11.7 basis points for 1983–93. In view of the currently favorable banking environment, however, a 5 basis point adjustment factor should be sufficient to maintain the DRR in the short run.

IV. Application and Adjustment of Proposed Assessment Rate Schedule

A. Summary

The proposal would establish (1) the manner in which the new schedule of assessment rates set forth in Section III, will be applied in the semiannual period during which the DRR is achieved, and (2) a process for adjusting the proposed rate schedule (within prescribed parameters) to maintain the reserve ratio at 1.25% without the necessity of notice and comment rulemaking procedures for each adjustment. In conformity with the statutory directives, the proposed assessment schedule would not become effective unless and until the DRR is, in fact, achieved. Once effective, however, the proposed rate would apply to the remainder of the semiannual period after the DRR is achieved and to semiannual periods thereafter.

For semiannual periods after that period in which the DRR is achieved, the proposed rate would be adjusted semiannually up or down by the adjustment factor of up to and including 5 basis points as necessary to maintain the target DRR at 1.25%. The semiannual assessment schedule, and any adjustment thereto, would be adopted by the Board in a resolution which reflects consideration of the statutory factors upon which it is determined. The Board would announce the semiannual assessment schedule not later than 45 days prior to the November 30 and May 30 quarterly invoice dates, and the adjusted rates would first be reflected in those invoices.

B. Semiannual Period During Which DRR Is Achieved

Section 7(b)(2)(E) provides that:

> The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the * * * reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—
>
> (i) section 7(b) as in effect on July 15, 1991 remained in effect; and
>
> (ii) the assessment rate in effect on July 15, 1991 [23 basis points] remained in effect.

Based on the language of this section as well as its legislative history, the Board believes that it has no authority to decrease the assessment rates paid by BIF members until after the reserve ratio has, in fact, reached the DRR, regardless of projections for BIF recapitalization. Section 7(b)(2)(E) indicates that the Board may not lower BIF assessment rates in anticipation of meeting the DRR during the upcoming semiannual period. If the Board were to decrease the rates based on projections for BIF recapitalization, the reserve ratio would ‘‘remain’’ below the DRR at the time of the Board’s action and the minimum assessments provisions of section 7(b) would continue to apply.

This interpretation is consistent with Congressional intent that the FDIC maintain a minimum assessment rate of 23 basis points for BIF members until the fund achieves its DRR. In connection with the Senate Banking Committee’s consideration of whether to establish a maximum assessment for BIF members, the Committee stated, ‘‘[t]he Committee is *firm* in its view that the 23 basis point premium rate now in effect [during the second semiannual period of 1991] should not be reduced until the BIF achieves its designated reserve ratio.’’ [Emphasis added.] S. Rep. No. 167, 102d Cong., 1st Sess., 30 (1991). The Committee believed that, ‘‘So long as BIF reserves remain insufficient to cover demands on the BIF as they arise, taxpayers will be at risk’’ and passed a bill which ‘‘encourages the FDIC to begin rebuilding the BIF by restricting the FDIC’s discretion to delay recapitalization.’’ *Id.* at 29.

If section 7(b)(2)(E) were further interpreted to mean that the FDIC must wait to reduce BIF rates until the beginning of the semiannual period after the DRR was reached, the FDIC would have collected far in excess of the revenue required to maintain the reserve ratio at the DRR with no mechanism for rebating the excess amounts. This is particularly the case if the BIF recapitalizes early in the semiannual period, as is indicated by current projections. If this provision were interpreted in this manner, the vast majority of the assessment revenue collected would not be needed to maintain the BIF at the DRR.

Although the Board must set semiannual assessments for BIF members, the FDI Act is silent as to when assessments must be announced or set and expressly allows the Board to prescribe the manner and time of assessment collections. *See* FDI Act, sections 7(b)(2)(A); 7(b)(3) and 7(c)(2)(B).[4] 12 U.S.C. 1817(b)(2)(A); 1817(b)(3) and 1817(c)(2)(B). Thus, the Board may set semiannual assessment rates to take effect after the DRR has been achieved.

The reserve ratio is the dollar amount of the BIF fund balance divided by the estimated insured deposits of BIF members. Although data for the fund balance is accounted for on a monthly basis, the amount of estimated insured deposits is based on data from the quarterly reports of condition (call reports). Because current projections indicate that the BIF will recapitalize early in the July–December semiannual period, the amount of estimated insured deposits would be determined by the information on the June call reports which are due on July 30 (or for some institutions, August 14). Due to the customary time lag involved in verifying the information from the call reports, it is probable that the determination that the DRR has been achieved will not be made until mid-September. Moreover, because the fund balance is determined only on a monthly, rather than daily basis, the date on which the Board ascertains that the DRR has been attained must necessarily be the last day of the month.

Because the Board cannot lower assessment rates until it is certain that the DRR has been attained, the May 30 quarterly invoice and, very likely, the August 30 quarterly invoice will reflect the pre-DRR rate of approximately 6 basis points (one-quarter of the annual assessment rate of 23 basis points). The June 30 direct debit of the amount specified on the May 30 invoice will proceed as planned. However, in the event it is determined that the DRR has been attained before the September 30 direct debit occurs, the Board proposes to promptly notify BIF members that the September 30 direct debit will be modified to reflect the new assessment rate.

Because the proposed 4–31 basis point assessment rate would apply from the first day of the month after the DRR was achieved for the remainder of the semiannual period, it is likely that some BIF members will have overpaid their semiannual assessments. For example, if the DRR is determined to have been achieved on July 31 and the 4–31 basis point rate becomes effective on August 1, a portion of the assessment paid for the July–September quarter would constitute an overpayment. In such a case, pursuant to section 7(e) of the FDI Act, the FDIC is permitted to refund any assessment overpayment or to credit the overpayment toward the next assessment due until the overpayment amount is exhausted.

Section 7(e) applies in the case of ‘‘any payment in excess of the amount

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[4] Section 7(b)(1)(A) was amended in FDICIA to permit the FDIC to establish ‘‘and, from time to time, adjust the assessment rates * * *’’. FDICIA, section 104(b). This provision was in effect from December 19, 1991 until January 1, 1994 when the risk-based assessment provisions became operative.