AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Proposed Rules

Federal Register
Vol. 61, No. 201
Wednesday, October 16, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB94

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

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

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

The proposed rule would enable the FDIC to make limited adjustments to the base assessment rates, both for the SAIF and for the Bank Insurance Fund (BIF), by a limited amount without notice-and-comment rulemaking.

The proposed rule would clarify and correct certain provisions without making substantive changes.

DATES: Comments must be received by the FDIC on or before November 15, 1996.

ADDRESSES: Send comments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5:00 p.m. (FAX number: 202/898–3838. Internet address: comments@fdic.gov). Comments will be available for inspection in the FDIC Public Information Center, Room 100, 801–17th Street, NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Allan Long, Assistant Director, Division of Finance, (202) 416–6991; James McFadyen, Senior Financial Analyst, (202) 898–7027; Christine Blair, Financial Economist, (202) 898–3936, Division of Research and Statistics; Stephen Ledbetter, Chief, Assessments Evaluation Section, Division of Insurance (202) 898–8658; Richard Osterman, Senior Counsel, (202) 898–3736; Jules Bernard, Counsel, (202) 898–3731, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

A. Background

Under the assessment schedule currently in effect, SAIF members are assessed rates for FDIC insurance ranging from 23 basis points for institutions with the best assessment risk classification to 31 basis points for the riskiest institutions. This assessment schedule implements the risk-based assessment program required by section 7 of the Federal Deposit Insurance (FDI Act), 12 U.S.C. 1817, and has been designed to increase the reserve ratio of the SAIF—the ratio of the SAIF's net worth to aggregate SAIF-insured deposits, *see id.* 1817(*l*)(7)—to the DRR.[1]

Since the creation of the SAIF and through the end of 1992, however, all assessments from SAIF-member institutions were diverted to other needs. While some SAIF-assessment revenue began flowing into the SAIF on January 1, 1993, the amounts authorized to be assessed against SAIF-member savings associations by the SAIF were reduced by the amounts assessed by the FICO in order to service the interest on its bond obligations. At $793 million per year, the FICO draw was substantial, and contributed to the slow growth in the SAIF reserve ratio, which only increased from .28 percent to .47 percent in 1995.

With the capitalization of the BIF in 1995, the Board has lowered the assessment rate schedule for BIF members, creating a significant disparity in the assessment rates paid by BIF and SAIF members. This disparity has created incentives for institutions to move deposits from SAIF-insured status to BIF-insured status, raising the question of whether a shrinking SAIF-assessable deposit base could continue both to service the interest on FICO debt and to capitalize the SAIF.

On September 30, 1996, the Deposit Insurance Funds Act of 1996 (Funds Act), Pub. L. 104–208, 110 Stat. 3009 et seq., was enacted, requiring the FDIC to impose a one-time special assessment on SAIF-assessable deposits to capitalize the SAIF at 1.25 percent of SAIF-insured deposits as of October 1, 1996. The FDIC is issuing a final rule to impose the special assessment; the special assessment is to be collected on November 27, 1996.

The Funds Act also eliminates the statutory link between the FICO's assessments and amounts authorized to be assessed by the SAIF, effective January 1, 1997. Accordingly, the rate-setting process for the SAIF takes the FICO's draw into account until that date, but not afterward.

In response to these developments, the FDIC is proposing to lower the regular SAIF assessment rates as of October 1, 1996, and to refund or credit any excess SAIF assessments collected for the second semiannual period of 1996.

B. Statutory Framework for Setting Assessment Rates

Section 7(b)(1) of the FDI Act, *id.* 1817(b)(1), requires the Board to establish a risk-based assessment system for all insured institutions, and to set semiannual assessments for each institution based on: (1) The probability that the institution will cause a loss to the BIF or to the SAIF, (2) the likely

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

amount of the loss, and (3) the revenue needs of the appropriate fund. *Id.* 1817(b)(1)(C).

Section 7(b)(2)(A) requires the Board to set assessments to maintain each fund's reserve ratio at the DRR (or, if the fund's reserve ratio is below the DRR, to increase the ratio to that level). *Id.* 1817(b)(2)(A)(i).[2] The Board must take into consideration the fund's: (1) Expected operating expenses; (2) case resolution expenditures and income; (3) the effect of assessments on members' earnings and capital; and (4) any other factors that the Board deems appropriate. *Id.* 1817(b)(2)(A)(ii). Once the SAIF's reserve ratio is at the DRR, the FDIC may not set SAIF assessments in excess of the amount necessary to maintain that ratio (although the Board may set higher rates for institutions that exhibit weakness or are not well capitalized). *Id.* 1817(b)(2)(A)(iii) & (v).

Until January 1, 1997, the amounts assessed by the FICO may not exceed the amount ''authorized to be assessed'' by the FDIC against SAIF member savings associations pursuant to section 7 of the FDI Act. Conversely, the amount of a SAIF assessment ''shall be reduced'' by the amount of the FICO draw. *Id.* 1441(f)(2).

Finally, until December 31, 1998, the assessment rate for a SAIF member may not be less than the assessment rate for a BIF member that poses a comparable risk to the deposit insurance fund. *Id.* 1817(b)(2)(E).

C. The SAIF Assessment Schedule

1. New Rate Spread

Risk-based assessment rates have a dual purpose: to reflect the risk posed to each Fund by individual institutions, and to provide institutions with proper incentives to control risk-taking. The FDIC has considered whether a spread of 8 basis points is sufficient for achieving these goals. In December 1992, the FDIC proposed to establish risk-based premium matrices of 23 to 31 basis points for both the BIF and the SAIF. The Board asked for comment on whether the proposed assessment rate spread of 8 basis points should be widened. *See* 57 *FR* 62502 (Dec. 31, 1992). Ninety-six commenters addressed this issue; 75 of them favored a wider rate spread. In the final rule, the Board expressed its conviction that widening the rate spread was desirable in principle, but chose to implement the 8-basis point rate spread. The Board expressed concern that widening the spread while keeping assessment revenue constant might unduly burden the weaker institutions that would be subject to greatly increased rates. *See* 58 FR 34357, 34361 (June 25, 1993).

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

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

TABLE 1.—HISTORICAL THRIFT FAILURE RATES BY CELL 1988–1993*

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

Average failure rate: 30.6%

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

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

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

2. Spreading Risk Over Time

The FDIC has recognized that, in setting deposit insurance premiums, the risk of adverse events that may occur beyond the immediate semiannual assessment period must be considered, in order to spread risk over time and to moderate the cyclical effects of insurance losses on insured institutions. A strict ''pay-as-you-go'' insurance

[2] The Board may set higher rates for institutions that exhibit weakness or are not well capitalized, however. *Id.* 1817(b)(2)(A)(v).

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

system—one that attempts only to balance revenue and expense over the current assessment period—can result in rate volatility that would adversely impact weak institutions in periods of economic stress, increasing the risk of loss to the fund. Historical evidence shows that in peak loss years, pay-as-you-go rates would substantially exceed the rates required to balance revenues and expenses over the longer term.

The FDIC believes that, for the purpose of estimating future losses for the thrift industry, the industry's loss experience in the 1980s is not likely to be especially informative. The insurance losses associated with thrifts far exceeded insurance losses from banks during this period both in dollars and, to an even greater extent, as a percentage of the size of the industry.

The losses prompted Congress to adopt a number of legislative reforms that have the effect of placing thrifts in a regulatory context that resembles that of the banks much more closely. The FDIC has replaced the Federal Savings and Loan Insurance Corporation (FSLIC) as insurer for the thrift industry. The Office of Thrift Supervision, an office within the Department of the Treasury, has replaced the Federal Home Loan Bank Board as the supervisor for thrift institutions. Thrifts are now subject to stronger capital standards, which are set at the same levels as required of banks. Thrifts, like banks, now pay assessments based on risk. The losses generated in thrift failures are limited by the same safeguards as those that apply to bank failures—notably, the early-closure rule of the prompt corrective action statute, the cross-guarantees among affiliates, the least-cost resolution requirement, and the depositor-preference statute. In view of these changes in the regulatory and insurance environment for thrifts, the failure experience of commercial banks is likely to be more illuminating for the purpose of estimating future thrift losses.

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

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

3. Maintaining the SAIF Reserve Ratio at the DRR

In setting assessments to maintain the reserve ratio at the DRR the Board is required to consider the following factors:

a. Expected operating expenses and revenues. With a balance of approximately $8.6 billion, the SAIF will be fully capitalized at 1.25 percent as of October 1, 1996. Table 2 shows the projected SAIF reserve ratio on June 30, 1997, under pessimistic, optimistic and moderate conditions. The pessimistic conditions combine relatively high loss provisions, high deposit growth and low investment earnings; the optimistic conditions combine zero loss provisions, negative deposit growth and high investment earnings. Table 2 indicates that, under pessimistic conditions, an assessment rate range of 4 to 31 basis points falls just short of maintaining the DRR of 1.25 percent. But under moderate conditions, which can be viewed as more likely than either the pessimistic or optimistic scenarios, rates of 0 to 27 basis points would result in a SAIF reserve ratio of 1.27 percent:

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

Conditions		Pessimistic	Optimistic	Moderate
Deposit growth rate (%)		4.0	−2.0	2.0
Loss provisions ($M)		270	0	50
Investment rate (%)		5.2	6.2	5.7
Assessment rates (bp)		Estimated reserve ratio (%) June 30, 1987		
Range	Average	Pessimistic	Optimistic	Moderate
4 to 31	4.7	1.24	1.36	1.30
2 to 29	2.7	1.23	1.34	1.28

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

Assessment rates (bp)		Estimated reserve ratio (%) June 30, 1987		
Range	Average	Pessimistic	Optimistic	Moderate
0 to 27	0.7	1.21	1.33	1.27

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

Yield on investments: The SAIF is very liquid, not having had any significant receivership activity. Although FDIC policy limits the proportion of investments with maturities beyond five years, a fully capitalized SAIF will have significant investment earnings. Short-term interest rates have been generally stable in 1996, and the FDIC's recent investment yield of 5.7 percent may be a reasonable approximation for the expected yield through the first half of 1997. The investment rates utilized in Table 2 range from 5.2 percent to 6.2 percent, or 50 basis points on either side of the recent experience. Estimated annual operating expenses are assumed to be $40 million, the same as in 1995.[5]

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

Provisions for loss: The FDIC has already established a reserve for losses within the SAIF, and has accordingly reduced SAIF's reported net worth by the amount of the reserve.[6] This reserve represents the estimated loss for institutions that, absent some favorable event, are likely to fail within 18 months. That projection is subject to considerable uncertainty.

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

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

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

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

c. Effect on SAIF members' earnings and capital. The proposed rule would reduce assessment rates for all institutions that pay assessments to the SAIF, and therefore would have a beneficial impact on all such institutions' earnings and capital.

Thrifts had record earnings and a return on assets above 1 percent in each of the first two quarters of 1996. Nearly 98 percent of all SAIF members are well capitalized. The assets of ''problem'' SAIF members fell to $7 billion as of June 30, down from over $200 billion at the end of 1991. Only one SAIF member has failed in 1996.

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

d. Summary. As discussed above, while the appropriate long-term assessment rate would be 4 to 5 basis points, the analysis summarized in Table 2 indicates that, under current conditions, this rate would likely result in a reserve ratio well in excess of 1.25%. The Board is therefore proposing to lower the rate to a range of 0 to 27 basis points, which would yield an average rate of 0.6 basis points (annualized) and an estimated reserve ratio of 1.27 percent at midyear 1997, under moderate conditions. With no significant receivership activity and a very liquid fund, investment earnings presently are more than adequate to maintain the DRR.

4. The Base Schedule and the Effective Rates

The Funds Act requires the special assessment to be in an amount that capitalizes the SAIF at the DRR as of October 1, 1996. Accordingly, from that date forward the FDIC must set SAIF assessments no higher than necessary to maintain the SAIF's reserve ratio at the DRR (although the Board may set higher rates for institutions that exhibit certain kinds of weakness or are not well capitalized). 12 U.S.C. 1817(b)(2)(A) (i), (iii) and (v). The FDIC must therefore lower the SAIF assessment schedule as a whole.[7]

At the same time, in order to maintain a risk-based assessment system, the FDIC must set rates for riskier institutions at higher levels, even if the resulting collections would cause the SAIF's reserve ratio to rise above the DRR. The higher rates are required to preserve the incentive for those institutions to control risk-taking behavior, and also to cover the long-term costs of the obligations that the institutions present to the SAIF. The FDIC has explicit authority to set higher assessments for such institutions. *See* 12 U.S.C. 1817(b)(2)(A)(v).

The FDIC is proposing to fulfill these requirements by adopting a base assessment schedule that sets forth a permanent (and reduced) set of rates for the SAIF, and an adjusted assessment schedule that further lowers the SAIF rates to the level that is appropriate under current conditions. The FDIC is also proposing to adopt a procedure for making limited modifications to the adjusted assessment schedule in an expeditious manner (discussed in paragraph I.E., below). Finally, in order to accommodate the special circumstances of institutions that pay FICO assessments, the FDIC is

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

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

[7] The proposed rule would give the FDIC flexibility to delay issuing the invoices for the first quarterly payment for the first semiannual period of 1997, which is the first payment under the new schedule. As a rule, the FDIC must issue invoices not less than 30 days prior to the collection date. 12 CFR 327.3(c)(1). A shorter interval is warranted in this case in order to afford time for notice and comment on the proposed regulation.

proposing to adopt a special interim set of rates that apply to these institutions from October 1, 1996, through the end of the year. (See discussion at paragraph I.C.4.d., below).

a. The SAIF Base Assessment Schedule. The SAIF rates currently range from 23 basis points for institutions with the most favorable assessment risk classification to 31 basis points for the riskiest institutions:

CURRENT SAIF ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

See 12 CFR 327.9(d)(1). The proposed rule would retain the basic framework of this schedule and name it the ''SAIF Base Assessment Schedule''.

The proposed SAIF Base Assessment Schedule would have generally lower rates, however, and would also have a wider range between the highest and lowest rates:

PROPOSED SAIF BASE ASSESSMENT SCHEDULE

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

Until January 1, 1999, SAIF rates may not be lower than the BIF rates for institutions that pose comparable risks to their funds. 12 U.S.C. 1817(b)(2)(E)(iii). Accordingly, the rates in the proposed SAIF Base Assessment Schedule are as low as, but no lower than, the permanent (or base) BIF rates set forth in Rate Schedule 2.[8] *See id.* 327.9(a).

The SAIF Base Assessment Schedule would, in principle, apply immediately to all institutions. As described below, however, the rates set forth in the SAIF Base Assessment Schedule would not be the rates that are actually effective upon adoption of the proposed rule.

b. Effective rates. The FDIC is proposing to modify the rates in the SAIF Base Assessment Schedule in two ways. Both modifications would be effective as of October 1, 1996. The first proposed modification is a general adjustment to the rates in the SAIF Base Assessment Schedule that lowers these rates by 4 basis points. The adjusted rate schedule would immediately apply to all institutions other than those that pay assessments to the FICO. The second proposed modification is a special interim set of rates for institutions that pay assessments to the FICO. The special interim rates would apply to these institutions from October 1, 1996, through December 31, 1996. After the end of 1996, the special interim rates would terminate, and these institutions—like other institutions that pay SAIF assessments—would pay the rates prescribed in the SAIF Base Assessment Schedule as reduced by the 4-basis-point adjustment.

The SAIF Adjusted Assessment Schedule. When the SAIF's reserve ratio is at the DRR, the FDIC cannot lawfully impose regular semiannual assessments with respect to the SAIF in excess of the amount needed to maintain the SAIF at the DRR (although the Board may set such assessments for institutions that exhibit weakness or are not well capitalized). *Id.* 1817(b)(2)(A)(iii) and (v). Accordingly, the FDIC is proposing to adopt an immediate adjustment to the SAIF Base Assessment Schedule that would avoid collecting such excess amounts. Like the SAIF Base Assessment Schedule, the adjusted assessment schedule would take effect on October 1, 1996.

The adjusted assessment schedule would apply at that time to all institutions other than institutions that pay FICO assessments. On and after January 1, 1997, the adjusted assessment schedule would apply to all institutions. The adjustment would reduce each SAIF assessment rate by 4 basis points.

The FDIC may not lower the rates in the SAIF Base Assessment Schedule by more than the proposed 4 basis-point adjustment. Any further reduction would cause the lowest rate to be less than zero, and would also cause the effective SAIF rates to fall below the current rates for BIF members.

Interim schedule for institutions paying FICO assessments. SAIF-member savings associations must pay assessments to the FICO to fund the FICO's interest obligations. 12 U.S.C. 1441(f)(2); *see id.* 1441(k)(1). Through year-end 1996, the FICO's assessments serve to reduce the amounts that the SAIF is authorized to assess against these institutions. Accordingly, in order to maintain a risk-based system of rates for these institutions, the FDIC is setting each rate in the system at a level that is sufficient to pay the FICO's requirements, and also to establish the incentives and generate the revenues necessary to carry out the mission of the risk-based assessment program.

Other institutions—BIF members and SAIF-member banks—do not make such payments to the FICO, even though these institutions may pay SAIF assessments. *See* ''Treatment of Assessments Paid by 'Oakar' Banks and 'Sasser' Banks on SAIF-Insured Deposits, General Counsel's Opinion No. 7'', 60 *FR* 7059 (February 6, 1995).[9] If the FDIC were to extend the special interim rates for SAIF-member savings associations to other institutions, the FDIC would collect amounts in excess of the amount needed to preserve the SAIF's reserve ratio at the DRR. But if the FDIC were to subject SAIF-member savings associations to the schedule that applies to these other institutions, the SAIF would not receive the amounts necessary to compensate it for the risk that the institutions present to it. Accordingly, the FDIC cannot adopt a single rate-schedule for all SAIF-assessable institutions between October 1, 1996, and year-end 1996.

Conversely, the Federal Home Loan Bank Act currently provides—and will continue to provide until January 1, 1997—that the amount assessed by the FICO against SAIF-member savings associations ''shall not exceed the amount authorized to be assessed'' by the SAIF against those institutions, and that the amount of the applicable SAIF assessment ''shall be reduced'' by the amount of the FICO draw. 12 U.S.C. 1441(f)(2)(A). If SAIF-member savings associations were subject to the rate-schedule for other institutions, the amounts collected from the SAIF-member savings associations would not be sufficient to cover the FICO draw.

The FDIC is proposing to set rates for SAIF-member savings associations at a level that is sufficient to cover the FICO draw, yet does not cause these institutions to pay amounts to the SAIF that would cause the SAIF's reserve ratio to exceed the DRR. The rates in the risk-based assessment system for SAIF-member savings associations must also be high enough to carry out the policies that underlie such a system, but not so high as to constitute an excessive burden. The FDIC is therefore proposing

[8] The proposed rule would redesignate Rate Schedule 2 as the BIF Base Assessment Schedule.

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

to retain, as a general matter, the relationships among the assessment-risk categories in the current SAIF assessment schedule, while reducing each rate in the schedule by 5 basis points. The only exception to this principle is found in the relationship between the highest-risk category and adjacent categories. Section 7(b)(2)(E) of the FDI Act specifies that the assessment rate for a SAIF member may not be less than the assessment rate for a BIF member that poses a comparable risk to its fund. *Id.* 1817(b)(2)(E)(iii). Accordingly, the rate proposed for institutions in the highest-risk category schedule is not the current rate reduced by the full 5 basis points, but rather is set at the same level as that for BIF members in the highest-risk category.

Summary. The effective rates applicable to institutions that pay assessments to the SAIF from October 1, 1996, through December 31, 1996, are shown in the following table:

SAIF ADJUSTED ASSESSMENT SCHEDULE

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

The rates in large type apply to all SAIF-assessable institutions from January 1, 1997, forward; these rates also apply from October 1, 1996, forward to institutions that are not SAIF-member savings associations. The rates in small type apply to SAIF member savings associations from October 1, 1996, through December 31, 1996.

5. Refund of Excess SAIF Assessments

Both the proposed SAIF Adjusted Assessment Schedule and the interim rate schedule for SAIF-member savings associations would become effective as of October 1, 1996. The FDIC has already sent out invoices for the second quarterly payment for the current semiannual period (July-December 1996), however. These assessments were computed at the rates presently in effect, which are generally higher than the proposed rates.

Accordingly, the proposed rule would provide for a refund or credit of the excess amount collected in the regular SAIF assessment, with interest. The excess amount would be refunded or credited in one or more installments. The refunds and credits would be made according to the procedures applicable to regular quarterly payments.

D. Assessments Paid by Certain Institutions

Even if a fund has been capitalized, the FDIC may collect assessments for the fund from institutions ''that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or that are not well capitalized as defined in [FDI Act] section 38''. *Id.* 1817(b)(2)(A)(v). The FDIC proposes to interpret this clause in a manner that is consistent with the existing framework of the risk-based assessment program.

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

Subgroup A Financially sound institutions with only a few minor weaknesses. 12 CFR 327.4(a)(2)(i).
Subgroup B Institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased loss to the BIF or SAIF. *Id.* 327.4(a)(2)(ii).
Subgroup C Institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken. *Id.* 327.4(a)(2)(iii).

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

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

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

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

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

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

E. Adjustments to the Assessment Schedule

1. In General

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

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

The Board proposes to modify and clarify this process somewhat, and extend it to SAIF rates as well. The proposed regulation would not change the limits on allowable adjustments, but would clarify the following two points.

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

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

2. Procedure

The proposed regulation would alter the formal mechanism by which the Board would make an adjustment to the base assessment schedules.

The current regulation calls for the Board to adopt the semiannual assessment schedule and any adjustment thereto by means of a resolution, a procedure that does not require public notice or comment. 12 CFR 327.9(b)(3). Under the proposed rule, the Board would adopt the new assessment schedule pursuant to a rulemaking proceeding, but still without public notice and comment. The Board would present each current assessment schedule in an appendix to part 327.

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

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

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

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

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

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

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

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

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

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

F. Effective Date

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

G. Technical Adjustments

The proposed rule would update, clarify, and correct various references in part 327. For example, § 327.4(a) refers to § 327.9(a) and to § 327.9(c); the proposed rule would replace the references with a single reference to § 327.9. Section 327.4(c) speaks of institutions for which either the FDIC or the Resolution Trust Corporation (RTC) has been appointed conservator; the proposed rule would eliminate the reference to the RTC, and would speak instead of institutions for which the FDIC either has been appointed or serves as conservator. The proposed rule would remove the definitions for ''adjustment factor'' and ''assessment schedule,'' which are found in § 327.8(i), on the ground they are not needed. Finally, the proposed rule would delete certain obsolete provisions relating to the BIF after the BIF achieved its DRR.

H. Capital Calculation for Risk-Based Assessment Purposes

The FDIC recognizes that payment of the special assessment could negatively impact the capital ratings of some institutions, affecting their risk classification under the risk-based assessment system. The risk classification for the first semiannual assessment period of 1997 will be based on an institution's capital as of June 30, 1996, and would be unaffected by payment of the special assessment. But the risk classification for the second semiannual assessment period of 1997 will be based on an institution's capital as of December 30, 1996, and therefore would reflect payment of the special assessment. Given the extraordinary nature of the special assessment, the FDIC is seeking comment on whether, for purposes of assigning an institution's risk classification under the risk-based assessment system for the second semiannual period of calendar year 1997 only, the FDIC should calculate the institution's capital as if the special assessment had not been paid, while taking into account other capital fluctuations.

II. Request for Public Comment

The FDIC is hereby requesting comment on all aspects of the proposed rule. The FDIC is particularly interested in receiving comments on whether it is appropriate to lower SAIF assessment rates from a range of 23 to 31 basis points to a range of 4 to 31 basis points, and then through application of the adjustment factor, to further reduce the SAIF assessment rates to a range of 0 to 27 basis points; whether the proposed spread of 27 basis points from the lowest to the highest assessment rates is appropriate; whether the 5-basis point adjustment factor should be extended to SAIF members; whether it is appropriate to establish an interim schedule for SAIF-member savings associations from October 1, 1996, through December 31, 1996; and whether the proposed rate-spread therein is appropriate. The FDIC also seeks particular comment on its proposed revision to the procedure for adjusting the base assessment schedules of the funds. Finally, the FDIC seeks comment on the propriety and advisability of determining an institution's risk classification under the risk-based assessment system, the second semiannual period of calendar year 1997 only, based on a calculation of the institution's capital as if the special assessment had not been paid, while taking into account other capital fluctuations.

III. Paperwork Reduction Act

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

IV. Regulatory Flexibility Analysis

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

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

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

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

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

V. Riegle Community Development and Regulatory Improvement Act

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

List of Subjects in 12 CFR Part 327

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

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

PART 327—ASSESSMENTS

1–2. The authority citation for part 327 continues to read as follows:

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

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

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) *First-quarterly payment*—(1) *Invoice.* Unless the Board determines that special and exigent circumstances require a shorter period with respect to the invoice for the first quarterly payment for the first semiannual period of 1997, no later than 30 days prior to the payment date specified in paragraph (c)(2) of this section, the Corporation will provide to each insured depository institution an invoice showing the amount of the assessment payment due from the institution for the first quarter of the upcoming semiannual period, and the computation of that amount. * * *

* * * * *

4. Section 327.4 is amended by revising the first sentence of paragraph (a) introductory text and paragraph (c) to read as follows:

§ 327.4 Annual assessment rate.

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

* * * * *

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

* * * * *

§ 327.8 [Amended]

5. Section 327.8 is amended by removing paragraph (i).

6. Section 327.9 is revised to read as follows:

§ 327.9 Assessment schedules.

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

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

BIF BASE ASSESSMENT SCHEDULE

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

(ii) *SAIF members.* Except as provided in paragraph (c) of this section, the following base assessment schedule applies with respect to assessments paid to the SAIF by SAIF members and by other institutions that are required to make payments to the SAIF pursuant to subpart B of this part:

SAIF BASE ASSESSMENT SCHEDULE

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

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

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

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

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

(i) Expected operating expenses of the insurance fund;

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

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

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

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph (b) will be adopted by rulemaking. Nevertheless, because the Corporation is required by statute to set assessment rates as necessary (and only to the extent necessary) to maintain or attain the designated reserve ratio, and because the Corporation must do so in the face of constantly changing conditions, and because the purpose of the adjustment procedure is to permit the Corporation to act expeditiously and frequently to maintain or attain the designated reserve ratio in an environment of constant change, but within set parameters not exceeding 5 basis points, without the delays associated with full notice-and-comment rulemaking, the Corporation has determined that it is ordinarily impracticable, unnecessary and not in the public interest to follow the procedure for notice and public comment in such a rulemaking, and that accordingly notice and public procedure thereon are not required as provided in 5 U.S.C. 553(b). For the same reasons, the Corporation has determined that the requirement of a 30-day delayed effective date is not required under 5 U.S.C. 553(d). Any adjustment adopted by the Board pursuant to a rulemaking specified in this paragraph (b) will be reflected in an adjusted assessment

schedule set forth in appendix A to this subpart A.

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

(c) *Special provisions*—(1) *Interim assessment schedule for SAIF-member savings associations.* From October 1, 1996, through December 31, 1996, savings associations that are members of the SAIF shall pay assessments according to the schedule in effect for such institutions on September 30, 1996, except that each rate in the schedule shall be reduced by 5 basis points (0.50 percent). No rate prescribed under this paragraph (c) shall be applied for the purpose of § 327.32(a)(2)(i).

(2) *Refunds or credits of certain assessments.* If the amount paid by an institution for the regular semiannual assessment for the second semiannual period of 1996 exceeds, as a result of the reduction in the rate schedule for a portion of that semiannual period, the amount due from the institution for that semiannual period, the Corporation will refund or credit any such excess payment and will provide interest on the excess payment in accordance with the provisions of § 327.7. Notwithstanding § 327.7(a)(3)(ii), such interest will accrue beginning on the date as of which the reserve ratio of the Savings Association Insurance Fund has reached the designated reserve ratio.

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

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

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

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

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

8. Subpart A of part 327 is amended by adding appendix A to read as follows:

Appendix A to Subpart A of Part 327—Adjusted Assessment Schedules

(a) *BIF members.* The Board has determined to adjust the BIF Base Assessment Schedule by reducing the rates therein by 4 basis points. The following adjusted assessment schedule applies to BIF members for the second semiannual period of 1996 and for subsequent semiannual periods:

BIF ADJUSTED ASSESSMENT SCHEDULE

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

(b) *SAIF members.* The Board has determined to adjust the SAIF Base Assessment Schedule by reducing the rates therein by 4 basis points, and has determined to present the adjusted rates in the following schedule. The Board has further determined to present the interim rates prescribed by § 327.9(c) in the same schedule. Accordingly, the following schedule sets forth in large type the adjusted rate schedule that applies to SAIF members generally on and after October 1, 1996, and also sets forth in small type the rates that apply to SAIF members that are savings associations pursuant to § 327.9(c) from October 1, 1996, through December 31, 1996:

SAIF ADJUSTED ASSESSMENT SCHEDULE

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

By order of the Board of Directors.

Dated at Washington, D.C., this 8th day of October 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–26506 Filed 10–11–96; 10:23 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AAL–23]

Proposed Revision of Class E Airspace; Savoonga, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Savoonga, AK. The development of a Global Positioning System (GPS) instrument approach to RWY 5 has made this action necessary. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Savoonga, AK.

DATES: Comments must be received on or before November 29, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–23, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified