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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

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Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is lowering the rates on assessments paid to the Savings Association Insurance Fund (SAIF), and widening the spread of the rates, in order to avoid collecting more than needed to maintain the SAIF's capitalization at 1.25 percent of aggregate insured deposits, and to improve the effectiveness of the risk-based assessment system.

The final rule establishes a base assessment schedule for the SAIF with rates ranging from 4 to 31 basis points, and an adjusted assessment schedule that reduces these rates by 4 basis points. In general, effective SAIF rates range from 0 to 27 basis points as of October 1, 1996. The final rule also prescribes a special interim schedule of rates ranging from 18 to 27 basis points for SAIF-member savings associations for just the last quarter of 1996, reflecting the fact that assessments paid to the Financing Corporation (FICO) are included in the SAIF rates for these institutions during that interval. Excess assessments collected under the prior assessment schedule will be refunded or credited, with interest.

The final rule establishes a procedure for making limited adjustments to the base assessment rates, both for the SAIF and for the Bank Insurance Fund (BIF), by rulemaking without notice and comment.

The final rule clarifies and corrects certain provisions without making substantive changes.

EFFECTIVE DATE: December 11, 1996.

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SUPPLEMENTARY INFORMATION:

I. The Final Rule

A. Background

Under the prior assessment schedule, SAIF rates have ranged from 23 basis points for institutions in the best assessment risk classification to 31 basis points for institutions in the least favorable one. This schedule has implemented the risk-based assessment program required by section 7 of the Federal Deposit Insurance (FDI Act), 12 U.S.C. 1817. The schedule has been designed to increase the reserve ratio of the SAIF—the ratio of the SAIF's net worth to aggregate SAIF-insured deposits, see id. 1817(l)(7)—to the designated reserve ratio (DRR).[1]

The SAIF has never received the full amount of the revenues that the SAIF rates have generated, however. The SAIF did not receive any revenues at all from its creation in 1989 through the end of 1992: all such revenues were diverted to other needs. Revenues have begun to flow into the SAIF after January 1, 1993, but still not at the full amounts. Certain SAIF-assessable institutions—namely, SAIF-member savings associations—have been required to pay assessments to the FICO in order to enable the FICO to pay the interest on its bonds. The amounts that these institutions have paid to the FICO have served to reduce the amounts that the institutions have paid to the SAIF. At $793 million per year, the FICO draw has been substantial. It has contributed to the slow growth in the SAIF reserve ratio, which has only increased from .28 percent to .47 percent during 1995.

Moreover, the assessment rates for the BIF were much lower than the comparable rates for the SAIF, because the BIF's reserve ratio had already reached the DRR. The disparity created incentives for institutions to move deposits from SAIF-insured status to BIF-insured status, and raised the question of whether a shrinking SAIF-assessable deposit base could continue both to service the interest on FICO debt and to capitalize the SAIF.

In response to these circumstances, Congress adopted the Deposit Insurance Funds Act of 1996 (Funds Act), Public Law 104–208, sections 2701–2711, 110 Stat. 3009 *et seq.* (Sept. 30, 1996). The Funds Act called for the FDIC to impose a one-time special assessment on SAIF-assessable deposits to raise the SAIF's reserve ratio to the DRR as of October 1, 1996. *Id.* section 2702. The FDIC carried out this mandate. See 61 FR 53834 (Oct. 16, 1996). The Funds Act also ended the link between the amounts assessed by the FICO and the amounts authorized to be assessed by the SAIF, effective January 1, 1997.

B. Statutory Framework for Setting Assessment Rates

Section 7(b)(1) of the FDI Act, 12 U.S.C. 1817(b)(1), requires the Board to establish a risk-based assessment system for all insured institutions. *Id.* 1817(b)(1)(A).

The Board must set semiannual assessments for each institution based on the following factors: (1) The probability that the institution will cause a loss to the BIF or to the SAIF, (2) the likely amount of the loss, and (3) the revenue needs of the appropriate fund. Id. 1817(b)(1)(C).

Section 7(b)(2)(A) sets forth the requirement that the FDIC's assessments must be designed to maintain each fund's reserve ratio at the DRR or, if the fund's reserve ratio is below that level, to lift the ratio to the DRR. Section 7(b)(2)(A)(i) states this requirement as a mandate to the Board to set assessments that are sufficient to achieve the appropriate goal. *Id.* 1817(b)(2)(A)(i). Section 7(b)(2)(A)(iii), as amended by section 2708(b) of the Funds Act, states this requirement as a limitation on the amounts to be collected: The Board may not collect more for a fund than is needed to fulfill the appropriate goal. *Id.* 1817(b)(2)(A)(iii).

[1] The DRR is a target ratio that has a fixed value for each year. The value is either 1.25 percent or such higher percentage as the Board determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the Fund. *Id.* 1817(b)(2)(A)(iv). The Board has not altered the statutory DRR for either fund.

Whether a fund is capitalized at the DRR or otherwise, the Board may set higher rates for institutions that exhibit weakness or are not well capitalized. *Id.* 1817(b)(2)(A)(v).

In setting semiannual assessments for an insurance fund, the Board must consider the following factors: (1) The fund's expected operating expenses; (2) the fund's case resolution expenditures and income; (3) the effect of assessments on the earnings and capital of fund members; and (4) any other factors that the Board deems appropriate. *Id.* 1817(b)(2)(A)(ii).

Through the end of 1996, the FICO draw serves to reduce the amounts that the FDIC assesses against SAIF-member savings associations. *Id.* 1441(f)(2) & 1817(b)(2)(D).[2] Thereafter, the FICO assessments are independent of and in addition to those of the FDIC. Funds Act section 2703 (a) and (c). But the FICO still must assess institutions in the same manner as the FDIC does, and the FDIC still must approve the FICO's assessments. 12 U.S.C. 1441(f)(2).

Finally, through the end of 1998, the assessment rate for a SAIF member may not be less than the assessment rate for a BIF member that poses a comparable risk to the deposit insurance fund. *Id.* 1817(b)(2)(E).

C. The Base and Adjusted Assessment Schedules for the SAIF

1. Overview

The SAIF's reserve ratio has been well below the DRR. The SAIF rates have been designed to increase the SAIF's capitalization to the DRR. In accordance with the Funds Act, however, the FDIC has capitalized the SAIF at the DRR as of October 1, 1996. The FDIC is therefore lowering the SAIF rates as of that date. See *id.* 1817(b)(2)(A)(iii) and (v).

The FDIC is retaining the 9-cell framework for SAIF assessment rates, but is replacing the prior set of rates with a new and lower rate-schedule, entitled the SAIF Base Assessment Schedule. The SAIF Base Assessment Schedule sets forth a permanent set of rates that will remain in place until changed through notice-and-comment rulemaking proceedings. The SAIF Base Assessment Schedule is adopted as of October 1, 1996. The SAIF Base Assessment Schedule is as follows:

SAIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

The FDIC is also making an immediate adjustment to the rates set forth in the SAIF Base Assessment Schedule. The adjustment, like the SAIF Base Assessment Schedule, is adopted as of October 1, 1996. The adjusted rates are the ones that are effective.

The adjustment is two-fold:

—The FDIC is making a general adjustment to the SAIF Base Assessment Schedule that lowers the rates therein by 4 basis points for all institutions other than SAIF-member savings associations. This adjustment is temporary, but indefinite: the FDIC expects to review it every semiannual period, but will not necessarily modify it, nor will the adjustment automatically terminate on its own.

—The FDIC is making a special adjustment to the SAIF Base Assessment Schedule that replaces the rates therein with a special interim set of rates just for SAIF-member savings associations, but only for the fourth calendar quarter of 1996. Thereafter these institutions pay the same SAIF rates as the others.

The SAIF Adjusted Assessment Schedule sets forth both sets of adjusted rates. The rates on the right in each risk classification category apply to SAIF-member savings associations during the last calendar quarter of 1996. The rates on the left in each risk classification category apply to all other SAIF-assessable institutions during that quarter, and to all SAIF-assessable institutions on and after January 1, 1997:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup					
	A		B		C	
1	0	18	3	21	17	24
2	3	21	10	24	24	25
3	10	24	24	25	27	27

The rates on the left in each risk classification category—those that represent the SAIF base rates as modified by the 4-basis- point adjustment—may be amended from time to time within certain limits by rulemaking without notice-and-comment procedures.

The FDIC has published these rates as a proposed rule, 61 FR 53867 (Oct. 16, 1996), and has received comments from 13 entities and organizations. Comments have come from three holding-company organizations (including their affiliates), six savings banks, and four trade groups. In addition, FDIC staff has conducted a briefing for members of the Savings Association Insurance Fund Industry Advisory Committee.

2. The SAIF Base Assessment Schedule

a. The Rate-Spread. Risk-based assessment rates have two purposes: To reflect the risk posed to each insurance fund by individual institutions, and to provide institutions with proper incentives to control risk-taking. The FDIC believes that a 27-basis-point rate-spread serves these purposes.

The FDIC has considered the comparative merits of a rate-spread of 8 basis points. In December, 1992, when the BIF and SAIF were both below the DRR, and assessment revenues were designed to build up the capitalization of both funds, the FDIC proposed to establish risk-based premium matrices of 23 to 31 basis points for each fund. The Board asked for comment on whether the proposed assessment rate spread of 8 basis points should be widened. See 57 FR 62502 (Dec. 31, 1992). Ninety-six commenters addressed this issue; 75 of them favored a wider rate spread. In the final rule, the Board expressed its conviction that widening the rate spread was desirable in principle, but chose to implement the 8-basis point rate spread. The Board expressed concern that widening the spread while keeping assessment revenue constant might unduly burden the weaker institutions that would be subject to greatly increased rates. See 58 FR 34357, 34361 (June 25, 1993).

Bankers, banking scholars and regulators have all criticized the 8-basis point rate-spread as being unduly

[2] Section 21(f)(2) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f)(2), provides that amounts assessed by the FICO reduce the amounts authorized to be assessed by the FDIC for the SAIF. Section 7(b)(2)(D) of the FDI Act, *id.* 1817(b)(2)(D), states a parallel requirement. Section 2703 of the Funds Act repeals both provisions. Section 2703(a) repeals section 21(f)(2); section 2703(b) repeals section 7(b)(2)(B).

The repeals are not simultaneous—at least, not on their face. Section 2703(c)(1) sets an effective date for section 2703(a) of January 1, 1997. Section 2703(c) does not mention section 2703(b). Accordingly, section 2703(b) is—apparently—effective upon passage of the Funds Act. If so, section 7(b)(2)(D) has been repealed since September 30, 1996. A repeal of section 7(b)(2)(D) would have no practical consequence, as section 21(f)(2) remains in effect through the end of 1996.

The FDIC takes the view, however, that section 2703(c)(1) contains a drafting error in this regard. Section 2703(c)(1) says it applies to section 2703(a) and to section 2703(c)—that is, to itself. The FDIC considers that the self-reference makes no sense, and that a reference to subsection (b) was intended. Accordingly, the FDIC interprets the Funds Act to repeal section 7(b)(2)(D) on January 1, 1997, in concert with the repeal of the Federal Home Loan Bank Act's parallel provisions.

narrow. There is considerable empirical support for this criticism. Using a variety of methodologies and different sample periods, the vast majority of relevant studies of deposit-insurance pricing have produced results that are consistent with the conclusion that the rate-spread between healthy and troubled institutions should exceed 8 basis points. The precise estimates vary; but there is a clear consensus from this evidence that the rate-spread should be widened.[3]

There also is a concern that rate differences between adjacent cells in the current matrix do not provide adequate incentives for institutions to improve their condition. Larger differences are consistent with historical variations in failure rates across cells of the matrix, as seen in the following table:

TABLE 1.—HISTORICAL THRIFT FAILURE RATES BY CELL

[1988–1993*]

Tangible capital category	Supervisory risk subgroup A	Supervisory risk subgroup B	Supervisory risk subgroup C	Not rated (as of 12/31/87)
1. Well:				
Thrifts	1,189	172	21	25
Failures	43	28	9	5
Failure rate	2.9%	16.3%	42.9%	20.0%
2. Adequate:				
Thrifts	215	73	14	1
Failures	26	20	7	0
Failure rate	12.1%	27.4%	50.0%	0.0%
3. Under:				
Thrifts	460	389	541	37
Failures	134	205	447	35
Failure rate	29.1%	52.7%	82.6%	94.6%

Average failure rate: 30.6%.

* Percentage of thrifts in cell at year-end 1987 that failed during 1988–1993. These figures reflect different examination policies and procedures than exist today. In particular, examinations may have been relatively infrequent for some institutions during this period.

The precise magnitude of the proper rate differences is open to debate, given the sensitivity of estimates to small changes in assumptions and to the selection of the sample periods. But the evidence indicates that larger rate differences between adjacent cells of the risk-based assessment matrix are warranted.

Because of concern for the impact of a wider spread on weaker SAIF-insured institutions, the FDIC has performed analyses on increasing the spread from 8 to 27 basis points and has found that, apart from institutions already recognized as likely failures, the wider spread is expected to have a minimal impact in terms of additional failures. The FDIC is therefore adopting a 27-basis point spread for members of the SAIF.

Two trade groups express support for the rate-spread in the SAIF Base Assessment Schedule, but without providing any extensive analysis. No commenter opposes it.

b. The Rates. The FDIC recognizes that, in setting deposit insurance premiums, the risk of adverse events that may occur beyond the immediate semiannual assessment period must be considered, in order to spread risk over time and to moderate the cyclical effects of insurance losses on insured institutions. A strict ''pay-as-you- go'' insurance system—one that attempts only to balance revenue and expense over the current assessment period—can result in rate volatility that would adversely impact weak institutions in periods of economic stress, increasing the risk of loss to the fund. Historical evidence shows that in peak loss years, pay-as- you-go rates would substantially exceed the rates required to balance revenues and expenses over the longer term.

The FDIC believes that, for the purpose of estimating future losses for the thrift industry, the industry's loss experience in the 1980s is not especially informative. The insurance losses associated with thrifts far exceeded insurance losses from banks during this period both in dollars and, to an even greater extent, as a percentage of the size of the industry. The losses prompted Congress to adopt a number of legislative reforms that have the effect of placing thrifts in a regulatory context that resembles that of the banks much more closely. The FDIC has replaced the Federal Savings and Loan Insurance Corporation (FSLIC) as insurer for the thrift industry. The Office of Thrift Supervision, an office within the Department of the Treasury, has replaced the Federal Home Loan Bank Board as the supervisor for thrift institutions. Thrifts are now subject to stronger capital standards, which are set at the same levels as required of banks. Thrifts, like banks, now pay assessments based on risk. The losses generated in thrift failures are limited by the same safeguards as those that apply to bank failures—notably, the early-closure rule of the prompt corrective action statute, the cross-guarantees among affiliates, the least-cost resolution requirement, and the depositor-preference statute. In view of these changes in the regulatory and insurance environment for thrifts, the failure experience of commercial banks is likely to be more illuminating for the purpose of estimating future thrift losses than is the experience of the thrifts themselves.

The FDIC has recently analyzed its historical loss experience with banks, and has considered the likely effect of recently enacted statutory provisions that are expected to moderate deposit insurance losses going forward. The FDIC has concluded that average assessment rates of 4 to 5 basis points

[3] The FDIC's research also suggests that a substantially larger spread is necessary to establish an ''actuarially fair'' assessment rate system. See Gary S. Fissel, ''Risk Measurement, Actuarially Fair Deposit Insurance Premiums and the FDIC's Risk-Related Premium System'', *FDIC Banking Review* 16–27, Table 5, Panel B (1994).

are appropriate to achieve a long-run balance between BIF revenues and expenses. See 60 FR 42680 (Aug. 16, 1995). These rates reflect the experience of the FDIC during the period from 1950 to 1980. From 1980 through 1994, rates in the range of 10 to 13 basis points would have been required to balance revenues and expenses: but for banks as well as thrifts, failures during this period were attributable to extraordinary conditions brought on by volatile interest rates, ineffective supervision and real estate values that first soared and then collapsed. While regulators still may not have the ability to foresee a real estate collapse or other severe economic adversities, the statutory and regulatory safeguards now in place are likely to limit losses to the funds under such extreme conditions. Accordingly, average assessment rates in the range of 4 to 5 basis points are thought to be adequate to balance long-range revenues and expenses for the BIF.

The FDIC considers that this range is an appropriate benchmark for SAIF rates as well. From 1950 to 1980, the rates paid by FSLIC-insured thrifts were about twice the effective rate paid by FDIC-insured banks, reflecting higher annual rates of deposit growth for thrifts and a somewhat higher loss experience for the FSLIC.[4] But differences between the banking and thrift industries are less significant today than they were in the period from 1950 to 1980; thrifts generally are better protected than they were from the effects of interest-rate swings; regulatory and accounting standards are more exacting; and deposits have generally declined since 1989. The FDIC recognizes that structural weaknesses of the SAIF, including a relatively small membership base and geographic and product concentrations, suggest that the appropriate SAIF assessment rate to achieve a long-range balance may be higher than the BIF rate. Lacking a compelling empirical basis for determining different assessment structures for the two industries, however, the FDIC currently expects that average assessment rates of 4 to 5 basis points will likely result in a long-range balance of revenues and expenses for the SAIF as well as for the BIF.

The vast majority of institutions qualify for the highest assessment risk classification, and pay assessments at the most favorable rate; conversely, the most favorable rate generates the vast majority of the revenues that the insurance funds receive. For the SAIF's average assessment rates to yield 4 to 5 basis points, the most favorable rate for the SAIF Base Assessment Schedule is set at 4 basis points; the other rates in the schedule are set in accordance with the rate-spreads described above.

Until January 1, 1999, SAIF rates may not be lower than the BIF rates for institutions that pose comparable risks to their funds. 12 U.S.C. 1817(b)(2)(E)(iii). Accordingly, the rates in the SAIF Base Assessment Schedule are no lower than the permanent (or base) BIF rates set forth in Rate Schedule 2.[5] See id. 327.9(a).

The SAIF Base Assessment Schedule (see I.C.1. above) applies to all institutions as of October 1, 1996. As discussed below, however, the rates set forth in the SAIF Base Assessment Schedule are not the rates that are actually effective as of that date.

Two trade groups and one savings bank express support for the rates in the SAIF Base Assessment Schedule. No commenter opposes the rates.

3. The SAIF Adjusted Assessment Schedule

a. The General 4-Basis-Point Adjustment

The Board is making a general adjustment to the rates in the SAIF Base Assessment Schedule that lowers each such rate by 4 basis points. The adjusted rates range from 0 to 27 basis points, which yield an average rate of 0.6 basis points (annualized) and an estimated reserve ratio of 1.27 percent at midyear 1997, under moderate conditions.[6] The adjusted rates are effective as of October 1, 1996, for all institutions other than SAIF-member savings associations. On January 1, 1997, the adjusted rates are effective for all institutions.

In setting these rates, the FDIC has considered the SAIF's expected operating expenses and revenues, its case resolution expenditures and income, and the effect of the new rates on the earnings and capital of SAIF members. See id. 1817(b)(2)(A)(ii).

Expected operating expenses and revenues of the SAIF. Table 2 shows the projected SAIF reserve ratio on June 30, 1997, under pessimistic, optimistic and moderate conditions. The pessimistic conditions combine relatively high loss provisions, high deposit growth and low investment earnings; the optimistic conditions combine zero loss provisions, negative deposit growth and high investment earnings.

Table 2 indicates that, under pessimistic conditions, an assessment rate range of 4 to 31 basis points falls just short of maintaining the DRR of 1.25 percent. But under moderate conditions, which can be viewed as more likely than either the pessimistic or optimistic scenarios, rates of 0 to 27 basis points result in a SAIF reserve ratio of 1.27 percent:

TABLE 2.—SAIF ASSESSMENT RATES AND RESERVE RATIO UNDER VARYING CONDITIONS

Conditions	Pessimistic	Optimistic	Moderate
Deposit growth rate (%)	4.0	−2.0	2.0
Loss provisions ($M)	270	0	50
Investment rate (%)	5.2	6.2	5.7

Assessment rates (bp)		Estimated reserve ratio (%) June 30, 1997		
Range	Average	Pessimistic	Optimistic	Moderate
4 to 31	4.7	1.24	1.36	1.30
2 to 29	2.7	1.23	1.34	1.28
0 to 27	0.7	1.21	1.33	1.27

Following is a discussion of each of the main variables affecting the estimated reserve ratio:

Yield on investments: After having been capitalized on October 1, 1996, the SAIF's balance stood at approximately $8.6 billion. The SAIF is very liquid, not having had any significant receivership activity. Although FDIC policy limits the proportion of investments with maturities beyond five years, a fully capitalized SAIF will have significant investment earnings. Short-term interest rates have been generally stable in 1996, and the FDIC's recent investment yield of 5.7 percent may be a reasonable approximation for the expected yield through the first half of 1997. The investment rates utilized in Table 2 range from 5.2 percent to 6.2 percent, or 50 basis points on either side of the recent experience. Estimated annual operating expenses are assumed to be $40 million, the same as in 1995.[7]

[4] See James R. Barth, John J. Feid, Gabriel Riedel and M. Hampton Tunis, Alternative Federal Deposit Insurance Schemes, Office of Policy and Economic Research, Federal Home Loan Bank Board (January 1989), at 12–20.

[5] The final rule redesignates Rate Schedule 2 as the BIF Base Assessment Schedule.

[6] While the appropriate long-term average assessment rates are 4 to 5 basis points (as discussed above), the analysis summarized in Table 2 indicates that, under current conditions, these rates would likely result in a reserve ratio well in excess of 1.25 percent. With no significant receivership activity and a very liquid fund, investment earnings presently are more than adequate to maintain the DRR.

[7] The FDIC presently is addressing the allocation of operating expenses between the BIF and the SAIF. A likely outcome is that the proportion of expenses borne by the SAIF will increase.

Growth of SAIF-insured deposits: For the 12 months ending December 31, 1995, SAIF-insured deposits increased 2.5 percent, reversing a long-term decline that began with the inception of the SAIF in 1989. But insured deposit growth slowed in the first six months of 1996 to an annual rate of 0.3 percent. The FDIC regards an annual growth rate of 2.5 percent as near the high end of the possible range of deposit growth for the near future. Accordingly, the FDIC's analysis uses a range of insured deposit growth from −2 percent to 4 percent (annualized).

Provisions for loss: The FDIC has already established a reserve for losses within the SAIF, and has accordingly reduced SAIF's reported net worth by the amount of the reserve.[8] This reserve represents the estimated loss for institutions that, absent some favorable event, are likely to fail within 18 months. That projection is subject to considerable uncertainty.

The optimistic scenario assumes the existing reserve is adequate. Table 2 shows an additional loss provision of zero under this scenario.

The pessimistic scenario has an additional loss provision of $270 million. This scenario represents the long-range failure rate for SAIF-insured institutions, which is estimated to be 22 basis points per year of total assets (or slightly more than $2 billion in failed assets per year). The pessimistic scenario is not a worst-case scenario. But given the currently favorable economic conditions and the relative health of the thrift industry, deterioration in the industry would have to be sudden and sharp for the SAIF to require additional loss reserves at the long-term rate.

The moderate scenario reflects the fact that the FDIC has identified a few SAIF members as possible failures by year-end 1997 but has not yet established loss reserves for them. If loss reserves were established for these thrifts in 1996, the cost to the SAIF would be about $50 million.

The SAIF's case resolution expenditures and income. As noted above, the SAIF has no significant receivership activity. Accordingly, case resolution expenditures and income are negligible.

SAIF members' earnings and capital. The final rule reduces assessment rates for all institutions that pay assessments to the SAIF, and therefore has a beneficial impact on all such institutions' earnings and capital.

Thrifts had record earnings and a return on assets above one percent in each of the first two quarters of 1996. Nearly 98 percent of all SAIF members are well capitalized. The assets of ''problem'' SAIF members fell to $7 billion as of June 30, down from over $200 billion at the end of 1991. Only one SAIF member has failed in 1996.

The commercial banking industry, which owns one-fourth of the SAIF assessment base, is even stronger. Based on net income for the first half of 1996, the banking industry is expected to have record annual earnings for the fifth consecutive year.

Three commenters—2 trade groups and a savings bank—express support for the 4-basis-point adjustment to the rates in the SAIF Base Assessment Schedule. No commenter opposes the adjusted rates.

b. The Interim Schedule for SAIF-Member Savings Associations

The FDIC is prescribing a special interim rate-schedule for SAIF-member savings associations for the final quarter of 1996. The interim schedule generally retains the relationships among the assessment-risk categories in the prior SAIF assessment schedule, but reduces each rate in the schedule by 5 basis points. There is one exception: the rate for institutions in the highest-risk category is only reduced by 4 basis points, in order to comply with section 7(b)(2)(E) of the FDI Act. These interim rates do not generate revenue for the SAIF that is in excess of the amount needed to maintain the SAIF's reserve ratio at the DRR. Accordingly, the interim rates do not violate the prohibition stated in section 7(b)(2)(A)(iii) of the FDI Act. Nor are the interim rates set so high as to impose an unreasonable burden on the SAIF-member savings associations.

The special interim rate-schedule is needed because SAIF-member savings associations are subject to a special requirement: they (and only they) must pay FICO assessments for the final quarter of 1996. See ''Treatment of Assessments Paid by 'Oakar' Banks and 'Sasser' Banks on SAIF-Insured Deposits, General Counsel's Opinion No. 7'', 60 FR 7059 (Feb. 6, 1995).[9] This special requirement prevents the FDIC from establishing a single rate-schedule for all SAIF-assessable institutions. If the SAIF-member savings associations were to pay at the general rates (as adjusted), the FICO draw would absorb all the amounts assessed on them, and the SAIF would not be compensated for the risks they pose. On the other hand, if all institutions were to pay assessments at the special interim rates, the SAIF would receive revenues far in excess of the amounts needed to preserve the SAIF's reserve ratio at the DRR.

Eleven commenters—five savings banks, two holding companies, and all four trade groups—expressly consider the interim schedule. One trade group endorses it. The other 10 commenters oppose it.

Five savings banks and two trade groups object to the interim schedule's effects. Four savings banks and both trade groups contend that the interim schedule is improper because the institutions that are subject to it must pay different (and higher) rates than other comparable institutions must pay. Two savings banks assert that, having paid a special assessment to capitalize the SAIF as of October 1, 1996, they should not have to sustain the burden of paying a FICO assessment for the fourth quarter of 1996. While the FDIC recognizes that the special interim rate-schedule has a disparate impact, the FDIC does not agree that the interim rate-schedule is therefore discriminatory or otherwise improper. The disparate impact merely reflects the different statutory obligations that these institutions have with respect to the FICO.

In essence, the FDIC's reduced rate-schedules—both for SAIF-member savings associations and for other institutions—serve to return the amounts that institutions have paid to the SAIF for the fourth quarter of 1996. In the case of SAIF-member savings associations, however, those amounts have been reduced by the FICO draw. The FICO draw is not subject to refund: accordingly, SAIF-member savings associations experience less of a reduction in rates than do other institutions.

Seven commenters—three trade organizations, two holding companies and two savings banks—expressly challenge the FDIC's authority to adopt the special interim rate-schedule. They contend that, when an insurance fund's reserve ratio is at the DRR, the FDIC cannot impose assessments with respect

[8] The SAIF loss reserve was $114 million on June 30, 1996.

[9] A prior version of the Funds Act, which was contained in the ''Balanced Budget Act of 1995'' (H.R. 2491) but vetoed by the President on December 6, 1995, would have required *pro rata* sharing of the FICO payments by savings associations and banks essentially immediately, as that provision would have been effective January 1, 1996. Later on, however, Congress altered the effective date for the FICO sharing provision to apply to semiannual periods beginning after December 31, 1996. By implication, banks do not share in the FICO assessment payments prior to that date.

to the fund. They recognize, as they must, that any sums assessed by the FICO against SAIF-member savings associations will serve to reduce the amounts that the SAIF is authorized to assess against those institutions during the final quarter of 1996. But they assert that SAIF is not authorized to impose any assessments for that quarter, and that accordingly there are no revenues to be directed to the FICO.

The FDIC does not agree. The FDIC considers that section 7(b)(2)(A)(ii)(IV) of the FDI Act, 12 U.S.C. 1817(b)(2)(A)(ii)(IV), provides ample authority for the special interim rate-schedule. Section 7(b)(2)(A)(ii)(IV) says that, when setting assessments for the purpose of maintaining a fund's reserve ratio at the DRR, the Board may—indeed, must—consider ''any other factors'' that it may deem appropriate. The FICO draw is just such a factor. SAIF-member savings associations must pay assessments at rates that are high enough to cover the full amount of the FICO draw: otherwise the rates would not generate any revenues for the SAIF at all. Moreover, every rate—even the lowest rate—must be high enough to cover each SAIF-member savings association's pro-rata share of the FICO draw. Otherwise institutions in less-favorable risk classifications would bear a disproportionately large share of the FICO draw. One consequence would be to deform the structure of the assessment-rate schedule, because the spread between the most-favorable rate and the other rates would be increased. Another consequence would be to impose an extra measure of risk on the SAIF, because the weaker institutions would have to sustain the burden of paying higher rates. The FDIC considers that these consequences would adversely affect its risk-based assessment program. More basically, the FDIC considers that section 7(b)(2)(A)(ii)(IV) gives the FDIC the necessary authority to consider and deal with these effects in constructing the SAIF rate-schedule.

The FDIC further considers that the legal interpretation espoused by the opponents contravenes the clear intent of Congress. The Federal Home Loan Bank Act makes it clear that the FDIC's assessment procedures govern the FICO's assessments. *Id.* 1441(f)(2). Both the Federal Home Loan Bank Act and the FDI Act also make it clear that the FICO is to receive (as a general matter) the full amount it needs from the revenues generated by means of those procedures, while the SAIF is to receive the residual amount of the revenues after the FICO draw has been subtracted from them. See *id.* and 1817(b)(2)(D). The clear expectation is that the FDIC will assess—and has full authority to assess—amounts that are sufficient to cover the FICO draw.

By contrast, the interpretation offered by the opponents leads to a result that is, in the FDIC's view, untenable: namely, that Congress intended to fund the FICO only intermittently. The FDI Act has, since 1989, instructed the FDIC to set semiannual assessments ''to maintain the reserve ratio of a fund at the designated reserve ratio''. Under the opponents' view, that language prevents the FDIC from setting rates sufficient to cover the FICO draw—and effectively cuts off the FICO's power to assess SAIF-member savings associations—whenever the SAIF is capitalized at the DRR. At the same time, however, the SAIF's reserve ratio can be expected to fluctuate: indeed, Congress has expressly provided for that possibility. The opponents' view thus implies a stop-and-go funding plan for the FICO, in which the FICO's access to SAIF assessments depends on the current status of the SAIF's capitalization. The FDIC declines to adopt this view.

More generally, the FDIC considers that the Funds Act expresses Congress' intention to revise the existing relationship between the FICO and the SAIF, but not until the start of 1997. See Funds Act section 2703(a). The FDIC considers that Congress has intended to preserve the existing relationship through the end of 1996.

As a final note, the opponents say their view is not unreasonable because, if the FICO has no access to assessments paid by SAIF-member savings associations (or to any other source of funding) during the final quarter of 1996, the exit fees now held in escrow by the Treasury Department are available to pay the interest on the FICO's bonds. The FDIC does not agree that the escrowed funds are available for this purpose. These funds are to be paid to the FICO only if the Secretary of the Treasury determines that the FICO has exhausted all other sources of funding for its interest payments, and orders that the fees be so paid. *Id.* 1815(d)(2)(E)(i)(II); see 12 CFR 312.5(d) and 312.8(f). The Secretary has not made such a determination or issued such an order.

Moreover, it is apparent that the FICO has no current need for these funds. The FICO has collected its assessments for the second semiannual period of 1996, and is entitled to retain them. The SAIF-rate reductions merely serve the purpose of returning to each institution the amount that the FDIC has collected from that institution for the SAIF in excess of the amount needed to maintain the SAIF at the DRR during the final quarter of 1996, while preserving appropriate risk-based rates for all such institutions. Seen from this standpoint, the SAIF-rate reductions have no effect on the FICO assessments or on the FICO's financial condition.

Conversely, the escrowed exit fees may not be released to the SAIF until the FDIC and the Secretary of the Treasury determine that it is not necessary to reserve the funds for the payment of interest on the FICO bonds. See 12 CFR 312.5(e) and 312.8(g). No such determination has been made. On the contrary, the FDIC considers that the exit-fee reserve serves to protect against the possibility of an interim short-fall during the period in which the FICO's assessment procedures are converted from those currently in effect to those prescribed for 1997 and thereafter by the Funds Act. Accordingly, the funds in the exit-fee reserve are required for other purposes: they cannot replace the FICO assessments due from SAIF-member savings associations for the final quarter of 1996.

D. The BIF Assessment Schedules

The final rule publishes the rates that currently apply to BIF members without change, except insofar as changes have been made by the Funds Act. The final rule does not make any change of substance to the FDIC's assessment regulation with respect to BIF rates.

1. The BIF Base Assessment Schedule

The FDIC's assessment regulation has presented the base rates for the BIF-assessable institutions in Rate Schedule 2. The final rule retains these base rates, and redesignates them as the BIF Base Assessment Schedule. The BIF Base Assessment Schedule is as follows:

BIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

2. The BIF Adjusted Assessment Schedule

In addition, the final rule sets forth the effective BIF rates for the second semiannual period of 1996 and the first semiannual period of 1997. These rates have been prescribed by the Board in resolutions dated May 14 and November 26, 1996, which were issued pursuant to the procedures in effect prior to the adoption of the final rule. See 61 FR 26078 (May 24, 1996) and *id.* 64609

(Dec. 6, 1996). The final rule presents the adjusted rates in the BIF Adjusted Assessment Schedule, as follows:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

These adjusted rates will terminate at the end of June, 1997. The final rule indicates that, upon termination of the adjusted rates, the rates in the BIF Base Assessment Schedule will apply to BIF members and other BIF-assessable institutions. The Board may adjust the rates in the BIF Base Assessment Schedule pursuant to the procedures herein adopted, however (see I.E. below).

The Funds Act has eliminated the minimum assessment required by statute. Funds Act section 2708(b). The FDIC's regulations have not stated that requirement, and the FDIC is not now retaining it. Accordingly, neither the BIF Base Assessment Schedule nor the adjusted rate-schedule refers to minimum assessments.

E. Procedure for Adjusting the Base Assessment Schedules

1. In General

Section 327.9(b) sets forth a procedure under which the Board may increase or decrease the BIF Base Assessment Schedule without engaging in separate notice-and-comment rulemaking proceedings for each adjustment. 12 CFR 327.9(b).

The allowable adjustments are subject to strict limits. No adjustment may, when aggregated with prior adjustments, cause the adjusted BIF rates to deviate ''over time'' by more than 5 basis points from those set forth in Rate Schedule 2, which is the permanent or base rate-schedule for the BIF. An adjustment may not result in a negative assessment rate. No one adjustment may constitute an increase or decrease of more than 5 basis points. See *id.* 327.9(b)(1).

The Board is modifying and clarifying this process somewhat, and extending it to SAIF rates as well. The final rule does not change the limits on allowable adjustments, but clarifies the following two points.

First, the Board may not, without notice-and-comment rulemaking, establish an adjusted assessment schedule for a fund in which the adjusted rates differ by more than 5 basis points at any time from the base assessment schedule for that fund. For example, if the rate for 1A SAIF members in the SAIF Base Assessment Schedule were 4 basis points, the adjusted rate for 1A SAIF members may never rise above 9 basis points without a new notice-and-comment rulemaking proceeding.

Second, the Board may not reduce the rates in either base assessment schedule any more than those rates have already been lowered, because in that event the lowest rate in the schedule would be less than zero. The final rule makes it clear that zero serves as a lower bound on the most favorable rate, and prevents the other rates from being adjusted by the full 5 basis points.

2. Procedure

The final rule alters the formal mechanism by which the Board makes adjustments to the base assessment schedules.

The prior regulation called for the Board to adopt the semiannual assessment schedule and any adjustment thereto by means of a resolution, a procedure that does not require public notice or comment. 12 CFR 327.9(b)(3). Under the final rule, the Board adopts the new assessment schedule pursuant to a rulemaking proceeding, but still without public notice and comment.

Consistent with the current rule, the final rule provides that an adjustment to the base assessment schedule may not be applied only to selected risk classifications, but rather must be applied to each cell in the schedule uniformly. The differences between the respective cells in the rate-schedule therefore remain constant. Similarly, adjustments neither expand nor contract the spread between the lowest- and highest-risk classifications.

The adjustment for any particular semiannual period is determined by: (1) The amount of assessment income necessary to maintain the SAIF reserve ratio at 1.25 percent (taking into account operating expenses and expected losses and the statutory mandate for the risk-based assessment system); and (2) the particular risk-based assessment schedule that would generate that amount considering the risk composition of the industry at the time. The Board expects to adjust the assessment schedule every six months by the amount (if any), up to and including the maximum adjustment of 5 basis points, necessary to maintain the reserve ratio at the DRR.

Such adjustments will be adopted in a regulation that reflects consideration of the following statutory factors: (1) Expected operating expenses; (2) projected losses; (3) the effect on SAIF members' earnings and capital; and (4) any other factors the Board determines to be relevant. The regulation will be adopted and announced at least 15 days prior to the date the invoice is provided for the first quarter of the semiannual period for which the adjusted rate-schedule is to take effect.

If the amount of the adjustment under consideration by the FDIC would result in an adjusted schedule exceeding the 5 basis-point maximum, then the Board would initiate a notice-and-comment rulemaking proceeding.

As discussed in more detail in the preamble to the final rule in which the FDIC established the adjustment procedure for BIF rates, the FDIC fully recognizes and understands the concern for the possibility of assessment rate increases without the benefit of full notice-and-comment rulemaking. See 60 FR 42680, 42739–42740 (Aug. 16, 1995). Nevertheless, for the reasons given below, the FDIC considers that notice and public participation with respect to an adjustment would generally be ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of 5 U.S.C. 553(b). Furthermore, the FDIC considers that for the same reasons it has ''good cause'' within the meaning of *id.* 553(d) to make any such rule effective immediately, and not after a 30-day delay.

Section 7(b)(2)(A)(i) of the FDI Act declares that the FDIC ''shall set rates when necessary, and only to the extent necessary'' to maintain each fund's reserve ratio at the DRR, or to raise a fund's reserve ratio to that level (although the Board may set higher rates for institutions that exhibit weakness or are not well capitalized, see *id.* 1817(b)(2)(A)(v)). Section 7(b)(2)(A)(iii) of the FDI Act restates the substance of this mandate in a different way: the FDIC ''shall not set assessment rates in excess of the amount needed'' for those purposes. These twin commands require the FDIC to monitor the size of each fund, the amount of deposits that each fund insures, and the relationship between them. Section 7(b)(2)(A) requires the FDIC to set ''semiannual assessments''. Accordingly, the FDIC evaluates the assessment schedules every six months.

Notice-and-comment rulemaking procedures are ''unnecessary'' as a general rule because institutions are already on notice with respect to the benchmark rates that are set forth in the base assessment schedules, with respect to the need for making semiannual adjustments to the rates, and with respect to the maximum amount of any such adjustments. Moreover, the adjustments are limited: The FDIC may not change a current assessment schedule by more than 5 basis points, or deviate from the base assessment schedule by more than 5 basis points.

Notice-and-comment rulemaking procedures also are generally ''unnecessary'' because they would not generate additional information that is relevant to the rate-setting process. The institutions already provide part of the needed information in their quarterly reports of condition. The remainder of the needed information is data that the FDIC generates internally: *e.g.,* The current balance and expected operating expenses of each fund, and each fund's case resolution expenditures and income.

Finally, notice-and-comment rulemaking procedures are also generally ''impracticable'' and ''contrary to the public interest'' in this context because they are not compatible with the need to make frequent small adjustments to the assessment rates in order to maintain the funds' reserve ratios at the DRR. The FDIC must use data that is as current as possible to generate an assessment schedule that complies with the statutory standards. Notice-and-comment rulemaking procedures entail considerable delay. Such delay could force the FDIC to use out-of-date information to compute the amount of revenue needed and to produce an appropriate assessment schedule. Using out-of-date information could cause the FDIC to set rates for a fund that were higher or lower than necessary to achieve the fund's target DRR.

For these reasons, the FDIC has determined that any adjustment to the base assessment schedule may be adopted as a final rule without notice and public procedure thereon. Any such final rule will be adopted at least 15 days before the invoice date for the first payment of a semiannual period (and 45 days before the collection date for that payment). The adjusted assessment schedule will be published in the Federal Register as an appendix to subpart A of part 327.

Two trade groups endorse the adjustment procedure; one of them specifically supports the 5-basis-point limit on adjustments. No commenters opposed the procedure.

F. Institutions That ''Exhibit Weaknesses'' or Are ''Not Well Capitalized''

Although the FDIC may not generally collect assessments in excess of the amounts necessary to maintain an insurance fund's reserve ratio at the DRR (or to raise the fund's reserve ratio to the DRR), the FDIC may continue to collect assessments from institutions ''that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or that are not well capitalized as defined in [FDI Act] section 38''. *Id.* 1817(b)(2)(A)(v). In setting adjusted BIF rates for the first semiannual period of 1997, the FDIC has interpreted this clause in a manner that is consistent with the existing framework of the risk-based assessment program. 61 FR 64609 (Dec. 6, 1996). The FDIC has now determined to formalize this interpretation in part 327 of its rules and regulations. No commenters addressed this aspect of the final rule.

''Financial, operational, or compliance weaknesses''. For assessment purposes, the FDIC classifies each institution into one of three supervisory subgroups:

Subgroup A—Financially sound institutions with only a few minor weaknesses. 12 CFR 327.4(a)(2)(i).

Subgroup B—Institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased loss to the BIF or SAIF. *Id.* 327.4(a)(2)(ii).

Subgroup C—Institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken. *Id.* 327.4(a)(2)(iii).

When Congress adopted the Funds Act, Congress was aware that the FDIC already had these standards and definitions in place, and that the FDIC already used them for the purpose of imposing risk-based assessments. Moreover, the standards and definitions focus on institutions' financial and operational activities, and with their compliance with laws and regulations. The FDIC accordingly believes that it is reasonable and appropriate—and consistent with the intent of Congress—to apply these standards and definitions in determining whether an institution ''exhibit[s] * * * weaknesses ranging from moderately severe to unsatisfactory'' for assessment purposes.

The FDIC considers that if an institution's weaknesses are so severe that ''if not corrected, [they] could result in significant deterioration of the institution and increased loss to the BIF or SAIF'', the weaknesses may properly be characterized as ''moderately severe''. The FDIC further considers that if the weaknesses ''pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken'', they may properly be regarded as ''unsatisfactory''. The FDIC is therefore interpreting section 7(b)(2)(A)(v) to include any institution that is classified in supervisory subgroup B or C.

''Not well capitalized''. Section 7(b)(2)(A)(v) also authorizes the FDIC to set higher rates for institutions ''that are not well capitalized as defined in [FDI Act] section 38''. Section 38 of the FDI Act, 12 U.S.C. 1831o, defines a ''well capitalized'' institution as one that ''significantly exceeds the required minimum level for each relevant capital measure''. 12 U.S.C. 1831o(b)(1)(A).

Section 38 requires each agency to specify the relevant capital measure at which insured depository institution is well capitalized. *Id.* 1831o(c)(2). The FDIC has done so in subpart B of part 325 of its regulations, 12 CFR part 325 (''Capital Maintenance''). See *id.* 325.103(b)(1). But subpart B—and therefore its definition of ''well capitalized''—only applies to state nonmember banks and to insured state branches of foreign banks for which the FDIC is the appropriate federal banking agency. *Id.* 325.101(c).

The FDIC also defines the term ''well capitalized'' in part 327. See *id.* 327.4(a)(1)(i). Here the FDIC does so for the broader purpose of implementing a risk-based assessment system: accordingly, part 327's definition applies to all insured institutions.

While the two definitions employ the same numerical ratios, part 325's definition also includes an extra criterion: an institution may not be ''subject to any written agreement, order, capital directive, or prompt corrective action directive * * * to meet and maintain a specific capital level for any capital measure''. *Id.* 325.103(b)(1)(v). Within the context of the assessment regulation, this kind of consideration helps to determine an institution's supervisory subgroup, but not its capital category. Accordingly, the FDIC considers that it is not appropriate to apply that criterion for the purpose of determining whether an institution is ''well capitalized'' for assessment purposes. The FDIC therefore is applying part 327's current definition of ''well capitalized'' for the purpose of interpreting section 7(b)(2)(A)(v) of the FDI Act.

G. Transitional Matters

1. Refunds

The FDIC has already collected the second quarterly payments for the current semiannual period (July-December 1996). These payments were computed at the rates in effect prior to passage of the Funds Act and prior to adoption of the final rule.

Both the SAIF Adjusted Assessment Schedule and the interim rate-schedule for SAIF-member savings associations are effective as of October 1, 1996. In addition, Congress has repealed the minimum assessment rate for all institutions. The final rule therefore provides for a refund or credit of any excess amounts collected for the BIF or the SAIF for the final quarter of 1996. Interest will accrue on the excess amounts as of October 1, 1996.

The excess amounts will be refunded or credited in one or more installments. The refunds and credits will be made according to the procedures applicable to regular quarterly payments.

2. Capital Ratios

The FDIC recognizes that payment of the special assessment could negatively impact the capital ratings of some institutions, affecting their risk classification under the risk-based assessment system. The risk classification for the first semiannual assessment period of 1997 is based on an institution's capital as of June 30, 1996, and is unaffected by payment of the special assessment. But the risk classification for the second semiannual assessment period of 1997 is based on an institution's capital as of December 30, 1996, and therefore reflects payment of the special assessment.

The FDIC has determined that, for purposes of assigning an institution's risk classification under the risk-based assessment system for the second semiannual period of calendar year 1997 only, the FDIC will calculate the institution's capital as if the special assessment had not been paid, while taking into account other capital fluctuations. The chief basis for this determination is that the special assessment is a one-time cost that is extraordinary in character: It neither derives from nor necessarily implies the presence of any adverse conditions or any procedural or managerial weaknesses in the institution. The FDIC has therefore concluded that, taken in isolation, the effect of the special assessment on an institution does not automatically represent an increase in the insurance risk that the institution poses to the SAIF as measured by the institution's capital.

The FDIC recognizes, however, that for some institutions the cost of the special assessment could have a more lasting effect. Accordingly, the FDIC is only calculating capital in this manner one time. All subsequent calculations will reflect all costs incurred by an institution.

The FDIC wishes to emphasize the point that it is excluding the special assessment from the capital calculation only for assessment purposes, and not for supervisory or regulatory purposes. For example, the exclusion does not come into play for the purpose of determining the adequacy of an institution's capital under the prompt corrective action statute, section 38 of the FDI Act, 12 U.S.C. 1831o. Part 325 of the FDIC's regulations, 12 CFR part 325 (Capital Maintenance), implements section 38 and sets capital ratios equivalent to those found in part 327. The ratios computed pursuant to part 325 will not reflect the exclusion allowed under part 327. If the ratios indicate that supervisory action may be warranted in a particular case, the FDIC will inquire further into the condition of the institution, and determine the supervisory action that is appropriate. Similarly, the exclusion does not come into play when determining whether an institution is ''well capitalized'' within the meaning of section 29 of the FDI Act, 12 U.S.C. 1831f, which sets minimum capital requirements for institutions that accept brokered deposits.

Two trade groups express support for the one-time relief in computing capital ratios. One of the two suggests that the FDIC should provide relief of this kind during the first semiannual period of 1998 on a case-by-case basis. The FDIC believes that such an extension is unwarranted, and would be imprudent. If an institution's capital ratios continued to be impaired for so long an interval, there would be no basis for allowing such relief, as the institution's financial condition would present an increased and on-going risk to the SAIF.

3. Deadlines

a. Invoices. The FDIC must generally issue invoices not less than 30 days prior to the collection date. 12 CFR 327.3(c)(1). A shorter interval is warranted in this case in order to afford time for notice and comment on the final rule, however. The final rule allows the FDIC to delay issuing the invoices for the first quarterly payment for the first semiannual period of 1997, which is the first payment under the new schedule.

b. Announcement of the Adjusted Rates. The assessment regulation has provided that, when the Board adopts an adjustment to the base rates by resolution, the Board must announce the adjustment and the new rate-schedule at least 15 days before the invoice date for the first payment of the semiannual period to which the rates will apply. For the reasons given above with respect to the invoice date, the Board has determined that it is appropriate to relax this requirement with respect to the rates for the first semiannual period of 1997.

H. Effective date

The final rule is effective immediately upon adoption. The FDIC considers that an immediate effective date is both necessary and appropriate because the FDIC must issue invoices reflecting the new lower rates, in order that institutions may know the amounts they are to pay for the first quarter of 1997. By making the rule effective immediately, the FDIC can issue the invoices as promptly as possible.

I. Technical Adjustments

The final rule updates, clarifies, and corrects various references in part 327. For example, § 327.4(a) refers to § 327.9(a) and to § 327.9(c); the final rule replaces the references with a single reference to § 327.9. Section 327.4(c) speaks of institutions for which either the FDIC or the Resolution Trust Corporation (RTC) has been appointed conservator; the final rule eliminates the reference to the RTC, and speaks instead of institutions for which the FDIC either has been appointed or serves as conservator. The final rule removes the definitions for ''adjustment factor'' and ''assessment schedule'', which are found in § 327.8(i), on the ground they are not needed. The final rule deletes certain obsolete provisions relating to the BIF after the BIF achieved its DRR.

II. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget (OMB) for review.

III. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, does not apply to the rule. The RFA's definition of the term ''rule'' excludes ''a rule of particular applicability relating to rates'. *Id.* 601(2). The FDIC considers that the rule is governed by this exclusion.

In addition, the legislative history of the RFA indicates that its requirements are inappropriate to this proceeding. The RFA focuses on the ''impact'' that a rule will have on small entities. The legislative history shows that the ''impact'' at issue is a differential impact—that is, an impact that places a disproportionate burden on small businesses:

Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule.

126 Cong. Rec. 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The final rule does not impose a uniform cost or requirement on all institutions regardless of size. Rather, it imposes an assessment that is directly proportional to each institution's size. Nor does the rule cause an affected institution to incur any ancillary costs of compliance (such as the need to develop new recordkeeping or reporting systems, to seek out the expertise of specialized accountants, lawyers, or managers) that might cause disproportionate harm to small entities. As a result, the purposes and objectives of the RFA are not affected, and an initial regulatory flexibility analysis is not required.

IV. Riegle Community Development and Regulatory Improvement Act

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that, as a general rule, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. See 12 U.S.C. 4802(b). This restriction is inapplicable because the final rule would not impose such additional or new requirements. Nevertheless, the final rule takes effect on January 1, 1997, in conformity with the Riegle Act.

V. Congressional Review

As a general matter, when an agency adopts a final rule, the agency must submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a general statement relating to the rule, and the rule's proposed effective date. 5 U.S.C. 801(a)(1). The term ''rule'' excludes ''any rule of particular applicability, including a rule that approves or prescribes for the future rates'', however. *Id.* 804(3). The final rule is governed by this exclusion, because the final rule sets assessment rates and relates to the computations associated with assessment rates. Accordingly, the reporting requirement of *id.* 801(a)(1), and the more general requirements of *id.* sections 801–808, do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

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

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Deposit Insurance Funds Act of 1996, Pub. L. 104–208, 110 Stat. 3009 *et seq.*

2. Section 327.3 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) *First-quarterly payment*—(1) *Invoice.* Except in the case of invoices for the first quarterly payment for the first semiannual period of 1997, no later than 30 days prior to the payment date specified in paragraph (c)(2) of this section, the Corporation will provide to each insured depository institution an invoice showing the amount of the assessment payment due from the institution for the first quarter of the upcoming semiannual period, and the computation of that amount. * * *

* * * * *

3. Section 327.4 is amended by revising the first sentence of paragraph (a) introductory text, paragraph (a)(1)(i)(A), paragraph (a)(1)(ii)(A), and paragraph (c) to read as follows:

§ 327.4 Annual assessment rate.

(a) *Assessment risk classification.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.9, each insured depository institution will be assigned an ''assessment risk classification''. * * *

(1) * * *

(i) * * *

(A) Except as provided in paragraph (a)(1)(i)(B) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 or greater. New insured depository institutions coming into existence after the report date specified in paragraph (a)(1) of this section will be included in this group for the first semiannual period for which they are required to pay assessments. For the purpose of computing the ratios referred to in this paragraph (a)(1)(i)(A) for the second semiannual period of 1997, each such ratio shall be computed for an institution as if the institution had retained the funds that the institution disbursed in payment of the special assessment prescribed by § 329.41(a).

* * * * *

(ii) * * *

(A) Except as provided in paragraph (a)(1)(ii)(B) of this section, this group consists of institutions that do not satisfy the standards of ''well capitalized'' under this paragraph but which satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater. For the purpose of computing the ratios referred to in this paragraph (a)(1)(ii)(A) for the second semiannual period of 1997, each such ratio shall be computed for an institution as if the institution had retained the funds that the institution disbursed in payment of the special assessment prescribed by § 327.41(a).

* * * * *

(c) *Classification for certain types of institutions.* The annual assessment rate applicable to institutions that are bridge banks under 12 U.S.C. 1821(n) and to institutions for which the Corporation has been appointed or serves as conservator shall in all cases be the rate applicable to the classification designated as ''2A'' in the appropriate assessment schedule prescribed pursuant to § 327.9.

* * * * *

§ 327.8 [Amended]

4. Section 327.8 is amended by removing and reserving paragraph (i).

5. Section 327.9 is revised to read as follows:

§ 327.9 Assessment schedules.

(a) *Base assessment schedules*—(1) *In general.* Subject to § 327.4(c) and subpart B of this part, the base annual assessment rate for an insured depository institution shall be the rate prescribed in the appropriate base assessment schedule set forth in paragraph (a)(2) of this section applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that institution. Each base assessment schedule utilizes the group and subgroup designations specified in § 327.4(a). An institution shall pay assessments at the rate specified in the appropriate base assessment schedule except as provided in paragraph (b) of this section.

(2) *Assessment schedules*—(i) *Base rates for BIF members.* The following base assessment schedule applies with respect to assessments paid to the BIF by BIF members and by other institutions that are required to make payments to the BIF pursuant to subpart B of this part:

BIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

(ii) *Base rates for SAIF members.* The following base assessment schedule applies with respect to assessments paid to the SAIF by SAIF members and by other institutions that are required to make payments to the SAIF pursuant to subpart B of this part:

SAIF BASE ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	4	7	21
2	7	14	28
3	14	28	31

(b) *Adjusted assessment schedules*—(1) *In general.* Institutions shall pay semiannual assessments at the rates specified in this paragraph (b) whenever such rates have been prescribed by the Board.

(2) *Adjusted rates for BIF members.* (i) The Board has adjusted the BIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the second semiannual period of 1996 and for the first semiannual period of 1997 by resolution of the Board of Directors of the Corporation. Accordingly, the following adjusted assessment schedule applies to BIF members for those two semiannual periods:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

(ii) The rates set forth in paragraph (b)(2)(i) of this section shall terminate at the end of the first semiannual period of 1997.

(3) *SAIF members*—(i) *General reduction.* Except as provided in paragraph (b)(3)(ii) of this section, the Board has adjusted the SAIF Base Assessment Schedule as of October 1, 1996, by reducing the rates therein by 4 basis points. The adjusted rates are presented to the left in each risk classification category in the schedule shown in paragraph (b)(3)(iii) of this section.

(ii) *Interim assessment schedule for SAIF-member savings associations.* From October 1, 1996, through December 31, 1996, savings associations that are members of the SAIF shall pay assessments according to the schedule in effect for such institutions on September 30, 1996, except that each rate in the schedule other than the rate for institutions in assessment risk classification 3C shall be reduced by 5 basis points (0.05 percent), and the rate for institutions in assessment risk classification 3C shall be reduced by 4 basis points (0.04 percent). No rate prescribed under this paragraph (b)(3)(ii) shall be applied for the purpose of § 327.32(a)(2)(i). The rates specified by this paragraph (b)(3)(ii) are presented to the right in each risk classification category in the schedule shown in paragraph (b)(3)(iii) of this section.

(iii) *Adjusted rates for SAIF members.* The following schedule sets forth to the left in each risk classification category the adjusted rate schedule that applies to SAIF members generally on and after October 1, 1996, in accordance with paragraph (b)(3)(i) of this section, and also sets forth to the right in each risk classification category the rates that apply to savings associations that are members of the SAIF from October 1, 1996, through December 31, 1996, in accordance with paragraph (b)(3)(ii) of this section:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup					
	A		B		C	
1	0	18	3	21	17	24
2	3	21	10	24	24	25
3	10	24	24	25	27	27

(c) *Rate adjustments; procedures*—(1) *Semiannual adjustments.* The Board may increase or decrease the BIF Base Assessment Schedule set forth in paragraph (a)(2)(i) of this section or the SAIF Base Assessment Schedule set forth in paragraph (a)(2)(ii) of this section up to a maximum increase of 5 basis points or a fraction thereof or a maximum decrease of 5 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary to maintain the reserve ratio of an insurance fund at the designated reserve ratio for that fund. Any such adjustment shall apply uniformly to each rate in the base assessment schedule. In no case may such adjustments result in an assessment rate that is mathematically less than zero or in a rate schedule for an insurance fund that, at any time, is more than 5 basis points above or below the base assessment schedule for that fund, nor may any one such adjustment constitute an increase or decrease of more than 5 basis points. The adjustment for any semiannual period for a fund shall be determined by:

(i) The amount of assessment revenue necessary to maintain the reserve ratio at the designated reserve ratio; and

(ii) The assessment schedule that would generate the amount of revenue in paragraph (c)(1)(i) of this section considering the risk profile of the institutions required to pay assessments to the fund.

(2) *Amount of revenue.* In determining the amount of assessment revenue in paragraph (c)(1)(i) of this section, the Board shall take into consideration the following:

(i) Expected operating expenses of the insurance fund;

(ii) Case resolution expenditures and income of the insurance fund;

(iii) The effect of assessments on the earnings and capital of the institutions paying assessments to the insurance fund; and

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

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph (c) will be adopted by rulemaking. Nevertheless, because the Corporation is generally required by statute to set assessment rates as necessary (and only to the extent necessary) to maintain or attain the target designated reserve ratio, and because the Corporation must do so in the face of constantly changing conditions, and because the purpose of the adjustment procedure is to permit the Corporation to act expeditiously and frequently to maintain or attain the designated reserve ratio in an environment of constant change, but within set parameters not exceeding 5 basis points, without the delays associated with full notice-and-comment rulemaking, the Corporation has determined that it is ordinarily impracticable, unnecessary and not in the public interest to follow the procedure for notice and public comment in such a rulemaking, and that accordingly notice and public procedure thereon are not required as provided in

5 U.S.C. 553(b). For the same reasons, the Corporation has determined that the requirement of a 30-day delayed effective date is not required under 5 U.S.C. 553(d). Any adjustment adopted by the Board pursuant to a rulemaking specified in this paragraph (c) will be reflected in an adjusted assessment schedule set forth in paragraph (b)(2) or (b)(3) of this section, as appropriate.

(4) *Announcement.* Except with respect to assessments for the first semiannual period of 1997, the Board shall announce the semiannual assessment schedule and the amount and basis for any adjustment thereto not later than 15 days before the invoice date specified in § 327.3(c) for the first quarter of the semiannual period for which the adjustment shall be effective.

(d) *Refunds or credits of certain assessments.* If the amount paid by an institution for the regular semiannual assessment for the second semiannual period of 1996 exceeds, as a result of the reduction in the rate schedule for a portion of that semiannual period, the amount due from the institution for that semiannual period, the Corporation will refund or credit any such excess payment and will provide interest on the excess payment in accordance with the provisions of § 327.7. Notwithstanding § 327.7(a)(3)(ii), such interest will accrue beginning as of October 1, 1996.

6. A new § 327.10 is added to subpart A to read as follows:

§ 327.10 Interpretive rule: section 7(b)(2)(A)(v).

This interpretive rule explains certain phrases used in section 7(b)(2)(A)(v) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(A)(v).

(a) An institution classified in supervisory subgroup B or C pursuant to § 327.4(a)(2) exhibits ‘‘financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory’’ within the meaning of such section 7(b)(2)(A)(v).

(b) An institution classified in capital group 2 or 3 pursuant to § 327.4(a)(1) is ‘‘not well capitalized’’ within the meaning of such section 7(b)(2)(A)(v).

By order of the Board of Directors.

Dated at Washington, D.C., this 11th day of December 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–32113 Filed 12–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–22]

Amendment to Class D Airspace; St. Petersburg Albert-Whited Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D surface area airspace at the St. Petersburg, FL, Albert-Whited Airport. Due to the low density aircraft traffic environment at and the proximity of the Tampa International Airport to the Albert-Whitted Airport, the Class D airspace at the Albert-Whitted Airport above 1,500 feet AGL has been delegated to Tampa Approach Control. Therefore, the height of the Albert-Whitted Airport Class D airspace will be amended from 2,500 feet AGL to 1,500 feet AGL.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:.

History

On October 17, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D airspace at the St. Petersburg, FL, Albert-Whited Airport. (61 FR 54108). This action would provide adequate Class D airspace for IFR operations at the Albert-Whited Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regualtions (14 CFR part 71) modifies Class D airspace at St. Petersburg, FL, Albert-Whitted Airport by reducing the height from 2,500 feet AGL to 1,500 feet AGL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113. 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D St. Petersburg Albert-Whitted Airport, FL [Revised]

St. Petersburg, Albert-Whitted Airport, FL
Lat. 27°45′54″ N, Long. 82°37′38″ W)
MacDill AFB
Lat. 27°50′57″ N, Long. 82°31′17″ W)

That airspace extending upward from the surface to and including 1,500 feet MSL within a 4-mile radius of the Albert-Whitted Airport; excluding that portion northeast of a line connecting the points of intersection with a 4.5-mile radius circle centered on MacDill AFB; excluding that portion within the Tampa International Airport, FL, Class B airspace area. This Class D airspace area is effective during the days and times established in advance by a Notice to Airmen. The effective days and times will