidated assets of \$10 billion or more. The surcharges would begin the calendar quarter after the reserve ratio of the Deposit Insurance Fund (DIF or fund) first reaches or exceeds 1.15 percent—the same time that lower regular deposit insurance assessment (regular assessment) rates take effect—and would continue through the quarter that the reserve ratio first reaches or exceeds 1.35 percent. The surcharge would equal an annual rate of 4.5 basis points applied to the institution's assessment base (with certain adjustments). The FDIC expects that these surcharges will commence in 2016 and that they should be sufficient to raise the reserve ratio to 1.35 percent in approximately eight quarters, *i.e.*, before the end of 2018. If, contrary to the FDIC's expectations, the reserve ratio does not reach 1.35 percent by December 31, 2018 (provided it is at least 1.15 percent), the FDIC would impose a shortfall assessment on insured depository institutions with total consolidated assets of \$10 billion or more on March 31, 2019. Since the Dodd-Frank Act requires that the FDIC offset the effect of the increase in the reserve ratio from 1.15 percent to 1.35 percent on insured depository

institutions with total consolidated assets of less than \$10 billion, the FDIC would provide assessment credits to insured depository institutions with total consolidated assets of less than \$10 billion for the portion of their regular assessments that contributed to growth in the reserve ratio between 1.15 percent and 1.35 percent. The FDIC would apply the credits each quarter that the reserve ratio is at least 1.40 percent to offset part of the assessments of each institution with credits.

**DATES:** Comments must be received by the FDIC no later than January 5, 2016.

**ADDRESSES:** You may submit comments on the NPR using any of the following methods:

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the agency Web site.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064-AE40 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/>.

**FOR FURTHER INFORMATION CONTACT:** Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898-8967; and Nefretete Smith, Senior Attorney, Legal Division, (202) 898-6851.

#### SUPPLEMENTARY INFORMATION:

##### I. 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.<sup>1</sup> The FDIC considers the adequacy of the DIF in terms of the reserve ratio, which is equal to the DIF balance divided by estimated

<sup>1</sup> As used in this NPR, 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).

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.<sup>2</sup> 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);<sup>3</sup> (2) required that the reserve ratio reach 1.35 percent by September 30, 2020;<sup>4</sup> 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."<sup>5</sup>

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. Furthermore, under the FDIC's assessment authority in 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.<sup>6</sup>

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

<sup>2</sup> Public Law 111-203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817(note)).

<sup>3</sup> 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).

<sup>4</sup> 12 U.S.C. 1817(note).

<sup>5</sup> 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).

<sup>6</sup> 12 U.S.C. 1817(b)(5).

procyclical assessments, a key policy goal of the FDIC that is supported in the academic literature and acknowledged by banks.<sup>7</sup> In meeting the requirements of the Dodd-Frank Act, the FDIC considered the tradeoff between building the DIF sooner rather than later and the potential cost of higher additional assessments for banks with \$10 billion or more in assets.

The purpose of the NPR 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 proposed primary mechanism described below for meeting the statutory requirements—surcharges on regular assessments—would ensure that the reserve ratio reaches 1.35 percent without inordinate delay (in 2018) and would ensure that assessments are allocated equitably among banks responsible for the cost of these requirements.

## II. 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.<sup>8</sup> The FDIC Board of Directors (Board) has set a 2 percent DRR for each year starting with 2011.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

The FDIC also adopted a schedule of lower regular assessment rates in the February 2011 final rule that will go into effect once the reserve ratio of the DIF reaches 1.15 percent.<sup>14</sup> 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.

In the FDIC’s most recent semiannual update of the DIF’s loss and income projections in October 2015, the FDIC projects that, under the current assessment rate schedule, the DIF reserve ratio is most likely to reach 1.15 percent in the first quarter of 2016, but may reach that level as early as the fourth quarter of this year.

## III. Description of the Proposed Rule

### A. Surcharges

To implement the requirements of the Dodd-Frank Act, and pursuant to the FDIC’s authority in section 7 of the FDIC

Act,<sup>15</sup> the FDIC proposes to add a surcharge to the regular assessments of banks with \$10 billion or more in assets. The surcharge would begin the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent and would continue until the reserve ratio first reaches or exceeds 1.35 percent, but no later than the fourth quarter of 2018.<sup>16</sup> The FDIC would notify those banks that would be subject to the surcharge in any quarter and the amount of such surcharge within the timeframe that applies to notification of regular assessment amounts.<sup>17</sup>

The FDIC proposes an annual surcharge rate of 4.5 basis points, which it 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.

### Banks Subject to the Surcharge

The banks subject to the surcharge (large banks) would 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; however, an insured branch of a foreign bank whose assets as reported in its most recent quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks equaled or exceeded \$10 billion would also be a large bank.<sup>18 19 20</sup>

<sup>15</sup> 12 U.S.C. 1817.

<sup>16</sup> A final rule adopting this proposal will become effective on the first day of a calendar quarter. If a final rule adopting this proposal is not yet effective on the first day of the calendar quarter after the reserve ratio reaches 1.15 percent, surcharges would begin the first day of the calendar quarter in which a final rule becomes effective. Thus, for example, if the reserve ratio reaches 1.15 percent on March 31, 2016 and a final rule does not become effective until the third quarter of 2016, surcharges would begin effective July 1, 2016.

<sup>17</sup> As with regular assessments, surcharges would be paid one quarter in arrears, based on the bank’s previous quarter data and would be due the last day of the quarter. (If the last day of the quarter was not a business day, the collection date would be the previous business day.) Thus, for example, if the surcharge were in effect for the first quarter of 2017, the FDIC would notify the banks that they are subject to the surcharge and 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 date (and the payment due date for first quarter 2017 regular assessments). The notice could be included in the banks’ invoice for their regular assessment.

<sup>18</sup> 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, after December 31, 2006, 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

<sup>7</sup> 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.

<sup>8</sup> 12 U.S.C. 1817(b)(3)(A)(i).

<sup>9</sup> 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.

<sup>10</sup> 12 U.S.C. 1817(b)(3)(E).

<sup>11</sup> 75 FR 66293 (Oct. 27, 2010).

<sup>12</sup> 76 FR at 10683.

<sup>13</sup> See 76 FR 10673, 10683 (Feb. 25, 2011). 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.

<sup>14</sup> 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, but would leave the overall range of rates and the assessment revenue expected to be generated unchanged. See 80 FR 40838 (July 13, 2015).

*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 would equal its regular quarterly deposit insurance assessment base (regular assessment base) for that

quarter with certain adjustments.<sup>21</sup> The first adjustment would add the regular assessment bases for that quarter of any affiliated banks<sup>22</sup> that are not large banks (affiliated small banks).<sup>23</sup> <sup>24</sup> The second adjustment would deduct \$10 billion from the resulting amount to produce the surcharge base. In a banking organization that includes more than one large bank, however, the affiliated small banks' regular assessment bases and the \$10 billion deduction would be apportioned among

all large banks in the banking organization in proportion to each large bank's regular assessment base for that quarter.

Table 1.A 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.B gives 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.A—APPLICATION OF \$10 BILLION DEDUCTION WITHIN A BANKING ORGANIZATION**  
[\$ in billions]

	Assessment base	Share of \$10 billion deduction		Surcharge base
		%	\$	
	A	(A/\$116)=B	(B*\$10)=C	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

**TABLE 1.B—APPLICATION OF \$10 BILLION DEDUCTION FOR A BANKING ORGANIZATION CONTAINING LARGE AND SMALL BANKS**  
[\$ in billions]

Affiliated large and small banks	Assessment base	Share of large bank assessment base		Addition of small bank assessment share		Share of \$10 billion deduction		Surcharge base
		Calculation	B (%)	Calculation	C	Calculation	D	
Affiliated Large Bank #1 .....	A1=\$35.00 .....	A1/(A1+A2+A3) ....	31.0	A1[B*(A4+A5)] .....	\$39.18	(C/\$126.50)*\$10 ...	\$3.10	\$36.08
Affiliated Large Bank #2 .....	A2=\$22.00 .....	A2/(A1+A2+A3) ....	19.5	A2[B*(A4+A5)] .....	24.63	(C/\$126.50)*\$10 ...	1.95	22.68
Affiliated Large Bank #3 .....	A3=\$56.00 .....	A3/(A1+A2+A3) ....	49.6	A3[B*(A4+A5)] .....	62.69	(C/\$126.50)*\$10 ...	4.96	57.73
Affiliated Small Bank #1 .....	A4=\$8.00 .....	.....	.....	.....	.....	.....	.....	.....
Affiliated Small Bank #2 .....	A5=\$5.50 .....	.....	.....	.....	.....	.....	.....	.....
Total .....	\$126.50 .....	.....	100	.....	126.50	.....	10.0	116.50

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, after December 31, 2010, 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).

<sup>19</sup> 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.

<sup>20</sup> A large bank would also include 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.

<sup>21</sup> 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:

- (1) The average consolidated total assets of the insured depository institution during the assessment period; minus
- (2) the sum of
  - (A) the average tangible equity of the insured depository institution during the assessment period, and
  - (B) 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).

<sup>22</sup> As used in this NPR, 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).

<sup>23</sup> 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 equaled or exceeded \$10 billion; and (2) a small institution that, while surcharges were in effect, was the surviving or resulting institution in a merger or consolidation with a large bank or that acquired all or substantially all of the assets or assumed all or substantially all of the deposits of a large bank.

<sup>24</sup> As of June 30, 2015, 19 banking organizations had both large and small banks.

Adding the assessment bases of affiliated small banks to those of their large bank affiliates would serve two purposes. First, it would prevent large banks from reducing their surcharges (and shifting 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.<sup>25</sup> Second, it would ensure that banking organizations of similar size (in terms of aggregate assessment bases) pay a similar surcharge. In other words, a banking organization with a large bank and one or more affiliated small banks would not have an advantage over a similarly sized banking organization that includes only a large bank but no affiliated small banks. For example, a banking organization that includes a large bank with \$45 billion regular assessment base would pay the same as a banking organization that includes a large bank with a \$35 billion regular assessment base and two affiliated small banks each with \$5 billion regular assessment bases. In this example, the large bank in each organization would pay a surcharge based on a \$35 billion assessment base (after deducting \$10 billion from the \$45 billion total in regular assessment bases).

Although the regular assessment bases of affiliated small banks would be added to those of the large banks for purposes of determining the surcharge base for large banks, only large banks would be assessed the quarterly surcharge and, as described below, all small banks, including small banks affiliated with large banks, would be entitled to credits for the portion of their assessments that contributed to the increase in the reserve ratio from 1.15 percent to 1.35 percent.

Deducting \$10 billion from each large bank's assessment base for the surcharge would avoid 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.

Like the proposed treatment of affiliated small banks, allocating the \$10 billion deduction among large banks in

a single banking organization that includes more than one large bank would ensure that banking organizations of a similar size (in terms of assessment bases) pay a similar surcharge. For example, a banking organization with multiple large banks would 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 would be apportioned among the multiple affiliated large banks.

#### *B. Shortfall Assessment*

The FDIC expects that the proposed surcharges combined with regular assessments would 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 anticipated, 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 would impose a shortfall assessment on large banks on March 31, 2019 and collect it on June 30, 2019.<sup>26</sup> The aggregate amount of the shortfall assessment would equal 1.35 percent of estimated insured deposits on December 31, 2018 minus the actual fund balance on that date.

If a shortfall assessment were needed, the FDIC proposes that it 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 would be proportional to the average of its surcharge bases (the average surcharge base) during the surcharge period. If a bank were not a large bank during a quarter of the surcharge period, its surcharge base would be deemed to equal zero for that quarter.<sup>27 28</sup>

<sup>26</sup> The FDIC would notify each bank subject to a shortfall assessment of its share of the shortfall assessment no later than 15 days before payment is due.

<sup>27</sup> 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 and assuming that the surcharge period lasted eight quarters, its 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.

<sup>28</sup> In the unlikely event that the reserve ratio had reached 1.15 percent (but not 1.35 percent) but had fallen below 1.15 percent on December 31, 2018 or had not reached 1.15 percent on or before December 31, 2018, the FDIC would impose a shortfall assessment at the end of the calendar quarter immediately following the calendar quarter in

If a bank of any size acquired—through merger or consolidation—a large bank that had paid surcharges for one or more quarters, the acquiring bank would be subject to a shortfall assessment and its average surcharge base would be increased by the average surcharge base of the acquired bank.<sup>29</sup>

A large bank's share of the total shortfall assessment would 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 should ensure that anomalous growth or shrinkage in a large bank's assessment base would not subject it to a disproportionately large or small share of any shortfall assessment.

#### *C. Payment Mechanism for the Surcharge and Any Shortfall Assessment*

Each large bank would be 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 would be 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

which the reserve ratio first reached or exceeded 1.15 percent. The aggregate amount of such a shortfall assessment would 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 had been in effect, the shortfall assessment would be imposed on the banks described in the text using average surcharge bases as described in the text. If surcharges had never been in effect: (1) The shortfall assessment would be imposed on 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 would be proportional to the average of what its surcharge bases were or would have been over the four calendar quarters ending with the calendar quarter in which the reserve ratio first reached or exceeded 1.15 percent. The shortfall assessment would be collected at the end of the quarter after the assessment was imposed. If the last day of the quarter was not a business day, the collection date would be the previous business day.

If the reserve ratio remains 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.

<sup>29</sup> With respect to surcharges and shares of any shortfall assessment, a surviving or resulting bank in a merger or consolidation would include any bank that acquires all or substantially all of another bank's assets or assumes all or substantially all of another bank's deposits.

<sup>25</sup> Some large banks, however, 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.

payments were due, each bank would have to ensure that sufficient funds to pay its obligations were available in the designated account for direct debit by the FDIC. Failure to take any such action or to fund the account would constitute nonpayment of the assessment. Penalties for nonpayment would be as provided for nonpayment of a bank's regular assessment.<sup>30</sup>

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

First, under existing regulations, a bank that is not the resulting or surviving bank in a merger or consolidation must file a quarterly report of condition and income (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 the part of the bank that is not the resulting or surviving bank.<sup>31</sup> The FDIC proposes that unpaid assessments would also include any unpaid surcharges and shares of a shortfall assessment.

Thus, for example, a large bank's first quarter 2017 surcharge (assuming that the surcharge was in effect then), which would be collected on June 30, 2017, would 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 would be required to file Call Reports through the first quarter of 2017 and the acquiring bank would be responsible for ensuring that these Call Reports were filed.

Second, 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 same manner.<sup>32</sup> The FDIC proposes that these provisions

would also apply to surcharges and shares of any shortfall assessment.

Third, existing regulations 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.<sup>33</sup> The FDIC proposes that these provisions would also apply to surcharges and shares of any shortfall assessment.

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 due after the transaction date and 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 FDIC proposes that the same process would also apply to surcharges and shares of any shortfall assessment.

*E. Credits for Small Banks*<sup>34</sup>

Under the proposal, while the reserve ratio remains between 1.15 percent and 1.35 percent, some portion of the deposit insurance assessments paid by small banks would 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 proposes to provide assessment credits (credits) to these banks for the portion of their assessments that contribute to the increase from 1.15 percent to 1.35 percent.<sup>35</sup> For purposes of awarding credits, a small bank would be a bank that was not a large bank in a quarter within the "credit calculation period." 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). Small bank affiliates of large banks would be small banks for purposes of this definition. The FDIC would apply credits to reduce future regular deposit insurance assessments.

*Aggregate Amount of Credits*

To determine the aggregate amount of credits awarded small banks, the FDIC would 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.<sup>36</sup> 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—would 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. Surcharges would 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 grow the reserve ratio above 1.15 percent, not to maintain it at 1.15 percent.<sup>37</sup>

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 would be used to maintain the fund at a 1.15 percent reserve ratio and that regular assessment revenue would be used to maintain the fund at that reserve ratio only to the extent that other revenue was 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

<sup>30</sup> 12 CFR 327.6(c).

<sup>31</sup> Large banks would receive no refund or credit if surcharges brought the reserve ratio above 1.35 percent. Thus, for example, if the reserve ratio were at 1.34 percent at the end of September 2018 and were at 1.37 percent at the end of 2018, large banks would receive no refund or credit for the two basis points in the reserve ratio above 1.35 percent. Similarly, large banks would receive no refund or credit if a shortfall assessment brought the reserve ratio above 1.35 percent.

<sup>32</sup> Small banks would not be entitled to any credits for the quarter in which a shortfall was assessed because large banks would be responsible for the entire remaining amount needed to raise the reserve ratio to 1.35 percent.

<sup>33</sup> If the reserve ratio had not reached 1.35 percent by December 31, 2018, the amount calculated would 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.

<sup>34</sup> If total assessments, including surcharges, during the credit calculation period were less than or equal to the increase in the DIF calculated above, the aggregate amount of credits to be awarded small banks would equal the aggregate amount of assessments paid by small banks during the credit calculation period.

<sup>30</sup> See 12 CFR 308.132(c)(3)(v).

<sup>31</sup> 12 CFR 327.6(a).

<sup>32</sup> 12 CFR 327.6(b).

extent of that growth), which is consistent with the purpose of the surcharge payments.

The FDIC projects that the aggregate amount of credits would be approximately \$900 million, but the actual amount of credits may differ.

#### Individual Small Banks' Credits

Credits would be awarded to any bank that was a small bank at any time during the credit calculation period. An individual small bank's share of the aggregate credit (a small bank's credit share) would be proportional to its credit base, which would be defined as the average of its regular assessment bases during the credit calculation period.<sup>38 39</sup> If, before the DIF reserve ratio reached 1.35 percent, a small bank acquired another small bank through merger or consolidation, the acquiring small bank's regular assessment bases for purposes of determining its credit base would 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 could receive more in credits than it (and any bank acquired through merger or consolidation) paid during the credit calculation period in regular assessments while it was 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 proposal reduces the chances that a riskier bank assessed at higher than average rates would receive credits for these higher rates, thus reducing the incentive for banks to take on higher risk.

#### Successors

If any bank acquired a bank with credits through merger or consolidation after the DIF reserve ratio reached 1.35 percent, the acquiring bank would acquire the credits of the acquired small bank. Other than through merger or consolidation, credits would not be transferrable. Credits held by a bank that failed or ceased being an insured depository institution would expire.

#### Use of Credits

After the reserve ratio reaches 1.40 percent (and provided that it remains at or above 1.40 percent), the FDIC would automatically apply a small bank's credits to reduce its regular deposit

insurance assessment by 2 basis points (annual rate) times its regular assessment base, to the extent that the small bank had sufficient credits remaining to do so.<sup>40</sup> If a small bank's deposit insurance assessment rate were less than 2 basis points (annual rate), the credit would be used to fully offset the bank's quarterly deposit insurance assessment, but the assessment could never be less than zero.<sup>41</sup>

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 1.40 percent would provide a cushion for the DIF to remain above 1.35 percent in the event of rapid growth in insured deposits or an unanticipated spike in bank failures, and therefore would reduce the likelihood of triggering the need for a restoration plan.

#### Notices of Credits

As soon as practicable after the DIF reserve ratio reaches 1.35 percent or December 31, 2018, whichever occurs earlier, the FDIC would 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, based on information derived from the FDIC's official system of records (the notice). The FDIC would provide the notice through FDICconnect or other means in accordance with existing practices for assessment invoices.<sup>42</sup>

After the initial notice, periodic updated notices would be provided to reflect the adjustments that may be made up or down as a result of requests for review of credit amounts, as well as subsequent adjustments reflecting the application of credits to assessments and any appropriate adjustment to a small bank's credits due to a subsequent merger or consolidation.

#### Requests for Review and Appeals

Proposed procedures under which a small bank that disagreed with the FDIC's computation of, or basis for, its credits could request review or appeal are set forth in Appendix 1.

## Appendix 1

### Requests for Review and Appeals

A small bank could request review if it disagreed with the FDIC's computation of or basis for its credits within 30 days from: (1) The initial notice stating the FDIC's preliminary estimate of a small bank's credit and the manner in which the credit was calculated; or (2) any updated notice. A request for review would have to be filed with the FDIC's Division of Finance and be accompanied by any documentation supporting the bank's claim. If a bank did not submit a timely request for review, the bank would be barred from subsequently requesting review of its credit amount.

Upon receipt of a request for review, the FDIC also could request additional information as part of its review and require the bank to supply that information within 21 days of the date of the FDIC's request for additional information. The FDIC would temporarily freeze the amount of the proposed credit in controversy for the banks involved in the request for review until the request was resolved.

The FDIC's Director of the Division of Finance (Director), or his or her designee, would notify the requesting bank of the determination of the Director as to whether the requested change was warranted, whenever feasible: (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional banks had been notified by the FDIC, within 60 days of the last response; or (3) if additional information had been requested by the FDIC, within 60 days of receipt of any such additional information, whichever was later.

The requesting bank that disagreed with that decision would be able to appeal its credit determination to the FDIC's Assessment Appeals Committee (AAC). An appeal to the AAC would have to be filed within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals would be included with that written determination.

Once the Director or the AAC, as appropriate, had made the final determination, the FDIC would make appropriate adjustments to credit amounts consistent with that determination and correspondingly provide the affected bank[s] with notice or update in the next invoice. Adjustments to credit amounts would not be applied retroactively to reduce or increase prior period assessments.

If the FDIC's responses to individual banks' requests for review of the preliminary estimate of their credit amount have not been finalized before the invoices for collection of assessments for the first calendar quarter following the quarter in which the reserve ratio reaches 1.40 percent, the FDIC would freeze the credit amounts in dispute while making any credits not in dispute available for use.

## IV. Economic Effects

The FDIC estimates that it would collect approximately \$10 billion in surcharges and award approximately \$900 million in credits to small banks, although actual amounts could vary

<sup>38</sup> When determining the credit base, a small bank's assessment base would be deemed to equal zero for any quarter in which it was a large bank.

<sup>39</sup> Call Report amendments after the payment date for the final quarter of the surcharge period would not affect an institution's credit share.

<sup>40</sup> The amount of credits applied each quarter would not be recalculated as a result of amendments to the quarterly Call Reports 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.

<sup>41</sup> The FDIC expects that few small banks will have credits remaining after 12 quarters of credit use. Any remaining credits after 12 quarters of credit use would be used to fully offset a bank's entire deposit insurance assessments in future quarters until credits were exhausted, as long as the reserve ratio exceeded 1.40 percent.

<sup>42</sup> See generally 12 CFR 327.2(b).

from these estimates. The FDIC projects that a shortfall assessment would be unnecessary.

**A. Accounting Treatment**

The FDIC's analysis is that banks would not account for future surcharges or a possible shortfall assessment in the Call Report and other banking regulatory reports based on generally accepted accounting principles (GAAP) as a present liability or a recognized loss contingency within the meaning of Financial Accounting Standards Board Accounting Standards Codification (ASC) Topic 450—Contingencies because they do not relate to a current condition or event giving rise to a liability. Surcharges would 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 would be 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 liability and expensed for the quarter it is assessed). A shortfall assessment would become a recognized loss contingency if (i) the reserve ratio had not reached 1.35 percent by the end of 2018; and (ii) the bank had 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.<sup>43</sup> Because small banks would not pay surcharges, surcharges would affect neither their capital nor their earnings; however, the analysis also estimates the effect of credits on small bank earnings.

Staff 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 July 1, 2014 through June 30, 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 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 June 30, 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 June 30, 2015. Data from July 1, 2014 through June 30, 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 June 30, 2015. The analysis assumes that current earnings equal pre-tax income before extraordinary and other items from July 1, 2014 through June 30, 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),<sup>44</sup> however, the analysis considers the

effective after-tax cost of assessments.<sup>45</sup> The analysis assumes that the large banks do not transfer the one-time assessment to customers in the form of changes in borrowing rates, deposit rates, or service fees.

**Projected Effects**

For almost all large banks, the effective surcharge annual rate measured against large banks' regular assessment base would 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 would result in lower assessments for nearly a third of all large banks. Specifically, the analysis estimates that 34 of the 108 large banks would pay lower assessments in the future.

The analysis reveals no significant capital effects from the surcharge. All large institutions would continue to maintain a 4 percent leverage ratio, at a minimum, both before and after the imposition of the surcharge.<sup>46</sup>

The annual surcharge would also represent only a small percentage of bank earnings for most large banks. In the aggregate, the annual surcharge would absorb 2.39 percent of total large bank adjusted earnings and 2.42 percent of total large bank current earnings.

Table 2.A shows that as of June 30, 2015, for 84 percent of all large banks (89 large banks) the surcharge would represent 3 percent or less of adjusted annual earnings. For more than 94 percent (100 large banks), the surcharge would represent 5 percent or less of adjusted annual earnings. Only 6 large banks' adjusted annual earnings would be affected by more than 5 percent, with the maximum effect on any single bank being 8.7 percent.

**TABLE 2.A—THE EFFECT OF THE PROPOSAL ON ADJUSTED EARNINGS OF INDIVIDUAL LARGE BANKS**

Surcharge relative to adjusted earnings	LARGE BANKS		Assets	
	Population		Total (\$ in billions)	Percentage of total large banks
	Number	Percentage of total large banks		
Between 0% to 1% .....	22	21	546	4
Between 1% to 2% .....	36	34	2,026	16
Between 2% to 3% .....	31	29	6,806	53
Between 3% to 4% .....	5	5	2,248	18

<sup>43</sup> Equity capital is defined as capital (stock and/or surplus earnings) that is free of debt, calculated as assets less liabilities.

<sup>44</sup> See 12 CFR 324.10(a).

<sup>45</sup> 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.

<sup>46</sup> 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.

TABLE 2.A—THE EFFECT OF THE PROPOSAL ON ADJUSTED EARNINGS OF INDIVIDUAL LARGE BANKS—Continued

LARGE BANKS				
Surcharge relative to adjusted earnings	Population		Assets	
	Number	Percentage of total large banks	Total (\$ in billions)	Percentage of total large banks
Between 4% to 5% .....	6	6	439	3
Over 5% .....	6	6	663	5
All Large Banks .....	106	100	12,728	100

**Notes:**

(1) Effect of Surcharge on Adjusted Earnings: Mean = 2.19%; Median = 1.92%; Max = 8.70%; Min = 0.04%

(2) Two 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 second large bank reported negative income.

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 83 percent of large banks as of June 30, 2015, (88 large banks), the surcharge would represent 3 percent or less of current earnings. For 92 percent (98 large banks), the surcharge would

represent 5 percent or less of current earnings. Only 8 large banks' current earnings would be affected by more than 5 percent, with the maximum effect on any single bank being 9.09 percent.

TABLE 2.B—THE EFFECT OF THE PROPOSAL 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
Between 0% to 1% .....	22	21	546	4
Between 1% to 2% .....	35	33	2,007	16
Between 2% to 3% .....	31	29	6,810	43
Between 3% to 4% .....	5	5	2,232	18
Between 4% to 5% .....	5	5	401	3
Over 5% .....	8	8	733	6
All Large Banks .....	106	100	12,728	100

**Notes:**

(1) Impact of Surcharge on Current Earnings: Mean = 2.24%; Median = 1.95%; Max = 9.09%; Min = 0.04%

(2) Two 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 second large bank reported negative income.

Finally, credits would result in a small increase in small bank income. Almost every small bank would be able to use credits for at least five quarters. Small bank annual earnings, on average would increase by about 2.3 percent.

**V. Evaluation of the Proposal**

In 2011, when the FDIC adopted the lower assessment rate schedule that will go into effect when the reserve ratio reaches 1.15 percent, the FDIC projected that the reserve ratio would reach 1.15 percent at the end of 2018, not long before the statutory deadline for the reserve ratio to reach 1.35 percent.<sup>47</sup> The FDIC now projects that the reserve ratio is most likely to reach 1.15 percent in the first quarter of 2016, but may reach that level as early as the fourth quarter of this year, leaving additional

time for the reserve ratio to reach the statutory target.

In all likelihood, under the proposal, the reserve ratio will reach 1.35 percent not later than the end of 2018. Reaching the statutory target reasonably promptly and in advance of the statutory deadline has benefits. First, it would strengthen the fund so that it could better withstand an unanticipated spike in losses from bank failures or the failure of one or more large banks.

Second, it would reduce the risk of the banking industry facing unexpected, large assessment rate increases in the future. Once the reserve ratio reaches 1.35 percent, the September 30, 2020 deadline 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 would 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.<sup>48</sup> In contrast, if a spike in losses occurs before the reserve ratio reaches 1.35 percent, the Dodd-Frank Act deadline would remain in place, which could require that the banking industry—including banks with less than \$10 billion in assets, if the reserve ratio fell below 1.15 percent—pay for the increase in the reserve ratio within a relatively short time. The proposal, therefore, reduces the risk of higher assessments being imposed at a time when the industry might not be as healthy and prosperous and can least afford to pay.

In addition, large banks would account for future surcharges in the Call Report and other banking regulatory reports based on GAAP as quarterly expenses, as they do for regular assessments, effectively spreading the

<sup>47</sup> 76 FR at 10684.<sup>48</sup> See generally 12 U.S.C. 1817(b)(3)(E)(ii).



cost of the requirement over approximately eight quarters.

As discussed above, FDIC analysis reveals no significant capital effects on large banks from the surcharge. On average, the annual surcharge would absorb approximately 2.4 percent of large bank annual income.

## VI. Alternatives Considered

Described below are several alternatives that the FDIC considered while developing this proposal. The FDIC also invites comment on these alternatives and any views as to whether and why an alternative, rather than the proposal, should be adopted as a final rule.

### A. Shortfall Assessment Immediately After the Reserve Ratio Reaches 1.15 Percent

#### Description of the Alternative

As an alternative to the proposal, the FDIC considered foregoing surcharges and imposing a one-time assessment, similar to a shortfall assessment, on large banks at the end of the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent. Thus, for example, if the reserve ratio first reaches or exceeds 1.15 percent as of June 30, 2016, the FDIC would impose the one-time assessment on September 30, 2016, and collect it on December 30, 2016.<sup>49 50</sup> The aggregate amount of a one-time assessment would equal 1.35 percent of estimated insured deposits as of the date that the reserve ratio first reaches or exceeds 1.15 percent minus the actual fund balance on that date.

The large banks that would be subject to a one-time assessment would be determined based upon their total consolidated assets for a period before the date of the NPR or their average total consolidated assets for several periods before the date of the NPR, such as average total consolidated assets over the last two quarters of 2014 and the first two quarters of 2015. While a large bank's assessment base for a one-time assessment would be determined similarly to the assessment base used for surcharges or a shortfall assessment, it would have to be determined based upon an assessment period before the date of the NPR or averaged over several assessment periods before the date of the NPR. Using assets and assessment

<sup>49</sup> As under the proposal, if the last day of the quarter was not a business day, the collection date would be the previous business day.

<sup>50</sup> A large bank might, however, have the option of paying (or be required to pay) its share of a one-time assessment in equal quarterly installments. One possibility would be to allow or require payment over four quarters; another would be to allow or require payment over eight quarters.

bases for a period before the date of the NPR would prevent large banks from avoiding the assessment (and shifting costs to other large banks) by transferring assets to a nonbank affiliate or by shrinking or limiting growth.

In other respects, a one-time assessment would generally be treated the same as a shortfall assessment under the proposal.<sup>51</sup>

Because large banks would be assessed for the entire increase in the reserve ratio from 1.15 percent to 1.35 percent under a one-time assessment, small banks would not contribute to increasing the reserve ratio and would not receive credits.

#### Economic Effects of a One-Time Assessment on Banks

The FDIC estimates that a one-time assessment under this alternative would likely be approximately \$13 billion, and would represent approximately 12 basis points of large banks' aggregate regular assessment base.

#### Accounting Treatment

As discussed above, the FDIC is of the view that large banks would account for surcharges as quarterly expenses and would not have to recognize in the Call Report and other banking regulatory reports based on GAAP a liability for them in advance. In contrast, the FDIC believes that a large bank's share of a one-time assessment would relate to a current period event or condition and could be probable and reasonably estimable. Therefore, under ASC Topic 450, if the FDIC adopted this alternative, large banks might have to recognize a liability for a one-time assessment. Recognition of such a liability could be as early as the date that the FDIC adopts a final rule (assuming that the FDIC adopts a one-time assessment in the final rule) or no later than when the FDIC determines that the reserve ratio has reached 1.15 percent.

#### Capital, Earnings and Liquidity Analysis

The FDIC estimates that, on average, a one-time assessment<sup>52</sup> would reduce large banks' annual earnings by approximately six-and-a-quarter percent,<sup>53</sup> would not materially affect

<sup>51</sup> However: (1) Call Report amendments received by the FDIC after 30 days before the collection date would not affect the determination of whether a bank met the definition of a large bank; and (2) Call Report amendments received by the FDIC after 30 days before the collection date would not affect the size of a large bank's assessment base for the one-time assessment.

<sup>52</sup> The estimate assumes an aggregate one-time assessment of approximately \$12.7 billion, which is 0.2 percent of estimated insured deposits as of June 30, 2015.

<sup>53</sup> Earnings or income are annual income before assessments, taxes, and extraordinary items. Annual

these banks liquidity,<sup>54</sup> and would leave Tier 1 leverage ratios above the 4 percent regulatory minimum for all large banks.<sup>55</sup> The FDIC estimates that a one-time assessment would equal less than 10 percent of annual earnings for 90 large banks, would not exceed 20 percent of annual earnings for 13 such banks, and would exceed 20 percent of annual earnings for only 3 such banks. The FDIC estimates that a one-time assessment would represent, on average, 0.30 percent of large banks' liquid assets and would not be more than 1.07 percent of any large bank's liquid assets.

#### Evaluation of a One-Time Assessment

The alternative of a one-time assessment when the reserve ratio reaches 1.15 percent has several benefits. It would ensure that the DIF reserve ratio reaches 1.35 percent immediately after the reserve ratio reaches 1.15 percent rather than later, as would occur using surcharges, which would: (1) Strengthen the fund more quickly, so that it would be in an even better position to withstand the effects of an unanticipated spike in bank failures; and (2) further reduce the risk of the banking industry facing unexpected, large assessment rate increases in the future when it may not be as healthy and prosperous as it is currently.

On the other hand, large banks would have to recognize in the Call Report and other banking regulatory reports based on GAAP a large liability for a one-time assessment in advance, reducing income materially for the quarter in which the liability is recognized. In addition, because regular assessments would not contribute to increasing the reserve ratio from 1.15 percent to 1.35 percent if a one-time assessment were imposed, the amount collected from large banks in a one-time assessment is estimated to exceed the estimated total amount of proposed surcharges.

The FDIC considers a one-time assessment when the reserve ratio reaches 1.15 percent a reasonable alternative to the proposal in this NPR and is interested in comments on this approach. On balance, however, the

income is assumed to equal income from July 1, 2014 through June 30, 2015.

<sup>54</sup> Liquidity (or liquid assets) are defined as cash balances, federal funds and repos sold, and securities. Liquid assets are assumed to be the same as they were on June 30, 2015.

<sup>55</sup> Capital and liquid assets are assumed to be the same as they were on June 30, 2015. The estimate considers the effective after-tax cost of assessments in calculating the effect on capital. One covered bank is an insured branch of a foreign bank and is not required to report earnings and capital as part of its financial filings and, therefore, its Tier 1 leverage ratio cannot be determined.

FDIC considers the proposal the better alternative. As described above, in the FDIC's view, the proposal 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.

#### *B. Delayed Shortfall Assessment Without Surcharges*

A second alternative would be to impose no surcharges after the reserve ratio reaches 1.15 percent and if the reserve ratio does not reach 1.35 percent by a deadline sometime near the statutory deadline, to impose a shortfall assessment at the end of the following quarter, and to collect it at the end of the next quarter. Thus, for example, if the reserve ratio had not reached 1.35 percent by December 31, 2019, then the FDIC would impose a shortfall assessment on March 31, 2020, and collect it on June 30, 2020. The aggregate amount of such a shortfall assessment would equal the difference between 1.35 percent and the reserve ratio as of December 31, 2019 times the estimated insured deposits as of the deadline.

As under the proposal, to ensure that the effect on small banks of raising the reserve ratio from 1.15 percent to 1.35 percent was fully offset, the FDIC would provide assessment credits to small banks for the portion of their assessments that contributed to the increase in the reserve ratio from 1.15 percent to 1.35 percent. Assessment credits to small banks would be determined and applied as described above in the proposal.

#### *Size of a Delayed Shortfall Assessment*

The FDIC cannot accurately predict the size of a delayed shortfall assessment so far in advance of one. The size of a delayed shortfall assessment could vary widely depending on the condition of the banking industry and the economy. For example, if fund losses from failed banks remain relatively low, the amount of a delayed shortfall assessment could be less than the amount of aggregate surcharges under the proposal, since regular assessments would contribute longer toward raising the reserve ratio from 1.15 percent.<sup>56</sup> Thus, if estimated

<sup>56</sup> The FDIC reached this conclusion assuming that the lower regular assessment rates scheduled to go into effect when the reserve ratio reaches 1.15 percent.

insured deposits grow to \$7.65 trillion on December 31, 2019 (a growth rate of approximately 4.2 percent per year from June 30, 2015), and the reserve ratio is 1.26 percent at December 31, 2019, then a delayed shortfall assessment imposed on March 31, 2020, would be approximately \$7.2 billion, less than the estimated \$10 billion aggregate amount of surcharges under the proposal.

On the other hand, the amount of a delayed shortfall could be much larger than the amount of aggregate surcharges under the proposal, if, for example, fund losses increase. Thus, assuming again that estimated insured deposits grow to \$7.65 trillion on December 31, 2019, if the reserve ratio as the result of increased losses is only 1.00 percent at December 31, 2019, a delayed shortfall assessment imposed on March 31, 2020, would be approximately \$15.3 billion in order to raise the reserve ratio from 1.15 percent to 1.35 percent, more than the aggregate amount of proposed surcharges. Moreover, in this example, all banks, including small banks, would be responsible for approximately \$11.5 billion in additional assessments to increase the reserve ratio from 1.00 percent to 1.15 percent. If losses between now and the end of 2019 were as large as they were during the recent financial crisis, a possibility that the FDIC is not predicting but cannot preclude, the amount of additional assessments that would be levied on all banks would be much larger than under the example. The actual amount of a delayed shortfall assessment would likely differ from any of these examples.

For similar reasons (the difficulty of predicting insured deposit growth and fund losses over a lengthy period, for example), the FDIC cannot accurately predict the aggregate amount of credits that would be awarded small banks under this alternative.

#### *Evaluation of a Delayed Shortfall Assessment*

For several reasons, the FDIC is not proposing this alternative. First, compared to either surcharges or a one-time assessment, a delayed shortfall assessment is likely to significantly delay the reserve ratio's reaching 1.35 percent, leaving the fund more exposed to a spike in losses from future bank failures.

Second, because the reserve ratio is likely to take significantly longer to reach 1.35 percent under this alternative, it increases the risk, as illustrated above, that banks—including small banks—might face sharp increases in assessments during a stressful period when they are less healthy and prosperous than they are now. As

discussed earlier, once the reserve ratio reaches 1.35 percent, the September 30, 2020 deadline 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, under the FDI Act, a minimum of eight years to return the reserve ratio to 1.35 percent, reducing the likelihood of a large and potentially procyclical increase in assessment rates.<sup>57</sup>

#### *C. Alternatives Based on Surcharges*

The FDIC has considered other alternatives that are essentially variations on certain aspects of the surcharge proposal.

##### *Method of Determining Surcharge Base*

To determine a large bank's surcharge base for a quarter, the proposal would use the bank's regular assessment base, but would add the regular assessment bases for that quarter of any affiliated small banks and deduct \$10 billion from the resulting amount to produce the surcharge base. In a banking organization that includes more than one large bank, however, the affiliated small banks' regular assessment bases and the \$10 billion deduction would be apportioned among all large banks in the banking organization in proportion to each large bank's regular assessment base for that quarter. Including affiliated small banks' regular assessment bases in a large bank's surcharge base would prevent a large bank from reducing its surcharges 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. It would also ensure that that banking organizations of similar size (in terms of aggregate assessment bases) pay a similar surcharge.

Rather than adding the entire regular assessment bases of affiliated small banks to those of large banks, an alternative would be to add to a large bank's assessment base each quarter only the amount of any increase in the regular assessment bases of affiliated small banks above their regular assessment bases as of June 30, 2015. Then \$10 billion would also be deducted as under the proposal. Also, as under the proposal, in a banking organization that includes more than one large bank, the increase in affiliated small banks' regular assessment bases and the \$10 billion deduction would be apportioned among all large banks in the banking organization in proportion

<sup>57</sup> See generally 12 U.S.C. 1817(b)(3)(E)(ii).

to each large bank's regular assessment base for that quarter.

Like the proposal, this alternative would prevent a large bank from reducing its surcharges 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. Unlike the proposal, however, it would not ensure that that banking organizations of similar size (in terms of aggregate assessment bases) pay a similar surcharge. In addition, because the full amount of affiliated small banks' assessment bases would not be included in their large bank affiliates' surcharge bases, the risk that the reserve ratio will take longer than eight quarters to reach 1.35 percent or that a shortfall assessment would be needed would be increased, thus shifting some of the burden of surcharges to large banks without affiliated small banks.

The FDIC also considered alternatives that would impose various types of documentation requirements on large banks to explain changes in assessment bases between quarters during the surcharge period. Although such an approach may help prevent or discourage a large bank from reducing its surcharges by transferring assets and liabilities to existing or new affiliated small banks, it likely would not be as effective as the proposed approach. Moreover, a documentation-based approach would introduce additional complexity to the rule and impose burden and recordkeeping requirements on large banks that are not associated with the proposed option. Finally, unlike the proposal, this alternative would not ensure that that banking organizations of similar size (in terms of aggregate assessment bases) pay a similar surcharge. For these reasons, the FDIC does not favor an alternative based on imposing additional documentation requirements.

#### Method of Allocating Credits

The proposal would allocate credits to small banks based upon their assessment bases during the surcharge period. An alternative would be to allocate credits based upon a small bank's actual assessment payments. Doing so, however, would grant relatively larger credits to riskier banks, since these banks would have paid higher assessment rates. For this reason, the FDIC does not favor this alternative.

#### Length of Surcharge Period

Under the proposal, surcharges would start the quarter after the DIF reserve ratio first reaches or exceeds 1.15 percent, would be set at an annual rate

of 4.5 basis points, and would continue until the reserve ratio first reaches or exceeds 1.35 percent, but no later than the fourth quarter of 2018. If necessary, a shortfall assessment would be imposed at the end of the first quarter of 2019.

An alternative would be to charge surcharges at a somewhat lower rate for a longer period and only impose a shortfall assessment if the reserve ratio had not reached 1.35 percent by a date nearer the statutory deadline (the end of 2019, for example).

The FDIC does not favor this alternative. In the FDIC's view, the proposal strikes the right balance after considering the statutory deadline for reaching the minimum reserve ratio and the goals of strengthening the fund's ability to withstand a spike in losses and minimizing the risk of larger assessments for the entire industry, as well as the effects on capital and earnings for surcharged banks.

#### VII. Effective Date

A final rule following this NPR would become effective on the first day of the calendar quarter that begins 30 or more days after publication of a final rule.

#### VIII. Request for Comment

The FDIC seeks comment on every aspect of this rulemaking, including the alternatives presented. In addition, the FDIC seeks comment on whether there are additional advantages, disadvantages or other effects of the proposal or an alternative that should be considered and why.

#### IX. Regulatory Analysis and Procedure

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed or final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment.<sup>58</sup> 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.<sup>59</sup> This NPR 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 and is seeking comment on it.

As of June 30, 2015, of the 6,348 insured commercial banks and savings institutions, there were 5,088 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.*, those with \$550 million or less in assets).<sup>60</sup> As described in the Supplementary Information section of the preamble, the purpose of this NPR 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 with less than \$10 billion in total consolidated assets. The FDIC proposes to meet 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 offset requirement.

The proposed rule would affect small entities only to the extent that they would be eligible for credits in exchange for their contributions toward raising the deposit insurance reserve ratio from 1.15 percent to 1.35 percent. For purposes of awarding credits, a small bank would be a bank that was not a large bank in a quarter within the credit calculation period. The FDIC is proposing to apply these credits to future regular assessments, resulting in estimated average savings of 2.2 percent of annual earnings. Thus, this initial RFA analysis demonstrates that, if adopted in final form, the proposed rule would not have a significant economic impact on a substantial number of small institutions within the meaning of those terms as used in the RFA and the FDIC so certifies.<sup>61</sup>

The proposed rule does not directly impose any "reporting" or "recordkeeping" requirements. The compliance requirements for the proposed 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. The FDIC is

<sup>60</sup> 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 June 30, 2015, one insured branch of a foreign bank also had less than \$550 million in assets.

<sup>61</sup> 5 U.S.C. 605.

<sup>58</sup> See 5 U.S.C. 603, 604, 605.

<sup>59</sup> 5 U.S.C. 601.

unaware of any duplicative, overlapping or conflicting federal rules.

*B. 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.<sup>62</sup>

This NPR proposes no additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions.

*C. 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 NPR does not modify FDIC's Assessments information collection 3064–0057, Quarterly Certified Statement Invoice for Deposit Insurance Assessment. Therefore, no submission to OMB need be made.

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

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

*E. 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 invites your comments on how to make this proposal easier to understand. For example:

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

**List of Subjects in 12 CFR Part 327**

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth above, the FDIC proposes to amend part 327 as follows:

**PART 327—ASSESSMENTS**

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

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

**§ 327.11 [Amended]**

- 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 either 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 ending on September 30, 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 BaseDInsured 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 total deposit insurance assessment base for the assessment period, determined according to § 327.5, of any affiliated insured depository institutions that are not subject to the surcharge; minus
- (C) \$10 billion; provided, however, that an institution's surcharge base for an assessment period cannot be negative.

(ii) *Surcharge BaseDInsured 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 institution's portion of the total deposit insurance assessment base of all affiliated insured depository

<sup>62</sup> 12 U.S.C. 4802.

institutions that are not subject to the surcharge, determined according to § 327.5, obtained by apportioning the total deposit insurance assessment base of institutions not subject to the surcharge, determined according to § 327.5, among all institutions and affiliated insured depository institutions that are subject to the surcharge, in proportion to the respective deposit insurance assessment bases, determined according to § 327.5, of the institutions subject to the surcharge; minus

(C) The institution's portion of a \$10 billion deduction, obtained by apportioning the deduction among all institutions and affiliated insured depository institutions that are subject to the surcharge, in proportion to those institutions' respective deposit insurance assessment bases, determined according to § 327.5; provided, however, that an institution's surcharge base for an assessment period cannot be negative.

(D) 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, but 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 paragraph (b) of this section. If surcharges under paragraph (a) of this section have not been in effect, the shortfall assessment described in paragraph (b) of this section will be imposed on 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 as 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 FDIC shall impose a shortfall assessment on March 31, 2019, equal to 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 FDIC shall impose a shortfall assessment equal to 0.2 percent of estimated insured deposits at the end of the assessment period immediately following the assessment period during 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, but there is not a legal merger or consolidation of the two insured depository institutions.

(c) *Assessment Credits.—*

(1) *Eligible Institutions.* For the purposes of this paragraph (c) of this

section, an insured depository institution will be considered an eligible institution, if, for any assessment period during the credit calculation period, the institution was not subject to a surcharge under paragraph (a) of this section.

(2) *Credit Calculation Period.* The credit calculation period shall begin 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 amount resulting from multiplying the *fraction of quarterly regular deposit insurance assessments paid by eligible institutions* during the credit calculation period and the amount by which the *DIF increase* 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 eligible institutions during the credit calculation period.

(i) *Fraction of Quarterly Regular Deposit Insurance Assessments Paid by Eligible Institutions.* The fraction of assessments paid by eligible institutions shall equal quarterly deposit insurance assessments, as determined under § 327.9, paid by eligible institutions 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.* 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.* 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)(5)(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. An eligible institution's credit base shall be deemed to equal zero for any assessment period during which the institution was subject to a surcharge under subsection (a).

(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 any part of the credit calculation period that it was an eligible 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 prior to the merger or consolidation that the acquired institution was an eligible 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 paragraph (c) of this section, 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 as described in paragraph (c)(5) of this section, after the reserve ratio of the DIF reaches 1.35 percent, the acquirer is successor to any assessment credits of the acquired institution. Other than through merger or consolidation, as described in paragraph (c)(5) of this section, credits awarded to an eligible institution under this paragraph (c) of this section are not transferable.

(10) *Mergers and Consolidation Include Only Legal Mergers and Consolidation.* For the purposes of this paragraph (c) of this section, 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 this paragraph (c) 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 1.40 percent.

(ii) The FDIC shall apply assessment credits to reduce an institution's quarterly deposit insurance assessments by the lesser of each institution's remaining credits or 0.5 basis points multiplied by the institution's deposit insurance assessment base in the assessment period. 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) Any credits remaining 12 assessment periods after the FDIC begins to apply the assessment credits under this section will be applied to the full amount of the assessment due for the following assessment period, and subsequent assessment periods, as

determined under § 327.9, until the credits are exhausted.

(iv) 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.

(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.* Any request for review under this paragraph must:

(i) Be submitted within 30 days from

(A) The initial notice provided by the FDIC to the insured depository institution under paragraph (c)(6) 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)(6) 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 would 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 the latter of the following timeframes:

(A) 60 days of receipt by the FDIC of the request for review; or

(B) 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, then 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.

■ 4. 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.

\* \* \* \* \*

By order of the Board of Directors.

Dated at Washington, DC, this 22nd day of October, 2015.

Federal Deposit Insurance Corporation.

**Robert Feldman,**

*Executive Secretary.*

[FR Doc. 2015-27287 Filed 11-5-15; 8:45 am]

**BILLING CODE 6714-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-132075-14]

RIN 1545-BM49

**Extension of Time To File Certain Information Returns; Extension of Comment Period**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** This document extends the comment period for a notice of proposed rulemaking (REG-132075-14) that was published in the **Federal Register** on Thursday, August 13, 2015. The proposed regulations relate to extensions of time to file information returns on forms in the W-2 series (except Form W-2G).

**DATES:** Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published on August 13, 2015 (80 FR 48472), is extended to January 11, 2016.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-132075-14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132075-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-132075-14).

**FOR FURTHER INFORMATION CONTACT:** Jonathan R. Black at (202) 317-6845 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking that appeared in the **Federal Register** on Thursday, August 13, 2015 (80 FR 48472) announced that written and electronic comments and requests for a public hearing must be received by November 12, 2015. In order to provide the public with a sufficient opportunity to submit comments, the due date to receive electronic comments and requests for a public hearing has been extended to Monday, January 11, 2016.

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2015-28279 Filed 11-5-15; 8:45 am]

**BILLING CODE 4830-01-P**