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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INCREASE MULTIPLIERS FOR THE ASSESSMENT PERIODS DURING THE SURCHARGE PERIOD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Fraction of quarterly regular deposit insurance assessments paid by credit accruing institutions.* The fraction of assessments paid by credit accruing institutions shall equal quarterly deposit insurance assessments, as determined under § 327.16, paid by such institutions for each assessment period during the credit calculation period, divided by the total amount of quarterly deposit insurance assessments paid by all insured depository institutions during the credit calculation period, excluding the aggregate amount of surcharges imposed under paragraph (b) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(11) *Use of credits.* (i) Effective as of July 1, 2019, the FDIC will apply assessment credits awarded under this paragraph (c) to an institution's deposit insurance assessments, as calculated under this part 327, beginning in the first assessment period in which the reserve ratio of the DIF is at least 1.38 percent, and in each assessment period thereafter in which the reserve ratio of the DIF is at least 1.35 percent, for no more than three additional assessment periods.

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

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

(13) *Remittance of credits.* After assessment credits awarded under this paragraph (c) have been applied for four assessment periods, the FDIC will remit the full nominal value of an institution's remaining assessment credits in a single lump-sum payment to such institution in the next assessment period in which the reserve ratio is at least 1.35 percent.

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

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

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

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

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

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

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

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

(4) *Appeal.* If the requesting institution disagrees with the final determination from the Director of the Division of Finance, that institution may appeal its assessment credit determination to the FDIC's Assessment Appeals Committee within 30 days from the date of the Director's written determination. Notice of the procedures applicable to an appeal before the Assessment Appeals Committee will be included in the Director's written determination.

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

[81 FR 16069, Mar. 25, 2016, as amended at 83 FR 14568, Apr. 5, 2018; 84 FR 65275, Nov. 27, 2019; 87 FR 64339, Oct. 24, 2022]

§ 327.12 Prepayment of quarterly risk-based assessments.

(a) *Requirement to prepay assessment.* On December 30, 2009, each insured depository institution shall pay to the FDIC a prepaid assessment, which shall equal its estimated quarterly risk-based assessments aggregated for the fourth quarter of 2009, and all of 2010, 2011, and 2012 (the ''prepayment period'').

(b) *Calculation of prepaid assessment*—(1) *Prepaid assessment*—(i) *Fourth quarter 2009 and all of 2010.* An institution's prepaid assessment for the fourth quarter of 2009 and for all of 2010 shall be determined by multiplying its prepaid assessment rate as defined in paragraph (b)(2) of this section times the corresponding prepaid assessment base for each quarter as determined pursuant to paragraph (b)(3) of this section.