

§ 327.34

12 CFR Ch. III (1–1–23 Edition)

successor institutions, as of December 31, 1996, as the denominator.

(c) If an insured depository institution is a successor to an eligible insured depository institution under the *de facto* rule, as defined in paragraph 327.31(c) of this subpart, the successor and the eligible insured depository institution will divide the eligible insured depository institution's 1996 assessment base ratio pro rata, based on the deposit liabilities assumed in the transaction. In any subsequent transaction involving an insured depository institution that previously engaged in a transaction to which the *de facto* rule applied, the insured depository institution may not be deemed to have transferred more than its remaining 1996 assessment base ratio. If the transferring institution is no longer an insured depository institution after the transfer, the last successor will acquire the transferring institution's remaining 1996 assessment base ratio.

§ 327.34 Transferability of credits.

(a) Any remaining amount of the one-time assessment credit and the associated 1996 assessment base ratio shall transfer to a successor of an eligible insured depository institution.

(b) Prior to the final determination of its 1996 assessment base and one-time assessment credit amount by the FDIC, an eligible insured depository institution may enter into an agreement to transfer any portion of such institution's one-time credit amount and 1996 assessment base ratio to another insured depository institution. The parties to the agreement shall 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 adjustment to credit amount and the associated 1996 assessment base ratio shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

(c) An eligible insured depository institution may enter into an agreement after the final determination of its 1996 assessment base ratio and one-time credit amount by the FDIC to transfer

any portion of such institution's one-time credit amount to another insured depository institution. The parties to the agreement shall 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 adjustment to the credit amount shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

§ 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an eligible insured depository institution's one-time credit shall be applied to the maximum extent allowable by law against that institution's quarterly assessment payment under subpart A of this part, after applying assessment credits awarded under § 327.11(c), until the institution's credit is exhausted.

(b) The following limitations shall apply to the application of the credit against assessment payments.

(1) For assessments that become due for assessment periods beginning in calendar years 2008, 2009, and 2010, the credit may not be applied to more than 90 percent of the quarterly assessment.

(2) For an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not at least adequately capitalized (as defined pursuant to section 38 of the Federal Deposit Insurance Act) at the beginning of an assessment period, the amount of the credit that may be applied against the institution's quarterly assessment for that period shall not exceed the amount that the institution would have been assessed if it had been assessed at the average assessment rate for all insured institutions for that period. The FDIC shall determine the average assessment rate for an assessment period based upon its best estimate of the average rate for the period. The estimate shall be made using the best information available, but shall be made no earlier than 30 days and no

Federal Deposit Insurance Corporation

§ 327.36

later than 20 days prior to the payment due date for the period.

(3) If the FDIC has established a restoration plan pursuant to section 7(b)(3)(E) of the Federal Deposit Insurance Act, the FDIC may elect to restrict the application of credit amounts, in any assessment period, up to the lesser of:

(i) The amount of an insured depository institution's assessment for that period; or

(ii) The amount equal to 3 basis points of the institution's assessment base.

(c) *Remittance of credits.* Subject to the limitations in paragraph (b) of this section, in the same assessment period that the FDIC remits the full nominal value of small bank assessment credits pursuant to § 327.11(c)(13), the FDIC shall remit the full nominal value of an institution's remaining one-time assessment credits provided under this subpart B in a single lump-sum payment to such institution.

[71 FR 61383, Oct. 18, 2006, as amended at 81 FR 16073, Mar. 25, 2016; 84 FR 65276, Nov. 27, 2019]

§ 327.36 Requests for review of credit amount.

(a)(1) As soon as practicable after the publication date of this rule, the FDIC shall notify each insured depository institution by FDICconnect or mail of its 1996 assessment base ratio and credit amount in a Statement of One-Time Credit ("Statement"), if any. An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base ratio or credit amount as shown on the Statement within 30 days after the effective date of this rule. Such review may be requested if:

(i) The institution disagrees with a determination as to eligibility for the credit that relates to that institution's credit amount;

(ii) The institution disagrees with the calculation of the credit as stated on the Statement; or

(iii) The institution believes that the 1996 assessment base ratio attributed to the institution on the Statement does not fully or accurately reflect its own 1996 assessment base or appropriate adjustments for successors.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(b)(1) An insured depository institution may submit a request for review of the FDIC's adjustment to the credit amount in a quarterly invoice within 30 days of the date on which the FDIC provides the invoice. Such review may be requested if:

(i) The institution disagrees with the calculation of the credit as stated on the invoice; or

(ii) The institution believes that the 1996 assessment base ratio attributed to the institution due to the adjustment to the invoice does not fully or accurately reflect appropriate adjustments for successors since the last quarterly invoice.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(c) 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. 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. In addition, the FDIC also shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

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

(e) Within 30 days of being notified 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,