

RESCINDED

Office of Thrift Supervision
Department of the Treasury

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Transmittal
TR-378

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Number TR-378

On May 18, 2006, the Federal Deposit Insurance Corporation (FDIC) issued the attached proposal to amend 12 CFR 327 to implement the divided requirements in the recently enacted Federal Deposit Insurance Reform Act of 2005 and the FDIC Reform Conforming Amendments Act of 2005 for an initial two-year period.

smaller banks or for OTS-supervised savings institutions of any size.

TABLE 6.—COMPARISON OF CURRENT FLOAT DEDUCTION TO CASH ITEMS (AS A PROXY FOR ACTUAL FLOAT) DEDUCTION FOR MEDIUM-SIZED, LARGE, AND VERY LARGE BANKS

Percentage Share of Industry Assessment Base**	Banks*		
	Medium \$300m–\$1b (percent)	Large \$1b–\$100b (percent)	Very Large >\$100b (percent)
With Current Standard Float Deduction	9.78	48.62	41.60
With Estimated Actual Float Deduction	9.97	48.90	41.13
Percent Change	1.91	0.58	–1.12

* Banks include commercial banks and FDIC-supervised savings banks.

** Percentages are of the aggregate base of medium, large, and very large commercial and savings banks only.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC this 9th day of May, 2006.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–4657 Filed 5–17–06; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–ADO7

Dividends

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend 12 CFR 327 to implement the dividend requirements in the recently enacted Federal Deposit Insurance Reform Act of 2005 (“Reform Act”) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (“Amendments Act”) for an initial two-year period. The proposed rule would sunset on December 31, 2008. If this proposal is adopted, during 2007, the FDIC would plan to undertake a second notice-and-comment rulemaking beginning with an Advanced Notice of Proposed Rulemaking to explore alternative methods for distributing future dividends after this initial two-year period.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: You may submit comments, identified by RIN number by any of the following methods:

- Agency Web Site: <http://www.fdic.gov/regulations/laws/federal.propose.html>. Follow instructions for submitting comments on the Agency Web site.

- E-mail: Comments@FDIC.gov.

Include the RIN number in 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/Courier: 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.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Munsell W. St.Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; Donna M. Saulnier, Senior Assessment Policy Specialist, Division of Finance, (703) 562–6167; and Kymberly K. Copa, Counsel, Legal Division, (202) 898–8832.

SUPPLEMENTARY INFORMATION:

I. Background

The Reform Act requires the FDIC to prescribe final regulations, within 270 days of enactment, to implement the dividend requirements, including regulations governing the method for the calculation, declaration, and payment of dividends and administrative appeals of individual dividend amounts. See sections 2107(a) and 2109(a)(3) of the Reform Act.¹

¹ The Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 9, which was signed into law by the President on February 8, 2006. Section 2109 of the Reform Act also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the one-time assessment credit, and assessments. An interim final rule on deposit insurance coverage was published on March 23, 2006. See 71 FR 14629. A notice of proposed rulemaking on the one-assessment credit and a

Section 7(e)(2) of the Federal Deposit Insurance Act (“FDI Act”), as amended by the Reform Act, requires that the FDIC, under most circumstances, declare dividends from the Deposit Insurance Fund (“DIF” or “fund”) when the reserve ratio at the end of a calendar year exceeds 1.35 percent, but is no greater than 1.5 percent. In that event, the FDIC must generally declare one-half of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions. However, the FDIC’s Board of Directors (“Board”) may suspend or limit dividends to be paid, if the Board determines in writing, after taking a number of statutory factors into account, that:

1. The DIF faces a significant risk of losses over the next year; and

2. It is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed to grow without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent or to exceed 1.5 percent.²

In addition, the statute requires that the FDIC, absent certain limited circumstances (discussed in footnote 2), declare a dividend from the DIF when the reserve ratio at the end of a calendar year exceeds 1.5 percent. In that event, the FDIC must declare the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5 percent

notice of proposed rulemaking on operational changes to the FDIC’s assessment regulations are both being proposed by the FDIC at the same time as this notice on dividends. Additional rulemakings on the designated reserve ratio and risk-based assessments are expected to be proposed in the near future.

² This provision would allow the FDIC’s Board to suspend or limit dividends in circumstances where the reserve ratio has exceeded 1.5 percent, if the Board made a determination to continue a suspension or limitation that it had imposed initially when the reserve ratio was between 1.35 and 1.5 percent.

as dividends to be paid to insured depository institutions.

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

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

1. The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date;

2. The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the DIF (and any predecessor fund);⁴

3. That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by the institution; and

4. Such other factors as the Board deems appropriate.

The statute does not define the term "predecessor" for purposes of the distribution of dividends to insured depository institutions.

Predecessor deposit insurance funds are the BIF and the SAIF, as those were the deposit insurance funds in existence after 1996 and prior to enactment of the Reform Act, and which merged into the DIF. That merger was effective on March 31, 2006.

The statute expressly requires the FDIC to prescribe by regulation the method for calculating, declaring, and paying dividends. As with the one-time assessment credit, the dividend regulation must include provisions allowing a bank or thrift a reasonable

opportunity to administratively challenge the amount of dividends it is awarded. Any review by the FDIC pursuant to these administrative procedures is to be considered final and not subject to judicial review.

Accordingly, the FDIC today is requesting comment on proposed rules that would implement the dividend requirement added by the Reform Act.

II. Description of the Proposal

As part of this rulemaking, the FDIC must establish the process for the Board's annual determination of whether a declaration of a dividend is required and consideration, to the extent appropriate, of whether circumstances indicate that a dividend should be limited or suspended. In addition, the FDIC must set forth the procedures for calculating the aggregate amount of any dividend, allocating that aggregate amount among insured depository institutions considering the factors provided, and paying such dividends to individual insured depository institutions. Furthermore, these regulations must allow an insured depository institution a reasonable opportunity to challenge the amount of its dividend.

A. Annual Determination of Whether Dividends Are Required/Declaration of Dividends

The statute requires the FDIC to determine whether at the end of each calendar year the reserve ratio of the DIF equals or exceeds 1.35 percent or exceeds 1.5 percent, thereby triggering a dividend requirement.

If the reserve ratio equals or exceeds 1.35 percent of estimated insured deposits, then the FDIC generally is required to declare the amount that is equal to one-half the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as dividends to be paid to insured depository institutions.⁵ As a practical matter, when the reserve ratio is at or only slightly above 1.35 percent, the aggregate amount of a potential dividend would be relatively small, and an individual institution's share would be very small. Nonetheless, the statute expressly provides that the Board may elect to suspend or limit such dividends only in certain circumstances, as discussed further below.

If the reserve ratio exceeds 1.5 percent of estimated insured deposits, then the FDIC generally is required to declare the amount in the DIF in excess of the

amount required to maintain the reserve ratio at 1.5 percent as dividends to be paid to insured depository institutions.

In order to limit or suspend the payment of dividends when the reserve ratio is at or above 1.35 percent, the Board must determine in writing that a significant risk of losses to DIF exists over the next year and that it is likely that such losses will be high enough to justify allowing the reserve ratio either—(1) to grow temporarily without requiring dividends; or (2) to exceed the upper end of the range for the reserve ratio (that is, 1.5 percent). The statute directs the Board to consider certain factors in making a determination to limit or suspend dividends:

(1) National and regional conditions and their effect on insured depository institutions;

(2) Potential problems affecting institutions or a specific group or type of institutions;

(3) The degree to which the contingent liability of the FDIC for anticipated failures adequately addresses funding levels in the DIF; and

(4) Any other factors the Board deems appropriate.

As noted above, if the Board elects to suspend or limit dividends pursuant to this authority, it must report to Congress within 270 days of that decision giving a detailed explanation, including a discussion of the statutory factors required to be considered.

A determination to limit or suspend dividends will have to be reviewed annually and must be justified to renew or make a new determination to limit or suspend dividends. Each year, if the decision is to continue to limit or suspend dividends, the Board must report to Congress. If the FDIC does not justify renewal or a new determination, it is required to provide cash dividends based on the amount of the reserve ratio.

The FDIC proposes that the Board announce its determination regarding dividends by May 15th of each year, which will allow for the Board's consideration of the dividend determination using complete data for the reserve ratio for the preceding December 31st. Depending on circumstances, such announcements could include: (1) A determination that no dividend is required because the reserve ratio is below 1.35 percent as of the end of the preceding calendar year; (2) a declaration of a dividend; or (3) a determination that a dividend would otherwise be required, but that circumstances warrant the limitation or suspension of that dividend, to be followed by the required report to Congress.

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

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

⁵ The FDIC, thus, would have to determine how much is necessary to maintain the reserve ratio at 1.35 percent, once the dividend requirement is triggered by the year-end reserve ratio.

Absent a Board determination that dividends should be limited or foregone, the aggregate amount of a dividend must be calculated as set forth in the statute. If the reserve ratio is between 1.35 percent and 1.5 percent, the FDIC must dividend half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent. If the reserve ratio exceeds 1.5 percent, the FDI Act requires the FDIC to dividend the excess of the amount required to maintain the reserve ratio at 1.5 percent.⁶

B. Allocation of Dividends

The FDIC proposes initially adopting a simple system for allocating future dividends. Under the proposal, this system would remain in place for two years with a definite sunset date (December 31, 2008). During the two-year lifespan of the initial dividend regulations, the FDIC would undertake another rulemaking, beginning with the issuance of an advance notice of proposed rulemaking, seeking industry comment on more comprehensive alternatives for allocating future dividends.

Specifically, the FDIC proposes that, initially, any dividends be awarded simply in proportion to an institution's 1996 assessment base ratio (including any predecessors' 1996 ratios), discussed more fully below. The FDI Act requires that the FDIC consider this ratio when allocating dividends.

The statute also requires that the FDIC consider the total amount of assessments paid after 1996 and the portion of those assessments that reflects higher levels of risk. No institution while in the lowest risk category (sometimes referred to as "the 1A category") has paid any deposit insurance assessments since the end of 1996. All assessments paid since then have reflected higher levels of risk—that is, since year-end 1996 when the BIF and SAIF were both fully capitalized with reserve ratios in excess of the statutory minimum of 1.25 percent, only those insured depository institutions

⁶ In most circumstances, if the reserve ratio exceeds 1.5 percent, the FDIC would declare a dividend of the excess, as determined by the FDIC, above 1.5 percent. At the same time, the FDIC would generally expect to declare a dividend of half of the amount necessary to maintain the reserve ratio at 1.35 percent, unless the Board makes a determination that suspension or limitation of that dividend is justified under section 7(e)(2)(E) of the FDI Act. That might happen, for example, if based on its consideration of the various statutory factors, the Board determines that it is appropriate to set the designated reserve ratio at 1.5 percent and set assessments to maintain the reserve ratio at that point. Sections 2104(a) and 2105(a) of the Reform Act (to be codified at 12 U.S.C. 1817(b)(2) and (3), respectively).

that exhibited financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or that were not well capitalized (as defined in section 38 of the FDI Act), were required to pay assessments.

Within the proposed initial two-year period, any assessments that institutions pay that do not reflect higher levels of risk are likely to be small in comparison to the assessments that institutions paid over time to capitalize the deposit insurance funds, for which the 1996 assessment base is intended to act as a proxy. As a result, the FDIC has concluded that payments since 1996 should not be included in the proposed temporary allocation method.⁷

Under the FDI Act, the Board also has discretion to consider such factors as it deems appropriate when allocating dividends. In the FDIC's view, other factors support an initially simple allocation based upon institutions' 1996 ratio. As a practical matter, it appears quite unlikely that the reserve ratio of the DIF will equal or exceed 1.35 percent in the near future given the combined fund's current reserve ratio of 1.25 percent⁸ as of December 31, 2005, the continuing trend of high insured deposit growth rates, and the \$4.7 billion one-time credit, which will constrain net assessment income. The FDIC has concluded that it is important to obtain and consider carefully public comment before instituting a more comprehensive allocation scheme that may not change for many years. Such a small likelihood of a dividend does not justify adoption of a more complex scheme within the relatively short timeframe required by the statute.

1. 1996 Assessment Base Ratio

As noted above, the FDI Act sets forth three specific factors for consideration in distributing dividends. The first factor is the ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date. This factor essentially parallels the basis for distribution of the one-time assessment credit.

The 1996 assessment base ratio for each insured depository institution will have been determined under the one-time assessment credit regulations and

⁷ It is in large part because post-2006 payments may become material over time that the FDIC proposes adoption of an interim rule, with the expectation that in 2007 the process of developing a more comprehensive long-term rule will begin.

⁸ When the funds from the SAIF exit fee escrow account are included, the combined reserve ratio for December 31, 2005, would be 1.26 percent.

will continue in effect for dividend purposes, subject to subsequent adjustments for transactions that result in the combination of insured depository institutions, thereby recognizing "predecessor" institutions as time goes by.

2. Predecessor Insured Depository Institutions

The FDI Act does not define the term "predecessor" for purposes of the distribution of dividends to individual insured depository institutions. In addition, unlike the term "successor" used in the context of the one-time assessment credit, the FDI Act does not expressly charge the FDIC with defining "predecessor." Nonetheless, in order to implement the dividend requirements, the FDIC must define "predecessor" for these purposes when it is used in connection with an insured depository institution and the distribution of dividends.

The FDIC proposes to adopt a definition of "predecessor," that is consistent with general principles of corporate law and the proposed definition of "successor" in the one-time assessment credit notice of proposed rulemaking. Therefore, a "predecessor" would be defined as an institution that combined with another institution through merger or consolidation and did not survive as an entity. As with the definition of "successor" in the one-time assessment credit notice of proposed rulemaking, the FDIC is seeking comment on whether the definition of "predecessor" should include an institution that combined with another institution through a de facto merger. In addition, if the FDIC were to adopt an alternative definition of "successor" for purposes of the one-time assessment credit rule, such as a definition that takes into account deposit or branch sales, the FDIC seeks comment on whether that alternative should similarly be applied to the definition of "predecessor" for purposes of dividends.

C. Notification and Payment of Dividends

The FDIC proposes that the FDIC advise each institution of its dividend amount as soon as practicable after the Board's declaration of a dividend on or before May 15th. Depending on circumstances, notification would take place through a special notice of dividend or, at the latest, with the institution's next assessment invoice. To allow time for requests for review of dividend amounts, the FDIC proposes that the individual dividend amounts be paid to insured depository institutions

at the time of the assessment collection for the second calendar quarter beginning after the declaration of the dividend and offset each institution's assessment amount. Under the proposed rule, the settlement would be handled through the Automated Clearing House consistent with existing procedures for underpayment or overpayment of assessments. Thus, in the event that the institution owes assessments in excess of the dividend amount, there will be a net debit (resulting in payment to the FDIC). Conversely, if the FDIC owes an additional dividend amount in excess of the assessment to the institution, there will be a net credit (resulting in payment from the FDIC).

If an institution requests review of the amount of its dividend (as discussed below), and that request is not finally resolved at the time of the collection of the assessment, the FDIC proposes to credit the institution with the dividend amount on the notice or invoice. To the extent that a dividend amount is in dispute between institutions, the FDIC proposes to freeze the availability of the amount in dispute. If the institution prevails on its request for review, then any additional amount of dividend will be remitted to the institution, with interest.

D. Requests for Review of Dividend Amounts

Like the regulations governing the one-time assessment credit, the FDI Act requires the FDIC to include in its dividend regulations provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of its dividend. The FDIC's determination under such procedures is to be final and not subject to judicial review.

It is proposed that the proposed rule largely parallel the procedures for requesting revision of computation of a quarterly assessment payment as shown on the quarterly invoice. As with the one-time credit notice of proposed rulemaking, the FDIC proposes shorter timeframes in the dividend appeals process so that requests for review may be resolved by the time payment of dividends is due, to the extent possible. An institution would have 30 days from the date of the notice or invoice advising each institution of its dividend amount to request review of the dividend determination. Under the proposed rule, an institution could request review if (1) it disagrees with the computation of the dividend as stated on the notice or invoice, or (2) it believes that the notice or invoice does not fully or accurately reflect

appropriate adjustments to the institution's 1996 assessment base ratio. For example, the institution may believe that its 1996 assessment base ratio has not been adjusted to reflect its acquisition of an eligible insured depository institution. The FDIC proposes that, if an institution does not submit a timely request for review, the institution be barred from subsequently requesting review of its dividend amount.

The proposed rule would require that a request for review be submitted to Division of Finance and include documentation sufficient to support the change sought by the institution. In addition, the requesting institution would have to identify all other institutions of which it knew or had reason to believe would be directly and materially affected by granting the request for review and provide those institutions with copies of the request for review, supporting documentation, and the FDIC's procedures for these requests for review.

Under the proposal, the FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified. These institutions would then have 30 days to submit a response and any supporting documentation to the FDIC's Division of Finance, copying the institution making the original request for review. The FDIC proposes that, if an institution is identified and notified through this process and does not submit a timely response, the institution be foreclosed from subsequently disputing the information submitted by any other institution on the transaction(s) at issue in the review process. The FDIC may request additional information as part of its review, and the proposed rule would require the institution to supply that information within 21 days of the date of the FDIC's request for additional information.

As previously noted, the FDIC further proposes to freeze temporarily the distribution of the dividend amount in dispute for the institutions involved in the challenge until the challenge is resolved.

The proposed rule requires a written response from the FDIC's Director of the Division of Finance ("Director"): (1) Within 60 days of receipt by the FDIC of the request for revision; (2) if additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or, (3) if additional information has been requested by the FDIC, within 60 days of receipt of the additional information,

whichever is latest. Whenever feasible, the response is to notify the institution of the determination of the Director as to whether the requested change is warranted. In all instances in which a timely request for review is submitted, the Director will make a determination on the request as promptly as possible and notify the institution in writing of the determination. Notice of the procedures applicable to reviews will be included with the notice or invoice providing notification of the dividend.

Under the proposed rule, an institution that disagrees with the determination of the Director may appeal its dividend determination to the FDIC's Assessment Appeals Committee ("AAC"). An appeal would have to be filed within 15 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals will be included with that written determination. The AAC's determination would be final and not subject to judicial review.

III. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?

- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

- Does the proposed regulation contain language or jargon that is not clear? 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? If so, what changes to the format would make the regulation easier to understand?

- What else could we do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the

analysis for comment. See 5 U.S.C. 603, 605. This proposed rule, if adopted in final form, would provide the procedures for the FDIC's declaration, distribution, and payment of dividends to insured depository institutions under the circumstances set forth in the FDI Act. While each insured depository institution would have the opportunity to request review of the amount of its dividend each time a dividend is declared, the proposed rule would rely on information already collected and maintained by the FDIC in the regular course of business. For the limited duration of the proposed rule, it appears unlikely that a dividend would be required. On this basis, the FDIC certifies that this proposal, if it is adopted in final form, would not have a significant impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Commenters are invited to provide the FDIC with any information they may have about the likely quantitative effects of the proposal.

C. Paperwork Reduction Act

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

D. The Treasury and General Government Appropriations Act, 1999—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).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. Add subpart C, consisting of § 327.50 through 327.55, to read as follows:

Subpart C—Implementation of Dividend Requirements

Sec.
327.50 Purpose and scope.
327.51 Definitions.

327.52 Annual dividend determination.
327.53 Allocation and payment of dividends.
327.54 Requests for review of dividend amount.
327.55 Sunset date.

Subpart C—Implementation of Dividend Requirements

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

§ 327.50 Purpose and scope.

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

(b) *Purpose.* This subpart C of part 327 sets forth the rules for:

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

(2) The FDIC's determination of the amount of each insured depository institution's share of any declared dividend;

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

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

§ 327.51 Definitions.

For purposes of this subpart:

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

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

(c) An *insured depository institution's 1996 assessment base ratio* means the share of an insured depository institution in the one-time assessment credit under subpart B of this part, adjusted as necessary after the effective date of subpart B of this part to reflect mergers in which the institution succeeds to another institution's share of the one-time assessment credit.

(d) *Merger* has the same meaning as under subpart B of this part.

(e) *Predecessor*, when used in the context of insured depository institutions, refers to the institution merged with or into a resulting institution.

(f) *Resulting institution* has the same meaning as under subpart B of this part.

(g) *Successor*, when used in the context of insured depository institutions, has the same meaning as under subpart B of this part.

§ 327.52 Annual dividend determination.

(a) Before May 15th of each calendar year, beginning in 2007, the Board shall determine whether to declare a dividend based upon the reserve ratio of the DIF as of December 31st of the

preceding year, and the amount of the dividend, if any.

(b) Except as provided in paragraph (d) of this section, if the reserve ratio of the DIF equals or exceeds 1.35 percent of estimated insured deposits and does not exceed 1.5 percent, the Board shall declare the amount that is equal to one-half of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent as the aggregate dividend to be paid to insured depository institutions.

(c) If the reserve ratio of the DIF exceeds 1.5 percent of estimated insured deposits, except as provided in paragraph (d) of this section, the Board shall declare the amount in excess of the amount required to maintain the reserve ratio at 1.5 percent as the aggregate dividend to be paid to insured depository institutions and shall declare a dividend under paragraph (b) of this section.

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

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

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

(A) To grow temporarily without requiring dividends when the reserve ratio is between 1.35 and 1.5 percent; or
(B) To exceed 1.5 percent.

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

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

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

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

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

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

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

(1) Make a new finding justifying the renewal of the suspension or limitation

under paragraph (d) of this section, and submit a report as required under paragraph (d)(3) of this section; or

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

§ 327.53 Allocation and payment of dividends.

(a) For any dividend declared before January 1, 2009, allocation of such dividend among insured depository institutions shall be based solely on an insured depository institution's 1996 assessment base ratio.

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

(c) The FDIC shall pay individual dividend amounts to insured depository institutions at the time of the collection by the FDIC of the assessments for the second calendar quarter beginning after the declaration of the dividend. An institution's dividend amount shall be remitted with that institution's assessment. Any excess dividend amount will be a net credit of the FDIC and will be deposited into the deposit account designated by the institution for assessment payment purposes pursuant to subpart A. If the dividend amount is less than the amount of assessment due, then the institution's account will be directly debited to the FDIC to reflect the net amount owed to the FDIC as an assessment.

(d) If an insured depository institution requests review of its dividend amount under § 327.54, and that request is not finally resolved prior to the dividend payment date, the FDIC shall credit the institution with the dividend amount provided on the invoice. If the institution prevails on its request for review, then any additional amount of dividend will be remitted to the institution, with interest, with the institution's assessment in the next calendar quarter after the final determination has been made.

§ 327.54 Requests for review of dividend amount.

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

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

(2) The institution believes that the 1996 assessment base ratio attributed to the institution does not fully or accurately reflect appropriate adjustments for predecessors resulting from transactions involving the institution after the FDIC's final determination of the 1996 assessment base ratio under subpart B of this part.

(b) Any such request for review must be submitted within 30 days of the date of the special notice of dividend or invoice for which a change is requested. The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. If an institution does not submit a timely request for review, that institution may not subsequently request review of its dividend amount, subject to paragraph (d) of this section. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. The FDIC shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(c) During the FDIC's consideration of the request for review, the amount of dividend in dispute shall not be available for use by any institution.

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

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

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

(e) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of

the FDIC's request for additional information.

(f) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance ("Director"):

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

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

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information, whichever is later.

Whenever feasible, the response will notify the institution of the determination of the Director as to whether the requested change is warranted. In all instances in which a timely request for review is submitted, the Director will make a determination on the request as promptly as possible and notify the institution in writing of the determination. Notice of the procedures applicable to reviews will be included with the special notice of dividend or assessment invoice providing notification of the dividend.

(g) An insured depository institution may appeal the determination of the Director to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 15 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section will be included with the Director's written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

§ 327.55 Sunset date.

Subpart C shall cease to be effective on December 31, 2008.

Dated at Washington, DC, this 9th day of May, 2006.

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

Robert E. Feldman,
Executive Secretary.

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FEDERAL DEPOSIT INSURANCE CORPORATION

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One-Time Assessment Credit

AGENCY: Federal Deposit Insurance Corporation (FDIC).