

due". The FDIC has interpreted this provision to apply case-by-case to an overpayment by an individual institution caused by a computation error or revisions to the institution's reported assessment base. Because individual institutions would have overpaid the amount that actually was due once the proposed rate became effective, section 7(e) should also be applicable in this situation.

On the other hand, if the DRR is not achieved, no action would be required because the existing collection process would simply remain in effect. In such a case, the September 30 direct debit of the amount specified on the August 30 quarterly invoices would go forward. If the DRR were to be reached, for example, on September 30, the proposed rate would nonetheless take effect at that point for the remainder of the July-December semiannual period.

In the event the FDIC collects more assessment revenue from an institution than is required for the July-December semiannual period, a refund of the overpayment, with interest from the time the DRR is achieved, would be provided. The FDIC intends to provide any such refund electronically using the ACH facility, but may do so by check. The same routing transit numbers and accounts used for the direct debit collection would be used for electronic refunds.

#### C. Semiannual Periods After the DRR Is Achieved

The 4-31 basis point assessment schedule would continue to apply to semiannual periods commencing with the semiannual period after the DRR has been achieved (presumably January 1996). However, to enable the Board to maintain the reserve ratio at the target DRR in future semiannual periods, the proposal would authorize the Board to adjust (by resolution) the proposed assessment schedule by an adjustment factor of up to and including 5 basis points or fraction thereof. By this means the Board proposes to limit its discretion to adjust rates within a range of 5 basis points. As noted above, such adjustments could only be made to the assessment schedule in its entirety, not to individual risk classification cells. Nor could the spread of 27 basis points be changed by means of the adjustment factor. Accordingly, by means of the adjustment factor, the Board could adjust the proposed assessment schedule of 4-31 basis points to a maximum assessment schedule of 9-36 basis points and a minimum assessment schedule of 0-27 basis points. Thus, for example, if the rate for 1A banks was 4 basis points, no matter how many times

the assessment schedule were adjusted up or down, the rate for 1A banks could never go above 9 basis points without going through the notice and comment rulemaking process. Finally, if financial conditions warranted a change beyond the maximum amount of the adjustment factor, the Board would make such adjustments through the notice and comment rulemaking process.

The adjustment factor for any particular semiannual period would be determined by (1) the amount of assessment income necessary to maintain the reserve ratio at 1.25% (taking into account operating expenses and expected losses) 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 proposes to adjust the assessment rate schedule every six months by the amount, up to and including the maximum adjustment factor of 5 basis points, necessary to maintain the reserve ratio at the DRR. Such adjustments will be adopted in a Board resolution that reflects consideration of the statutory factors. These include expected operating expenses, projected losses, the effect on BIF members' earnings and capital and any other factors the Board determines to be relevant to the BIF. The resolution will be adopted and announced at least 45 days prior to the invoice date for the first quarter of the semiannual period in which the rate will take effect (*i.e.*, November 30 and May 30 invoice dates). Those invoices would then first reflect the adjusted assessment rate schedule.

#### V. Request for Comment

The Board invites comments on all aspects of the proposal.

#### VI. Paperwork Reduction Act

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

#### VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. *Id.* at 601(2). Accordingly, the statute does not apply to the proposed changes in the assessment rate schedule, the structure of that schedule and future adjustments thereto. In any event, to the extent an institution's assessment is

based on the amount of its domestic deposits, the primary purpose of the Regulatory Flexibility Act, that agencies' rules do not impose disproportionate burdens on small businesses, is fulfilled.

#### List of Subjects in 12 CFR Part 327

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

For the reasons stated in the preamble, the Board proposes to amend part 327, as amended at 59 FR 67153 effective April 1, 1995, of title 12 of the Code of Federal Regulations as follows:

#### PART 327—ASSESSMENTS

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

**Authority:** 12 U.S.C. 1441, 1441b, 1817-1819.

2. Section 327.8 is amended by adding a new paragraph (i) to read as follows:

#### § 327.8 Definitions.

\* \* \* \* \*

(i) As used in § 327.9, the following terms have the following meanings:

(1) *Adjustment factor.* The maximum number of basis points by which the Board may increase or decrease Rate Schedule 2 set forth in § 327.9(a).

(2) *Assessment schedule.* The set of rates based on the assessment risk classifications of § 327.4(a) with a difference of 27 basis points between the minimum rate which applies to institutions classified as 1A and the maximum rate which applies to institutions classified as 3C.

3. Section 327.9 is amended by revising paragraphs (a) and (b), by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

#### § 327.9 Assessment rate schedules.

(a) *BIF members.* Subject to § 327.4(c), the annual assessment rate for each BIF member other than a bank specified in § 327.31(a) shall be the rate in the Rate Schedules below applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that BIF member. Until the BIF designated reserve ratio of 1.25 percent is achieved, the rates set forth in Rate Schedule 1 shall apply. After the BIF designated reserve ratio is achieved, the rates set forth in Rate Schedule 2 shall apply. The schedules utilize the group and subgroup designations specified in § 327.4(a):