in recent years. Finally, bank failures and the resulting losses for the insurance fund historically have represented a major source of uncertainty in forecasting the fund balance. Failures can arise from developments in the global marketplace, smaller geographic markets, or specific product markets, and the failure rate is affected by numerous other factors. The 1980s offer strong evidence that changes in these determinants and their implications cannot, as a rule, be anticipated far in advance. The specific timing of failures is particularly difficult to project, even for short forecast horizons. Taken together, the above considerations indicate that the reserve ratio cannot be managed with sufficient precision to achieve a precise target consistently.

Section 208 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended section 7(b) of the FDI Act to establish a DRR and set the level at 1.25%. Public Law 101–73, 103 Stat. 183, 206. Prior to FIRREA, beginning in 1980, the FDI Act required or authorized the Board to adjust the amount of assessment income transferred to the insurance fund, and thereby to increase or decrease the rebate amount, based on the actual reserve ratio of the fund within a range from 1.10 percent to 1.40 percent, with 1.25 percent as the target. See discussion *infra*, Rebates.

FIRREA also prescribed minimum annual assessment rates which could be increased from the scheduled levels, ''if necessary to restore the fund's ratio of reserves to insured deposits to its *target level* within a reasonable period of time.'' [Emphasis added.] H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 396 (1989). Thus, when the DRR was established, Congress appears to have considered the DRR as a target level.

The view that the DRR is a target finds further support in Senate legislation which was considered when enacting the Assessment Rate Act. Section 1(a) of S. 3045, which was sponsored by then Senate Banking Committee Chairman Riegle and other members of the Senate Banking Committee, required the Board to ''maintain the reserve ratio at a level equal to the designated reserve ratio''. This language was almost identical to the comparable provision of S. 3093, the Administration bill, which ultimately was enacted. The section-by-section analysis of S. 3045 describes Section 1(a) as permitting

> * * * the FDIC to set the assessment rate at the level the FDIC determines to be appropriate: to maintain the Bank Insurance Fund's reserves at the target level (now $1.25 in reserves for each $100 in insured deposits, with the FDIC having the discretion under the current law to increase it to $1.50); or if the Fund's reserves are below the target level, to restore the reserves to the target level. The FDIC would have 'a reasonable period of time' to restore the Fund's reserves to the target level. [Emphasis added.]

The Senate banking committee clearly considered the DRR as a target.

Finally, FDICIA section 104, Recapitalizing the Bank Insurance Fund, amended the assessment rate provisions of section 7(b)(1)(C) (in effect December 19, 1991 through December 31, 1993) as follows:

> If the reserve ratio of the Bank Insurance Fund *equals or exceeds* the fund's designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund as appropriate to maintain the reserve ratio at the designated reserve ratio. [Emphasis added.]

Thus Congress appears to have recognized that the reserve ratio would fluctuate around a target DRR.

Treating the DRR as a target would necessarily include the concept of fluctuations above and below the target, thus incorporating into the rate-setting process a measure of economic reality. If the reserve ratio falls below 1.25% in a semiannual period, the Board could adjust the assessment schedule in the next semiannual period to restore the ratio. Section 7(b)(3)(A) of the FDI Act contemplates precisely that. That section provides that, after the DRR is achieved, if the reserve ratio falls below the DRR, the Board is required to set semiannual assessments sufficient to increase the reserve ratio to the DRR within one year or in accordance with a recapitalization schedule promulgated to restore the reserve ratio to the DRR within 15 years. Conversely, when the reserve ratio rises above the DRR for any semiannual period, the Board could adjust the assessment schedule downward to reflect the increase.

Current projections show, however, that even if the assessment rate for risk classification 1A banks were as low as possible consistent with a meaningful risk-based assessment system, the fund may continue to grow as a result of the revenue from investment income. In such a case where the rates are set as low as possible consistent with a risk-based assessment system and the fund nevertheless continues to grow, the Board considers that it will have complied with the statute because the Board will have *set rates* to maintain the reserve ratio at 1.25% in accordance with statutory requirements for a risk-based assessment system.

Congress could not have understood that the reserve ratio can be maintained precisely at 1.25%. Under this interpretation, amounts in excess of that fixed point should be returned to the industry. However, as discussed above, the FDIC cannot completely control the factors that produce fluctuations in the level of the reserve ratio. Therefore, management of the reserve ratio is necessarily imprecise. In the current economic situation, the fund will likely grow beyond the DRR as a result of investment income alone. Thus, an interpretation which requires the FDIC to maintain the reserve ratio precisely at 1.25% would necessarily require a mechanism for providing assessment credits (known as rebates) to BIF members for amounts in excess of 1.25%. Putting aside issues of whether investment income, reserve corpus or both can be rebated, more importantly, the FDIC's authority in section 7(d), 12 U.S.C. 1817(d), to provide assessment credits was deleted in FDICIA as being obsolete. *See*, section-by-section analysis of section 212(e)(3) of S. 543 which became the language of section 302(a) of FDICIA at 138 *Cong. Rec.* S2073 (daily ed. February 21, 1992). See discussion *infra*, Rebates.

The Board believes that viewing the DRR as a target is the correct position because (1) it reflects economic reality and the impossibility of maintaining the reserve ratio precisely at 1.25%; (2) it gives effect to other relevant requirements in the statute for a minimum assessment, a risk-based assessment system, and maintenance of the DRR; and 3) it better comports with Congressional intent as indicated by the legislative history and the fact that Congress eliminated the rebate authority of section 7(d).

2. BIF Members shall pay a minimum semiannual assessment of $1,000.

Section 302 of FDICIA completely revised section 7(b) of the FDI Act. The minimum assessment language was modified only to reflect the fact that rates are to apply semiannually and to combine separate provisions into a single provision applicable to both the BIF and SAIF as follows:

> The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000. FDI Act, section 7(b)(2)(A)(iii).

After FDICIA, BIF members must pay the greater of their risk-based rate or $2000 each year.

C. The FDIC Shall Establish a Risk-Based Assessment System

In FDICIA, Congress completely restructured the basis upon which assessment rates are determined. Section 302(a) of FDICIA required the