

(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.

(ii) *All of 2011 and 2012.* An institution's prepaid assessment for each quarter of 2011 and 2012 shall be determined by multiplying the sum of its prepaid assessment rate as defined in paragraph (b)(2) of this section, plus .75 basis points (which implements the 3 basis point increase in annual assessment rates adopted by the Board on September 29, 2009), times the corresponding prepaid assessment base for each quarter determined pursuant to paragraph (b)(3) of this section.

(2) *Prepaid assessment rate.* For each quarter of the prepayment period, an institution's prepaid assessment rate shall equal the total base assessment rate that the institution would have paid for the third quarter of 2009 had the institution's CAMELS ratings in effect on September 30, 2009, and, where applicable, long-term debt issuer ratings in effect on September 30, 2009, been in effect for the entire third quarter of 2009.

(3) *Prepaid assessment base.* For each quarter of the prepayment period, an institution's prepaid assessment base shall be calculated by increasing its third quarter 2009 assessment base at an annual rate of 5 percent.

(4) *Finality of prepaid assessment.* The prepaid assessment rate and prepaid assessment base defined in paragraphs (b)(2) and (3) of this section shall be determined based upon data in the FDIC's computer systems as of December 24, 2009. Changes to data underlying an institution's adjusted total base assessment rate or assessment base, whether by amendment to a report of condition or otherwise, received by the FDIC after December 24, 2009, shall not affect an institution's prepaid assessment.

(5) *Prepaid assessment rates for mergers and consolidations.* For mergers and consolidations recorded in the FDIC's computer systems no later than December 24, 2009, the acquired institution's prepaid assessment rate under paragraph (b)(2) of this section shall be the prepaid assessment rate of the acquiring institution.

(c) *Invoicing of prepaid assessment.* The FDIC shall advise each insured depository institution of the amount and calculation of its prepaid assessment at the same time the FDIC provides the

institution's quarterly certified statement invoice for the third quarter of 2009. The FDIC will re-invoice through FDICconnect based upon any data changes as provided in paragraph (b)(4) of this section.

(d) *Payment of prepaid assessment.* Each insured depository institution shall pay to the Corporation the amount of its prepaid assessment as required under paragraph (a) of this section in compliance with and subject to the provisions of §§327.3 and 327.7 of subpart A.

(1) *Exception to ACH payment.* If an institution's prepaid assessment is greater than \$99 million, the institution shall make payment by wire transfer to the FDIC, rather than by funding its designated deposit account for payment via ACH as provided in §327.3 of subpart A.

(2) *One-time assessment credits.* The FDIC will not apply an institution's one-time assessment credit under subpart B of this part 327 to reduce an institution's prepaid assessment. The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B to its quarterly deposit insurance assessments before applying its prepaid assessments.

(e) *Use of prepaid assessments.* Prepaid assessments shall only be used to offset regular quarterly risk-based deposit insurance assessments payable under this subpart A. The FDIC will begin offsetting regular quarterly risk-based deposit insurance assessments against prepaid assessments on March 30, 2010. The FDIC will continue to make such offsets until the earlier of the exhaustion of the institution's prepaid assessment or June 30, 2013. Any prepaid assessment remaining after collection of the amount due on June 30, 2013, shall be returned to the institution. If the FDIC, in its discretion, determines that its liquidity needs allow, it may return any remaining prepaid assessment to the institution prior to June 30, 2013.

(f) *Transfers.* An insured depository institution may enter into an agreement to transfer, but not pledge, any portion of that institution's prepaid assessment to another insured depository institution, provided that the parties

to the agreement notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The institution transferring its prepaid assessment shall submit the required notice and documentation through FDICconnect. That information will be presented by the FDIC through FDICconnect to the institution acquiring the prepaid assessments for its acceptance. The adjustment to the amount of the prepaid assessment for each institution involved in the transfer will be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of acceptance by the institution acquiring the prepaid assessments.

(g) *Prepaid assessments following a merger.* In the event that an insured depository institution merges with, or consolidates into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the acquired institution's prepaid assessment not otherwise transferred pursuant to paragraph (f) of this section.

(h) *Disposition in the event of failure or termination of insured status.* In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution's receiver. In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution, subject to the provisions of § 327.6 of subpart A.

(i) *Exemptions—(1) Exemption without application.* The FDIC, after consultation with an institution's primary federal regulator, will exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement under paragraph (a) of this section if the FDIC determines that the prepayment would adversely

affect the safety and soundness of that institution. No application is required for this review and the FDIC will notify any affected institution of its exemption by November 23, 2009.

(2) *Application for exemption.* An institution may also apply to the FDIC for an exemption from the prepayment requirement under paragraph (a) of this section if the prepayment would significantly impair the institution's liquidity, or would otherwise create extraordinary hardship. Written applications for exemption from the prepayment obligation must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (prepaidassessment@fdic.gov) or fax (202-898-6676). The application must contain a full explanation of the need for the exemption and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC will exercise its discretion in deciding whether to exempt an institution that files an application for exemption. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, either that the institution is exempt from the prepaid assessment or the FDIC has postponed determination under paragraph (i)(4) of this section. The FDIC's denial of applications for exemption will be final and not subject to further agency review.

(3) *Application for withdrawal of exemption.* An institution that has received an exemption under paragraph (i)(1) of this section may request that the FDIC withdraw the exemption. Written applications for withdrawal of exemption must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (prepaidassessment@fdic.gov) or fax (202-898-6676). The application must contain a full explanation of the reasons the exemption is not needed and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC, after

Federal Deposit Insurance Corporation

§ 327.15

consultation with the institution's primary Federal regulator, will exercise its discretion in deciding whether to withdraw the exemption. The FDIC will notify an institution of its decision to withdraw the exemption by December 15, 2009; that determination will be final and not subject to further agency review. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, that the exemption is withdrawn.

(4) *Postponement of determination.* The FDIC may postpone making a determination on any application for exemption filed under paragraph (i)(2) of this section until no later than January 14, 2010. An institution notified by the FDIC of such postponement will not have to pay the prepaid assessment calculated under paragraph (b) of this section on December 30, 2009. If the FDIC denies the application for exemption, the FDIC will notify the institution of the denial and of the date by which the institution must pay the prepaid assessment. The due date for payment of the prepaid assessment after such a denial will be no less than 15 days after the date of the notice of denial.

(5) *Obligation to pay third quarter 2009 assessment.* Any institution exempted from the prepayment requirement or any institution whose application for exemption has been postponed under this section shall pay to the Corporation on December 30, 2009, any amount due for the third quarter of 2009 as shown on the certified statement invoice for that quarter.

[74 FR 59065, Nov. 17, 2009]

§ 327.15 Emergency special assessments.

(a) *Emergency special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose an emergency special assessment of 20 basis points on each insured depository institution based on the institution's assessment base calculated pursuant to § 327.5 for the second assessment period of 2009.

(b) *Emergency special assessments after June 30, 2009.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that that the Board believes would ad-

versely affect public confidence or to a level which shall be close to zero or negative at the end of a calendar quarter, an emergency special assessment of up to 10 basis points may be imposed by a vote of the Board on all insured depository institutions based on each institution's assessment base calculated pursuant to § 327.5 for the corresponding assessment period.

(1) *Estimation process.* For purposes of any emergency special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

(2) *Imposition and announcement of emergency special assessments.* Any emergency special assessment under this paragraph (b) shall be on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice published in the FEDERAL REGISTER of the emergency special assessment.

(c) *Invoicing of any emergency special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any emergency special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice for the assessment period in which the emergency special assessment was imposed.

(d) *Payment of any emergency special assessment.* Each insured depository institution shall pay to the Corporation any emergency special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any emergency special assessment shall be the date provided in § 327.3(b)(2) for the