Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 2.18, 2.53.

■ 12. In § 557.2, revise paragraph (b) to read as follows:

§ 557.2 Eligibility of foreign countries for importation of fish and fish products into the United States.

* * * * *

(b) The countries eligible to export specific process categories of fish and fish products are listed at *http://www.fsis.usda.gov/importlibrary.* Such products must be covered by foreign inspection certificates of the country of origin as required by § 557.4. Products from such countries are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 13. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 14. Revise § 590.910 to read as follows:

§ 590.910 Eligibility of foreign countries for importation of egg products into the United States.

(a) Whenever it is determined by the Administrator that the system of egg products inspection maintained by any foreign country is such that the egg products produced in such country are processed, labeled, and packaged in accordance with, and otherwise comply with, the standards of the Act and these regulations including, but not limited to the same sanitary, processing, facility requirements, and continuous Government inspection as required in §§ 590.500 through 590.580 applicable to inspected articles produced within the United States, notice of that fact will be given according to paragraph (b) of this section. Thereafter, egg products from such countries shall be eligible for importation into the United States, subject to the provisions of this part and other applicable laws and regulations. Such products must meet, to the extent applicable, the same standards and requirements that apply to comparable domestic products as set forth in these regulations. Egg products from foreign countries not deemed eligible in accordance with paragraph (b) of this section are not eligible for importation into the United States, except as provided by § 590.960. In determining if the inspection system of a foreign country is the equivalent of the system maintained by the United States, the Administrator shall review the *COM007*inspection regulations of the foreign country and make a survey to determine the manner in which the inspection system is administered within the foreign country. The survey of the foreign inspection system may be expedited by payment by the interested Government agency in the foreign country of the travel expenses incurred in making the survey. After approval of the inspection system of a foreign country, the Administrator may, as often and to the extent deemed necessary, authorize representatives of the Department to review the system to determine that it is maintained in such a manner as to be the equivalent of the system maintained by the United States.

(b) A list of countries eligible to export egg products to the United States is maintained at *http://www.fsis.usda.gov/importlibrary.*

Done at Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–25750 Filed 11–26–19; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF16

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending the deposit insurance assessment regulations that govern the use of small bank assessment credits (small bank credits) and one-time assessment credits (OTACs) by certain insured depository institutions (IDIs). Under this final rule, now that the FDIC is applying small bank credits to quarterly deposit insurance assessments, such credits will continue to be applied as long as the Deposit Insurance Fund (DIF) reserve ratio is at least 1.35 percent (instead of, as originally provided, 1.38 percent). In addition, after small bank credits have been applied for four quarterly assessment periods, and as long as the reserve ratio is at least 1.35 percent, the FDIC will remit the full nominal value of any remaining small bank credits in lump-sum payments to each IDI holding such credits in the next assessment period in which the reserve ratio is at least 1.35 percent, and will simultaneously remit the full nominal value of any remaining OTACs in lump-sum payments to each IDI holding such credits.

DATES: This final rule is effective November 27, 2019, and is applicable beginning July 1, 2019 (the third quarterly assessment period of 2019).

FOR FURTHER INFORMATION CONTACT: Ashley Mihalik, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–3793, *amihalik@FDIC.gov;* Jithendar Kamuni, Manager, Assessment Operations Section, (703) 562–2568, *jikamuni@FDIC.gov;* Samuel B. Lutz, Counsel, Legal Division, (202) 898–3773, *salutz@FDIC.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The FDIC maintains and administers the DIF in order to assure the agency's capacity to meet its obligations as the insurer of deposits and receiver of failed IDIs.[1] The FDIC considers the adequacy of the DIF in terms of the reserve ratio, which is equal to the DIF balance divided by estimated insured deposits. A higher reserve ratio reduces the risk that losses from IDI failures during an economic downturn will exhaust the DIF and also reduces the risk of large, pro-cyclical increases in deposit insurance assessments to maintain a positive DIF balance during such a downturn.

The FDIC is amending its regulations governing the use of small bank credits and OTACs.[2] As originally adopted, the regulations provided that after the reserve ratio reached or exceeded 1.38 percent, and provided that it remained at or above 1.38 percent,[3] the FDIC would automatically apply small bank credits up to the full amount of the IDI's credits or quarterly assessment, whichever is less.[4] Under the final rule,

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[1] As used in this final rule, the term ''insured depository institution'' has the same meaning as the definition used in Section 3 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813(c)(2).

[2] *See* 12 CFR 327.11(c) (use of small bank credits) and 12 CFR 327.35 (use of OTACs).

[3] *See* 83 FR 14565 (April 5, 2018) (making technical amendments to FDIC's assessment regulations, including an amendment clarifying that small bank credits will be applied in assessment periods in which the reserve ratio is at least 1.38 percent).

[4] After the initial notice of an IDI's assessment credit balance, and the manner in which the credit was calculated, periodic updated notices will be provided to reflect adjustments that may be made as the result of credit use, request for review of credit amounts, any subsequent merger or consolidation. Under the rule, such notices will also reflect adjustments that may be made as a result of an IDI's amendment to its quarterly Consolidated Reports of Condition and Income or

Continued

the FDIC will continue to apply small bank credits if the reserve ratio falls below 1.38 percent, as long as it does not fall below the statutory minimum reserve ratio of 1.35 percent. The FDIC will remit the full nominal value of any remaining small bank credits after such credits have been applied for four quarterly assessment periods. At the same time that any remaining small bank credits are remitted, the FDIC will also remit the full nominal value of any remaining OTACs, issued under section 7(e)(3) of the FDI Act, to IDIs holding such credits.[5]

The primary objective of this rule is to make the application of small bank credits to IDIs' quarterly assessments more predictable, and to simplify the FDIC's administration of small bank credits, without materially impairing the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent. The rule affects the timing of when small bank credits would be applied to an IDI's quarterly assessment, but it does not change the aggregate amount of credits that banks have been awarded. Based on data from Consolidated Reports of Condition and Income and quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (together, ''quarterly regulatory reports''), as of June 30, 2019, the aggregate amount of small bank credits, $764.5 million, represented less than one basis point of the reserve ratio. For the initial quarter in which small bank credits were applied, and for each future quarter of application, such credits represent less than one-half of one basis point of the reserve ratio.

In the FDIC's view, these changes lessen the likelihood that application of small bank credits would be suspended due to small variations in the reserve ratio. In particular, the rule lessens the likelihood that such credits would be applied in a quarter when the reserve ratio is at or above 1.38 percent and then immediately suspended in the next quarter if the reserve ratio falls below 1.38 percent. The rule is expected to result in more stable and predictable application of credits to quarterly assessments, permitting IDIs to better budget for their assessment cash flow, and could benefit certain IDIs that might realize the full value of their credits at an earlier date.

Additionally, the final rule simplifies the FDIC's administration of the DIF from an operational perspective. While the rule affects the timing of DIF revenues by reducing the period of time during which small bank credits are applied, the long-term adequacy of the DIF is not impacted because the total amount of credits awarded does not change.

An additional objective of the rule is to establish a reasonable time period during which the FDIC will administer the application of credits for the small bank credit program and the OTAC program. The FDIC will accomplish this by remitting, after four quarterly assessment periods, any remaining small bank credits and OTACs in lump-sum payments to each IDI holding such credits in the next quarterly assessment period in which the reserve ratio is at least 1.35 percent. The FDIC will then conclude both credit programs. This change will accelerate the time at which IDIs will receive the benefit of such credits and will permit more efficient administration of the DIF on a going-forward basis.

II. Background

A. Small Bank Assessment Credits

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which raised the minimum reserve ratio for the DIF to 1.35 percent (from the former minimum of 1.15 percent), required the FDIC to ''offset the effect of the increase in the minimum reserve ratio on insured depository institutions with total consolidated assets of less than $10 billion'' when setting assessments.[6] To offset the effect of increasing the minimum reserve ratio on IDIs with total consolidated assets of less than $10 billion (small IDIs), on March 25, 2016, the FDIC published a final rule (the 2016 final rule) that, among other things, provided assessment credits to small IDIs for the portion of their regular assessments that contributed to the growth in the reserve ratio between 1.15 percent and 1.35 percent.[7] Pursuant to the 2016 final rule, upon reaching the statutory minimum reserve ratio of 1.35 percent, small IDIs were awarded small bank credits for the portion of their assessments that contributed to the growth in the reserve ratio from 1.15 percent to 1.35 percent.[8] The regulations provided that these small bank credits would be applied to quarterly deposit insurance assessments when the reserve ratio is at least 1.38 percent.[9]

As of September 30, 2018, the DIF reserve ratio reached 1.36 percent, exceeding the statutorily required minimum reserve ratio of 1.35 percent. All IDIs that were small IDIs, including small IDI affiliates of large IDIs, at any time during the ''credit calculation period'' [10] were awarded a share of credits in January 2019.[11] As of June 30, 2019, the DIF reserve ratio reached 1.40 percent, exceeding the 1.38 percent threshold for the first time. As a result, for the second quarter assessment period, the FDIC applied $319.7 million of small bank credits to offset IDIs' assessments. After applying credits for the second quarter of 2019, $444.8 million in small bank credits remain.[12]

The share of the aggregate small bank credits allocated to each IDI was proportional to its credit base, defined as the average of its regular assessment base during the credit calculation period.[13] [14] IDIs eligible to receive a credit were notified of their individual credit allocation in January 2019 via FDIC*connect.* The FDIC will provide IDIs with periodic notices to reflect adjustments that may be made as the result of credit use or acquisition of an IDI with credits through merger or consolidation.[15]

quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (as applicable).

[5] *See* 12 U.S.C. 1817(e)(3); *see also* 12 CFR part 327, subpart B.

[6] Public Law 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817 (note)).

[7] *See* 81 FR 16059 (Mar. 25, 2016).

[8] *See* 81 FR 16065–16066.

[9] 12 CFR 327.11(c)(11).

[10] The ''credit calculation period'' covers the period beginning July 1, 2016 (the quarter after the reserve ratio first reached or exceeded 1.15 percent) through September 30, 2018 (the quarter in which the reserve ratio first reached or exceeded 1.35 percent). *See* 12 CFR 327.11(c)(2).

[11] If a small IDI acquired another small IDI through merger or consolidation during the credit calculation period, the acquiring small IDI's regular assessment bases for purposes of determining its credit base included the acquired IDI's regular assessment bases for those quarters during the credit calculation period that were before the merger or consolidation. *See* 12 CFR 327.11(c)(5).

[12] In January 2019, aggregate credits of $764.7 million were awarded to 5,381 institutions. As of June 30, 2019, due to mergers, IDI failures, and voluntary liquidations, 5,215 remaining institutions had credits totaling $764.5 million. Since then, the FDIC has applied $319.7 million of small bank credits, reducing the aggregate amount of remaining small bank credits to $444.8 million.

[13] Individual shares of credits were adjusted so that the assessment credits awarded to an eligible institution would not exceed the total amount of quarterly deposit insurance assessments paid by the institution during the credit calculation period in which it was a credit accruing institution. The adjusted amount was then reallocated to the other credit accruing institutions. *See* 12 CFR 327.11(c)(4)(iii).

[14] *See* 12 CFR 327.11(c)(4).

[15] If any IDI acquires an IDI with credits through merger or consolidation, the acquiring IDI will acquire any remaining small bank credits of the acquired institution. *See* 12 CFR 327.11(c)(9). Other than through merger or consolidation, credits are not transferrable. *See* 12 CFR 327.11(c)(12). Credits held by an IDI that fails or ceases to be an insured depository institution will expire.

B. One-Time Assessment Credits

The Federal Deposit Insurance Reform Act of 2005 (FDI Reform Act) required the FDIC to provide OTACs to IDIs that existed on December 31, 1996, and paid a deposit insurance assessment prior to that date, or that were successors to such an institution.[16] [17] The purpose of the OTAC, which was described as a ''transitional'' credit when it was enacted, was to recognize the contributions that certain institutions made to capitalize the Bank Insurance Fund and Savings Association Insurance Fund, which had been recently merged into the Deposit Insurance Fund.[18] In October 2006, the FDIC adopted a final rule implementing the OTAC required by the FDI Reform Act.[19] The aggregate amount of the OTAC was estimated to be approximately $4.7 billion. The FDIC began to apply OTACs to offset an IDI's quarterly deposit insurance assessments beginning with the first assessment period of 2007. As of June 30, 2019, only two IDIs have outstanding OTACs totaling approximately $300,000. The assessment bases of these two IDIs have decreased significantly since December 31, 1996, which was the date used to calculate assessment bases when awarding OTACs to each eligible IDI. Based on the assessment bases of the two IDIs reported as of June 30, 2019, the FDIC estimates that application of the OTACs could continue for more than 13 years.

C. The Proposed Rule

On August 20, 2019, the FDIC Board approved a Notice of Proposed Rulemaking (NPR) to amend the deposit insurance assessment regulations that govern the use of small bank assessment credits and OTACs by certain IDIs.[20] Under the proposed rule, the FDIC would continue to apply small bank credits if the reserve ratio falls below 1.38 percent, as long as it does not fall below the statutory minimum reserve ratio of 1.35 percent. The FDIC proposed to remit the full nominal value of any remaining small bank credits after such credits had been applied for eight quarterly assessment periods. At the same time that any remaining small bank credits are remitted, the FDIC also proposed to remit the full nominal value of any remaining OTACs, issued under section 7(e)(3) of the FDI Act, to IDIs holding such credits. The FDIC received two comments on the NPR. The comments are discussed in the relevant sections below.

III. The Final Rule

A. Summary

The FDIC received two comments from trade associations in response to the NPR. Both commenters generally supported the proposed rule. After careful consideration of all of the comments received, the FDIC is finalizing the rule as proposed with one modification to the amount of time during which the FDIC will apply small bank credits before remitting any remaining balances of such credits and OTACs to IDIs. With respect to that aspect of the rule, the FDIC is adopting an alternative proposed in the NPR. Under the alternative and this final rule, the FDIC will remit any remaining balance of small bank credits and OTACs to IDIs after small bank credits have been applied for four quarterly assessment periods, instead of eight assessment periods as proposed in the NPR. The FDIC applied small bank credits for the assessment period ending June 30, 2019, the first quarter that the reserve ratio was at least 1.38 percent. Pursuant to this final rule, and as proposed in the NPR, the FDIC will continue to apply small bank credits as long as the DIF reserve ratio is at least 1.35 percent. After small bank credits have been applied for four quarterly assessment periods (rather than after eight quarterly assessment periods, as proposed in the NPR), the FDIC will remit the full amount of any remaining small bank credits in lump-sum payments to each IDI holding such credits in the next quarterly assessment period in which the reserve ratio is at least 1.35 percent. Also, as proposed in the NPR, at the same time that any remaining small bank credits are remitted, the FDIC also will remit the nominal value of any remaining OTACs in lump-sum payments to each IDI holding such credits. Finally, the final rule allows for the recalculation of credits applied each quarter as a result of subsequent amendments to the quarterly regulatory reports.

The primary objective of this rule is to make the application of small bank credits to quarterly assessments more predictable for IDIs with these credits, and to simplify the FDIC's administration of these credits, without materially impairing the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent. The final rule is effective upon publication in the **Federal Register** with an application date of July 1, 2019 (the beginning of the third quarter assessment period).

B. Application of Small Bank Credits as Long as Reserve Ratio Is at or Above 1.35 Percent

As proposed in the NPR, the final rule amends the deposit insurance assessment regulations to suspend the application of small bank credits to an IDI's deposit insurance assessment when the reserve ratio is below 1.35 percent (instead of 1.38 percent, as originally provided). The rule also allows for the recalculation of credits applied each quarter as a result of subsequent amendments to quarterly regulatory reports.[21]

In the FDIC's view, the final rule results in more predictable application of credits to quarterly assessments and simplifies the FDIC's administration of the DIF. Otherwise, a small change in the reserve ratio—caused by, for example, insured deposit growth, changing interest rates, or losses from bank failures—could cause the reserve ratio to fluctuate one basis point above or below 1.38 percent. This uncertainty would make it difficult for IDIs with small bank credits to predict each quarter whether their deposit insurance assessments would be offset by credits, and would complicate the FDIC's ability to administer the DIF.

As explained in the NPR, the changes pursuant to this final rule will not materially impair the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent. In the 2016 final rule, the FDIC noted that ''allowing credit use only when the reserve ratio is at or above 1.38 percent should provide sufficient cushion for the DIF to remain above 1.35 percent in the event of rapid growth in insured deposits and ensure that credit use alone will not result in the reserve ratio falling below 1.35 percent. Allowing credit use before the reserve ratio reaches this level, however,

[16] The FDI Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Public Law 109–171, 2107(a), 120 Stat. 4, 18 (12 U.S.C. 1817(e)(3)).

[17] By statute, the aggregate amount of credits equaled the amount that would have been collected if the FDIC had imposed a 10.5 basis point assessment on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001. *See* 12 U.S.C. 1817(e)(3)(B). Individual shares were required to be based on the ratio of the institution's assessment base on December 31, 1996, to the aggregate assessment base of all eligible IDIs on that date. *See* 12 U.S.C. 1817(e)(3)(A).

[18] *See* H.R. Rep., No. 109–362, at 197 (Conf. Rep.); 71 FR 61374, 61381 (Oct. 18, 2006).

[19] 71 FR 61375; 12 CFR part 327, subpart B (12 CFR 327.30 *et seq.*).

[20] 84 FR 45443 (Aug. 29, 2019).

[21] This aspect of the rule addresses the use of credits once the DIF reserve ratio reaches 1.38 percent and the FDIC begins to apply credits to an institution's regular quarterly deposit insurance assessments. This aspect of the rule will not affect the aggregate amount of credits that have been awarded to all eligible IDIs, nor will it affect the amount of credits awarded to an individual IDI.

would create a greater risk of the reserve ratio falling below 1.35 percent, triggering the need for a restoration plan.'' [22] However, as described below, the FDIC now projects that the reserve ratio will not decline below 1.35 percent due to credit use alone.

First, based on quarterly regulatory report data as of June 30, 2019, the aggregate amount of small bank credits awarded to banks, $764.5 million, represented less than one basis point of the reserve ratio. Furthermore, the FDIC applied approximately 42 percent of all small bank credits during the second quarter assessment period of 2019 (the first time that small bank credits were eligible to be applied). Moreover, the application of small bank credits in future quarters is projected to represent increasingly smaller portions of the reserve ratio. The largest expected subsequent quarterly effect will be equal to approximately one-third of a basis point of the reserve ratio. Therefore, the application of small bank credits in any one quarter will not be sufficient on its own to cause the reserve ratio to fall below 1.35 percent in future quarters. Second, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF). For example, since the beginning of 2018 only four IDIs have failed, with an estimated cost to the DIF of $36.2 million. As of June 30, 2019, the number of ''problem banks'' was 56, the lowest since the first quarter of 2007.

Lowering the reserve ratio threshold at which the application of small bank credits is suspended permits the FDIC to balance its goal of adequately maintaining the reserve ratio while increasing the likelihood that the application of small bank credits to quarterly assessments will remain stable and predictable over time. Furthermore, suspending the application of small bank credits when the reserve ratio falls below 1.35 percent is consistent with the statutory requirement that the FDIC adopt a restoration plan under the FDI Act when the reserve ratio falls below that level.[23]

The FDIC received two comments on this aspect of the rule. Both commenters supported the FDIC's proposal to amend the deposit insurance assessment regulations so that the application of small bank credits to a bank's deposit insurance assessment would be suspended only if the reserve ratio falls below 1.35 percent rather than 1.38 percent. The commenters agreed that the proposal would result in more predictable application of credits to quarterly assessments and would simplify the FDIC's administration of the DIF.

Finally, as mentioned above, the final rule allows for the recalculation of credits applied each quarter as a result of subsequent amendments to the quarterly regulatory reports. The FDIC received one comment in support of this change, and the commenter noted that, for banks with credit balances, this amendment would mitigate the impact on assessments due from Call Report revisions, thus limiting the impact on bank earnings. The 2016 final rule prohibited recalculation of the amount of small bank credits applied for a prior quarter's assessment resulting from subsequent amendments to a bank's quarterly regulatory reports.[24] Removing this prohibition results in a more appropriate assignment of credits to the assessment period in which the credits originally would have been applied under a correct filing of the quarterly regulatory report, without materially affecting the reserve ratio. Consistent with this final rule, if small bank credits or OTACs are restored due to a recalculation of a prior quarter's assessment, such credits will be applied to future assessments, as applicable, or, in the event that small bank credits have been applied for four quarterly assessment periods, remitted in a lump-sum payment into the deposit accounts designated by the IDIs for deposit insurance assessment payment purposes.

C. Remitting Small Bank Credits and One-Time Assessment Credits

Under the NPR, the FDIC proposed that after small bank credits have been applied for eight quarterly assessment periods, and as long as the reserve ratio is at least 1.35 percent, the FDIC will remit in the next assessment period the full balance of any remaining small bank credits to each IDI holding such credits in lump-sum payments. The FDIC received one comment in support of this aspect of the proposed rule. Another commenter supported remitting the full balance of any remaining small bank credits after small bank credits have been applied for four quarterly assessment periods, noting that the FDIC should ''return the credit funds as expeditiously as is feasible'' and that ''the credits will serve a better purpose when disbursed to these banks where these funds can support the institutions' lending and liquidity.'' [25]

Based on current data and projections, remitting the full balance of any remaining small bank credits after four quarterly assessment periods will not materially impair the ability of the FDIC to maintain adequacy of the DIF reserve ratio. Therefore, under the final rule, after small bank credits have been applied for four quarterly assessment periods, and as long as the reserve ratio is at least 1.35 percent, the FDIC will remit in the next assessment period the full balance of any remaining small bank credits to each IDI holding such credits in lump-sum payments.

In addition, and as proposed in the NPR, at the same time that the FDIC remits payment for any remaining small bank credits, FDIC will remit the full balance of any remaining OTACs to each IDI holding such credits in lump-sum payments. One commenter requested that these funds be paid out ''without delay.'' The FDIC is adopting this aspect of the rule as proposed. For purposes of operational efficiency, the FDIC will remit the remaining balances of OTACs on the same schedule as small bank credits.

The FDIC anticipates that after applying small bank credits for three more quarterly assessment periods, 233 institutions will hold an estimated $6.2 million in small bank credits. Under the final rule, these 233 institutions will receive a payment for the nominal amount of the remaining balance. Similarly, as of June 30, 2019, two institutions held OTACs of about $300,000. After three more quarters of applying OTACs, the FDIC estimates that the two IDIs will have approximately $275,000 in remaining OTACs. Therefore, remittance of all remaining small bank credits and OTACs in individual lump-sum payments will affect only a small number of institutions, and the total amount of such payments should not be sufficient on its own to cause the DIF reserve ratio to fall below 1.35 percent.

Moreover, in the FDIC's view, remitting the full balance of remaining small bank credits, as well as OTACs, after four quarters of applying small bank credits will provide a benefit to an IDI that was awarded small bank credits or OTACs. From an operational perspective, implementation of this aspect of the rule allows the FDIC to conclude both the small bank credit and OTAC programs at the same time, thereby simplifying the FDIC's administration of the DIF.

[22] 81 FR 16066.

[23] *See* 12 U.S.C. 1817(b)(3)(E).

[24] *See* 12 CFR 327.11(c)(11)(iii).

[25] *See* American Bankers Association, comment letter, (September 30, 2019), *https://www.fdic.gov/regulations/laws/federal/2019/2019-assessments-3064-af16-c-002.pdf.*

IV. Economic Effects

The FDIC expects that the economic effects of the rule are likely to be small and positive for affected IDIs. As stated previously, the rule reduces the possibility that the FDIC will suspend the application of small bank credits due to a decline in the reserve ratio. The rule affects the timing of when small bank credits will be applied to an IDI's quarterly assessment, but it does not change the aggregate amount of credits that IDIs have been awarded. Therefore, the economic effect of this aspect of the rule is a reduction in any potential future costs associated with a disruption in the application of small bank credits to the assessments of IDIs if the reserve ratio drops below 1.38 percent but remains at or above 1.35 percent. It is difficult to accurately estimate the magnitude of these benefits to IDIs because it depends, among other things, on future economic and financial conditions, the operational and financial management practices at affected IDIs, and future levels of the reserve ratio.

As of June 30, 2019, the DIF reserve ratio reached 1.40 percent, and the FDIC began applying small bank credits to institutions' quarterly assessment for the second assessment period of 2019. As of that date, 5,215 IDIs had small bank credits totaling $764.5 million. For the second assessment period, the FDIC applied $319.7 million of these small bank credits to IDIs' assessments. The FDIC expects that in the next assessment period of credit application (*i.e.,* the next assessment period where the reserve ratio is at or above 1.35 percent), $237.7 million of credits will be applied. Cumulatively, about 73 percent of the aggregate amount of small bank credits will be applied in the first two assessment periods. Therefore, the dollar amount of remaining small bank credits is expected to decline substantially after the first two periods of application, reducing the economic effects if credit application is suspended due to a decrease in the reserve ratio. Additionally, as mentioned above, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF), therefore the probability of suspending the application of small bank credits is low, particularly in the near-term quarters.

Using the same data, the FDIC estimates that 4,982 IDIs (or 95.5 percent) will exhaust their individual shares of small bank credits within four assessment periods of application, leaving 233 with residual small bank credits available for immediate remittance. The FDIC estimates that these IDIs will hold an aggregate of $6.2 million in credits. Under the final rule, the FDIC will remit the remaining individual small bank credit balances to each of these 233 institutions in a lump-sum payment.

Under the final rule and as proposed in the NPR, the FDIC similarly will remit the outstanding balances of remaining OTACs in a lump-sum payment at the same time that the outstanding small bank credit balances are remitted. The FDIC believes that this aspect of the rule is likely to provide a small benefit to affected institutions. As of June 30, 2019, two institutions held OTACs of approximately $300,000. After three more quarters of OTAC use, the two banks will have approximately $275,000 remaining. The benefit of this aspect of the rule to the IDIs with OTACs is that they will receive and can utilize these funds after three more quarters of use, rather than the expected program duration of more than 13 years. Since the IDIs holding OTACs are not currently earning any returns on these funds, and assuming the funds are invested in risk-free assets for 12 years and earn 0.25 percent real rate of return,[26] this aspect of the rule provides an estimated benefit of $8,374 to the affected institutions.

The FDIC requested comments on all aspects of the information provided in the Economic Effects section of the NPR, but did not receive any comments.

V. Alternatives Considered

The FDIC considered several alternatives while developing this rule. In response to comments received, the FDIC is adopting the rule as proposed with one modification to the amount of time during which FDIC will apply small bank credits before remitting any remaining balances of such credits and OTACs to IDIs. With respect to that aspect of the rule, the FDIC is adopting an alternative proposed in the NPR. Under the alternative and this final rule, the FDIC will remit any remaining balance of small bank credits and OTACs to IDIs after small bank credits have been applied for four quarterly assessment periods, instead of eight assessment periods as proposed in the NPR.

The first alternative the FDIC considered would be to leave its regulation governing the use of small bank credits and OTACs unchanged. The FDIC rejected this alternative because, as discussed above, small variations in the reserve ratio could result in the application of credits in one quarter and suspension of credit application in the next, reducing the stability and predictability of assessment obligations. Changing the threshold for suspending application of small bank credits benefits institutions receiving credits at no material cost to the DIF, since the aggregate amount of credits does not change under the final rule and the rule will not materially impair the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent.

Second, the FDIC considered remitting any remaining balances of small bank credits and OTACs to IDIs after fewer than eight assessment periods. For example, the FDIC considered immediately issuing a single lump sum payment in the amount of each IDI's aggregate credit to all eligible IDIs and holders of OTACs after the reserve ratio first reached or exceeded 1.38 percent. The FDIC also considered applying credits for four quarterly assessment periods, then remitting the remaining balance of small bank credits and OTACs to IDIs. The FDIC received one comment in support of remitting the remaining balance of small bank credits to IDIs after four quarters and chose to adopt this alternative upon further consideration. The FDIC has determined that the impact of remitting any remaining balances of small bank credits and OTACs after four quarterly assessment periods will have minimal effects on the volatility of the DIF and will not materially impair the ability of the FDIC to maintain adequacy of the DIF reserve ratio. The FDIC rejected time periods shorter than four quarters because applying credits over a longer period of time would result in less volatility for the DIF.

The FDIC also considered increasing the amount of time during which it would apply small bank credits before remitting any remaining balances of such credits and OTACs to IDIs. The FDIC rejected this alternative because delaying the remittance of any remaining balances of small bank credits and OTACs would affect relatively few institutions, would unnecessarily complicate FDIC's administration of the DIF from an operational perspective, and would not provide a material benefit to the DIF.

VI. Effective Date and Application Date

The rule will be immediately effective upon publication of the final rule in the **Federal Register**. The application date for the rule is July 1, 2019. Because the reserve ratio exceeded 1.38 percent as of

[26] Board of Governors of the Federal Reserve System, 10-Year Treasury Inflation-Indexed Security, Constant Maturity [DFII10] (July 22, 2019), *https://fred.stlouisfed.org/series/DFII10.*

June 30, 2019, the FDIC first applied small bank credits to invoices for the second quarterly assessment period, which began on April 1, 2019, and for which payment was due on September 30, 2019. Making this rule immediately effective and applying the rule beginning with the third quarterly assessment period of 2019—*i.e.,* the period beginning July 1, 2019, and ending September 30, 2019, for which payment is due on December 30, 2019—will allow for application of credits if the reserve ratio falls below 1.38 percent as of September 30, 2019. The application date provides certainty to IDIs with small bank credits that the rule will apply to the third assessment period of 2019, and that the FDIC will continue to apply small bank credits even if the DIF reserve ratio is less than 1.38 percent (but at least 1.35 percent) for that assessment period. The FDIC received two comments on the proposed effective date; both commenters supported making the rule effective upon publication in the **Federal Register**.

As discussed below in Section VII.A (Administrative Procedure Act), the FDIC finds good cause for an immediate effective date, because IDIs will benefit by having increased stability and predictability in the FDIC's application of small bank credits to quarterly assessments over time.

VII. Regulatory Analysis and Procedure

A. The Administrative Procedure Act

Under the Administrative Procedure Act, ''[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.'' [27] Under the final rule, the amendments to the FDIC's deposit insurance assessment regulations will be effective upon publication in the **Federal Register**, and the FDIC finds good cause that the publication of a final rule can be less than 30 days before its effective date because IDIs would benefit from increased stability and predictability in the application of small bank credits to quarterly assessments before the final rule would otherwise become effective.

As explained above in the SUPPLEMENTARY INFORMATION section and in the NPR, because the FDIC invoices for quarterly deposit insurance assessments in arrears, invoices for the third quarterly assessment period of 2019 will be made available to IDIs in December 2019, with a payment date of December 30, 2019. To address any possibility that the reserve ratio, which exceeded 1.38 percent as of June 30, 2019 (the end of the second quarterly assessment period), may decrease below 1.38 percent as of September 30, 2019 (the end of the third quarterly assessment period), the FDIC is establishing an immediate effective date concurrent with the publication in the **Federal Register** and will apply the rule beginning with the third quarterly assessment period of 2019. This effective date will provide certainty to IDIs with small bank credits that the final rule will apply to the third quarterly assessment period of 2019, and that the FDIC will continue to apply small bank credits even if the DIF reserve ratio is less than 1.38 percent (but at least 1.35 percent) for that assessment period.

B. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [28] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comment regarding the use of plain language but did not receive any comments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [29] generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the proposed rule on small entities. However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[30] [31] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC considers effects in excess of these thresholds to typically represent significant effects for FDIC-insured institutions.

In addition, certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[32] The final rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of June 30, 2019, the FDIC insures 5,312 depository institutions, of which 3,947 are defined as small entities by the terms of the RFA.[33] Further, 3,939 RFA-defined small, FDIC-insured institutions have small bank credits totaling $179.7 million.

As stated previously, the final rule reduces the possibility that small bank credits would be suspended due to a decline in the reserve ratio. Therefore, the economic effect of this aspect of the final rule is a reduction in the potential future costs associated with a disruption of the type just described in the application of small bank credits by affected small, FDIC-insured institutions. It is difficult to accurately estimate the magnitude of this benefit to affected small, FDIC-insured institutions because it depends, among other things, on future economic and financial conditions, the operational and financial management practices at affected small, FDIC-insured institutions, and the future levels of the reserve ratio. However, the FDIC expects that the economic effects of the final rule are likely to be small because 41 percent of the aggregate amount of small bank credits have already been applied to the second quarter assessment period

[27] 5 U.S.C. 553(d)(3).

[28] Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999).

[29] 5 U.S.C. 601 *et seq.*

[30] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. . . .'' 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[31] The FDIC supplemented the RFA analysis in the NPR with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards, which were adjusted for inflation as of August 19, 2019. *See* 84 FR 52826 (Oct. 3, 2019).

[32] 5 U.S.C. 601(2).

[33] Consolidated Reports of Condition and Income for the quarter ending June 30, 2019.

of 2019, when the reserve ratio was first at or above 1.38 percent. Cumulatively, about 73 percent of the aggregate amount of small bank credits will be applied in the first two assessment periods. Further, the FDIC estimates that for 3,794 small, FDIC-insured institutions, $54.4 million of small bank credits will be applied in the next assessment period of credit application in which the reserve ratio is at or above 1.35 percent. Therefore, the dollar amount of remaining small bank credits declines substantially following the initial application of credits, reducing the effects of credit application being suspended due to a decrease in the reserve ratio. Additionally, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF), therefore the probability that application of small bank credits will be suspended is low, particularly in the near-term quarters.

As stated previously, under the final rule, the FDIC will remit the outstanding balances of remaining OTACs in a lump-sum payment, in the next assessment period in which the reserve ratio is at least 1.35 percent, at the same time that the outstanding small bank credit balances are remitted. As of June 30, 2019, only two IDIs have outstanding OTACs totaling approximately $300,000. However, both institutions are subsidiaries of large banking organizations and therefore do not qualify as small entities under the RFA. Therefore, this aspect of the final rule does not affect any small, FDIC-insured institutions.

The FDIC solicited comments on all aspect of the supporting information provided in the RFA section of the notice of proposed rulemaking, but none were received.

D. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995,[34] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The final rule does not revise any of these existing assessment information collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review.

[34] 44 U.S.C. 3501 *et seq.*

E. The Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[35] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on IDIs, including small IDIs, and customers of IDIs, as well as the benefits of such regulations. In addition, subject to certain exceptions, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[36]

The final rule does not impose additional reporting or disclosure requirements on IDIs, including small IDIs, or on the customers of IDIs. It provides for: Continued application of small bank credits as long as the reserve ratio is at least 1.35 percent; remittance of any remaining small bank credits in a lump-sum payment after such credits have been applied for four quarterly assessment periods, in the next assessment period in which the reserve ratio is at least 1.35 percent; and remittance of any remaining OTACs in a lump-sum payment at the same time that any remaining small bank credits are remitted. Accordingly, section 302 of RCDRIA does not apply. The FDIC invited comment regarding the application of RCDRIA to the final rule, but did not receive comments on this topic.

F. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[37] The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[38] The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[39] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[35] 12 U.S.C. 4802(a).

[36] 12 U.S.C. 4802(b).

[37] 5 U.S.C. 801 *et seq.*

[38] 5 U.S.C. 801(a)(3).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

For the reasons set forth above, the FDIC amends part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

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

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 2. Amend § 327.11 by revising paragraph (c)(11)(i), removing paragraph (c)(11)(iii), and adding paragraph (c)(13).

The revision and addition read as follows:

§ 327.11 Surcharges and assessments required to raise the reserve ratio of the DIF to 1.35 percent

* * * * *

(c) * * *

(11) *Use of credits.* (i) Effective as of July 1, 2019, the FDIC will apply assessment credits awarded under this paragraph (c) to an institution's deposit insurance assessments, as calculated under this part 327, beginning in the first assessment period in which the reserve ratio of the DIF is at least 1.38 percent, and in each assessment period thereafter in which the reserve ratio of the DIF is at least 1.35 percent, for no more than three additional assessment periods.

* * * * *

(13) *Remittance of credits.* After assessment credits awarded under this paragraph (c) have been applied for four assessment periods, the FDIC will remit the full nominal value of an institution's

[39] 5 U.S.C. 804(2).

remaining assessment credits in a single lump-sum payment to such institution in the next assessment period in which the reserve ratio is at least 1.35 percent.

* * * * *

■ 3. Amend § 327.35 by adding paragraph (c) to read as follows:

§ 327.35 Application of credits.

* * * * *

(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.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–25566 Filed 11–26–19; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 390

RIN 3064–AF07

Removal of Transferred OTS Regulations Regarding Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove a subpart from the Code of Federal Regulations entitled ''Deposits,'' applicable to State savings associations, because the subpart is duplicative of other rules and statutes and is unnecessary to the regulation of State savings associations. The FDIC did not receive any comments on the Notice of Proposed Rulemaking (NPR) and is finalizing the rule as proposed.

DATES: The final rule is effective on December 27, 2019.

FOR FURTHER INFORMATION CONTACT: Karen J. Currie, Senior Examination Specialist, (202) 898–3981, *KCurrie@FDIC.gov,* Division of Risk Management Supervision; Christine M. Bouvier, Assistant Chief Accountant, (202) 898–7289, Division of Risk Management Supervision; Cassandra Duhaney, Senior Policy Analyst, (202) 898–6804, Division of Depositor and Consumer Protection; Laura J. McNulty, Counsel, Legal Division, (202) 898–3817; or Jennifer M. Jones, Counsel, Legal Division (202) 898–6768.

SUPPLEMENTARY INFORMATION:

I. Policy Objective

The policy objective of the rule is to remove unnecessary and duplicative regulations in order to simplify them and improve the public's understanding of them. Thus, the FDIC is rescinding the regulations in part 390, subpart M and reserving the subpart for future use.

II. Background

Part 390, subpart M, was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision (OTS) on July 21, 2011, in connection with the implementation of applicable provisions of title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1]

A. The Dodd-Frank Act

As of July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Pursuant to section 316(c) of the Dodd-Frank Act,[4] on June 14, 2011, the FDIC's Board of Directors (Board) approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[5]

Although § 312(b)(2)(B)(i)(II) of the Dodd-Frank Act[6] granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act)[7] and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c)(1) of the Dodd-Frank Act[8] revised the definition of ''appropriate Federal banking agency'' contained in § 3(q) of the FDI Act,[9] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the appropriate Federal banking agency (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured State-licensed branches of foreign banks.

As noted above, on June 14, 2011, operating pursuant to this authority, the Board issued a list of regulations of the former OTS that the FDIC would enforce with respect to State savings associations. On that same date, the Board reissued and redesignated certain regulations transferred from the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[10] When the FDIC republished the transferred OTS regulations as new FDIC regulations, it specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC regulations, amending them, or rescinding them, as appropriate.[11]

B. Transferred OTS Regulations (Transferred to the FDIC's Part 390, Subpart M)

One of the regulations transferred to the FDIC from the OTS was former 12 CFR 557.20, concerning the maintenance of deposit records by State savings associations.[12] That provision was transferred to the FDIC and now comprises part 390, subpart M. The OTS had issued § 557.20 as part of a

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[1] 12 U.S.C. 5301 *et seq.*

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

[4] 12 U.S.C. 5414(c).

[5] 76 FR 39246 (July 6, 2011).

[6] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[7] 12 U.S.C. 1811 *et seq.*

[8] 12 U.S.C. 5412(c)(1).

[9] 12 U.S.C. 1813(q).

[10] 76 FR 47652 (Aug. 5, 2011).

[11] *See* 76 FR 47653.

[12] *See* 76 FR 47659.