

to any clearly identified Federal candidates; or

(B) One or more clearly identified non-Federal candidates and also refer to candidates of a particular party or associated with a particular issue, but do not refer to any clearly identified Federal candidates;

(iii) Public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates; and

(iv) Public communications that refer to a political party, and refer to one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates.

(c) *Method for allocating administrative expenses, costs of generic voter drives, and certain public communications.* Nonconnected committees and separate segregated funds shall pay their administrative expenses, costs of generic voter drives, and costs of public communications that refer to any political party, as described in paragraphs (b)(1)(i), (b)(1)(iii) or (b)(1)(iv) of this section, with at least 50 percent Federal funds, as defined in 11 CFR 300.2(g).

\* \* \* \* \*

(f) *Payments for public communications and voter drives that refer to one or more clearly identified Federal or non-Federal candidates.* Nonconnected committees and separate segregated funds shall pay for the costs of all public communications that refer to one or more clearly identified candidates, and voter drives that refer to one or more clearly identified candidates, as described in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, as follows:

(1) The following shall be paid 100 percent from the Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to one or more clearly identified Federal candidates, regardless of whether there is reference to a political party, but do not refer to any clearly identified non-Federal candidates, as described in paragraph (b)(2)(iii) of this section; and

(ii) Voter drives described in paragraph (b)(2)(i) of this section.

(2) The following may be paid 100 percent from the non-Federal account of the nonconnected committee or separate segregated fund:

(i) Public communications that refer to a political party and one or more clearly identified non-Federal candidates, but do not refer to any clearly identified Federal candidates, as

described in paragraph (b)(2)(iv) of this section; and

(ii) Voter drives described in paragraph (b)(2)(ii) of this section.

(3) Notwithstanding 11 CFR 106.1(a)(i), public communications and voter drives that refer to one or more clearly identified Federal candidates and one or more clearly identified non-Federal candidates, regardless of whether there is a reference to a political party, including those that are expenditures, independent expenditures or in-kind contributions, shall be allocated as follows:

(i) Public communications and voter drives, other than phone banks, shall be allocated based on the proportion of space or time devoted to each clearly identified Federal candidate as compared to the total space or time devoted to all clearly identified candidates, or

(ii) Public communications and voter drives that are conducted through phone banks shall be allocated based on the number of questions or statements devoted to each clearly identified Federal candidate as compared to the total number of questions or statements devoted to all clearly identified candidates.

Dated: November 18, 2004.

**Bradley A. Smith,**

*Chairman, Federal Election Commission.*

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

RIN 3064-AC84

### Deposit Insurance Assessments—Certified Statements

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is modernizing and simplifying its deposit insurance assessment regulations governing certified statements, to provide regulatory burden relief to insured depository institutions. Under the final rule, insured institutions will obtain their certified statements on the Internet via the FDIC's transaction-based e-business Web site, *FDICconnect*. Correct certified statements will no longer be signed by insured institutions or returned to the FDIC, and the semiannual certified statement process will be synchronized with the quarterly

invoice process. Two quarterly certified statement invoices will comprise the semiannual certified statement and reflect the semiannual assessment amount. If an insured institution agrees with its quarterly certified statement invoice, it will simply pay the assessed amount and retain the invoice in its own files. If it disagrees with the quarterly certified statement invoice, it will either amend its report of condition or similar report (to correct data errors) or amend its quarterly certified statement invoice (to correct calculation errors). The FDIC will automatically treat either as the insured institution's request for revision of its assessment computation, eliminating the requirement of a separate filing. In addition, the FDIC will provide e-mail notification each quarter to let depository institutions know when their quarterly certified statement invoices are available on *FDICconnect*. An institution that lacks Internet access will be able request from the FDIC a one-year renewable exemption from the use of *FDICconnect*, during which it will continue to receive quarterly certified statement invoices by mail. With these amendments, the time and effort required to comply with the certified statement process will be reduced, a result of the FDIC's ongoing program under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPA) to provide regulatory burden relief to insured depository institutions.

**DATES:** This final rule will become effective on March 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Steve Wagoner, Senior Assessment Specialist, Division of Finance, (202) 416-7152; Linda A. Abood, Supervisory IT Specialist, Division of Information Resources Management, (703) 516-1202; or Christopher Bellotto, Counsel, Legal Division, (202) 898-3801, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

### SUPPLEMENTARY INFORMATION:

#### I. Background

On June 8, 2004, the FDIC published in the **Federal Register**, for a 60-day comment period, a notice of proposed rulemaking with request for comment on the proposed amendments to section 327.2, the certified statement regulation. (69 FR 31922). The comment period closed on August 9, 2004. The FDIC received 22 comment letters, one from a trade organization (Independent Community Bankers of America) and 21 from depository institutions. Seventeen of the commenters generally supported the proposal and the remaining five generally opposed, although in varying

degrees. Eleven commenters addressed the question of e-mail notice, all of them favoring the courtesy notification suggested by the FDIC. An alternative form of delivery for institutions without Internet access was requested by four commenters. The following is a discussion of the amendments to section 327.2 and the comments received.

Under section 7(c) of the Federal Deposit Insurance Act (FDI Act or Act) (12 U.S.C. 1817(c)) insured depository institutions are required to file a certified statement with the FDIC for each semiannual deposit insurance assessment period, containing such information as the FDIC "may require for determining the institution's semiannual assessment." 12 U.S.C. 1817(c)(1)(A). The FDI Act also provides that the certified statement "shall \* \* \* be in such form and set forth such supporting information as the Board of Directors shall prescribe \* \* \*" 12 U.S.C. 1817(c)(1)(B)(i). In this way, the Act vests in the FDIC discretion to prescribe the information contained in, as well as the form of, semiannual certified statements. As a result of the FDIC's exercise of this discretion over a period of years, the certified statement process has evolved in response to advances in collection procedures and data processing technology.

Prior to 1995, the FDIC mailed a blank certified statement form to every insured depository institution every semiannual period. Each institution was required to transcribe manually on this form the deposit data culled from its two prior Call Reports/Thrift Financial Reports (TFRs) and to calculate its assessment payment. The assessment was paid for the entire semiannual period one month after the beginning of the semiannual period (*i.e.*, January 31 and July 31). An officer of the institution was required to certify the accuracy of that information by signing the form, which was then returned to the FDIC along with the institution's check for the assessment amount. Under this system almost all of the certified statements were returned to the FDIC each semiannual period, but about 10 percent of the certified statements received contained mistakes, due in part to simple transpositions of figures and mathematical errors that required correction and revision.

The FDIC revised the process for collecting deposit insurance assessments—adopting the system of quarterly payments in 1994 and implementing it in March of 1995. 59 FR 67153 (Dec. 29, 1994). As part of this changeover to the automated invoicing and collection system, the FDIC assumed responsibility for "filling out"

the certified statement and calculating each institution's deposit insurance assessment. The information used by the FDIC in completing certified statements is derived from institutions' Call Reports/TFRs, and is stored by the FDIC electronically. Because the June and December Call Report/TFR data was not available electronically until after the next semiannual payment date,<sup>1</sup> the FDIC instituted the practice of collecting semiannual assessments in two quarterly installments to facilitate FDIC preparation of assessment forms for insured institutions.

Accordingly, since 1995, the semiannual assessment has been collected in two quarterly installments; the sum of these installments equals an institution's semiannual assessment. Each quarterly installment is based on deposit data contained in one of the two quarterly Call Reports/TFRs submitted by the institution during the previous semiannual period. Under section 7(a)(3) of the FDI Act (12 U.S.C. 1817(a)(3)), reports of condition must contain a declaration by an officer of the institution, and a signed attestation by two other institution officers, that the information set forth is true and correct.

The FDIC computes the amount of each quarterly installment by retrieving the relevant electronic data from the Call Report/TFR for each institution. Under the present system, the FDIC sends each insured institution an invoice for the first semiannual installment, and, three months later, a certified statement for the second installment. The invoice and the certified statement<sup>2</sup> are each mailed about two weeks prior to the actual collection of each respective installment.<sup>3</sup>

<sup>1</sup> The June 30 Call Report/TFR data is not available electronically until after the July 31 payment date; similarly, the December 31 Call Report/TFR data is not available electronically until after the January 31 payment date.

<sup>2</sup> The "invoice" is the first quarterly installment sent each semiannual period; the "certified statement" is the invoice for the second quarterly installment.

<sup>3</sup> Collection has been and will continue to be accomplished via Automated Clearing House (ACH) direct debit of the account designated by the institution for that purpose. Like the invoice and certified statement (which were mailed about two weeks prior to the ACH payment/settlement date), quarterly certified statement invoices will be made available on FDICconnect approximately two weeks prior to the ACH payment/settlement date. The FDIC also collects Financing Corporation (FICO) assessments pursuant to the same statutory requirements that govern FDIC deposit insurance assessments. The FICO rate is based on the deposit data reflected on the invoice and certified statements. Under the final rule, the FICO rate will be based on the deposit data reflected on the two quarterly certified statement invoices made available each semiannual period. To ensure timely collection of adequate funds for FICO, institutions

The invoice and the certified statement differ in two essential respects. The invoice contains the data, assessment computation, and amount due for the first installment of the semiannual period only. The certified statement, however, contains more than just the data, assessment computation, and amount due for the second installment of the semiannual period. It also restates the first installment information and combines the two sets of information into a semiannual presentation. In addition, the second installment invoice—the certified statement—contains a signature block. Institutions are required to sign and return the certified statement to the FDIC, while the first installment invoice was subject to neither requirement.

Under the present process, if an institution agrees with the information on the first installment invoice, it takes no action other than to fund the designated assessment account sufficiently to allow the direct debit of the account. At most institutions, an officer reviews the first installment invoice before authorizing payment by comparing the deposit data on the invoice to the amounts reported by the institution on its corresponding Call Report/TAR, reconciling any adjustments from prior assessment periods as noted on the back of the invoice, verifying the rate multiplier used and the ACH account information, and spot checking mathematical calculations. If the institution disagrees with the information on the first installment invoice, the institution is required by regulation (12 CFR 327.3(h)), to file a request for revision of its assessment computation if it wished to change its assessment payment, which in practice was usually done to obtain a refund.

If an institution agrees with the second installment invoice (the certified statement), in addition to ensuring that the designated account is adequately funded and payment is authorized, an officer of the institution is required to certify the accuracy of the statement and return it to the FDIC. Generally, this process involves checking the restated first invoice data again, as well as checking the data for the second half of the semiannual period. The institution has to return its certified statement (usually by mail) signed by an officer, not later than the second quarterly payment date of the semiannual period (*i.e.*, certified statements must be returned by March 30 for the January—

will continue to pay the original amount due; any appropriate adjustments, plus interest, will be part of a subsequent quarterly assessment collection.

June semiannual period and by September 30 for the July–December semiannual period).<sup>4</sup> If the institution disagrees with the certified statement, the institution has to annotate changes on the statement, certify by signing, and return the form to the FDIC. As with the first installment, the institution is also required under section 327.3(h) to file a request for revision of its assessment computation if it wishes to change its assessment payment, which in practice is usually done to obtain a refund.

Under the automated invoicing and collection system, over a period of years, the certified statement has evolved from a semiannual form used by insured institutions to report their deposit data and calculate their assessment payments, into a form designed to confirm the accuracy of information previously provided by the institution (via Call Reports/TFRs) and the accuracy of the FDIC's assessment calculations based on that information.

The existing certified statement process imposes significant and unnecessary burdens on insured institutions and the FDIC. The FDIC mails out over 9,000 first installment invoices and an equal number of certified statements each semiannual period. Institution officials must review and accept the first installment assessment calculation twice: once in reviewing the first installment invoice and then a second time, when reviewing the certified statement. Institutions return their certified statements to the FDIC, even if no discrepancies are found, a process prone to recurrent errors. For example, some institutions return the wrong form (the first installment invoice rather than the certified statement), or the certified statement is lost in transit. Further, the FDIC does not receive approximately 1,000 certified statements each semiannual period, necessitating significant follow-up efforts by FDIC staff through letters and telephone calls, which in turn imposes significant burdens on the insured institutions that must respond.

In addition, institutions filing corrected certified statements or

invoices are required under section 327.3(h) to file a separate request for revision of that payment with the FDIC within 60 days from the date of the quarterly assessment invoice. The request for revision sets in motion the process of FDIC review of the validity of the certified statement amendment, the accuracy of the corresponding assessment payment, and the potential for a refund or additional charges based on the FDIC's determination.

Finally, the return of certified statements to the FDIC was important when institutions themselves filled out the certified statement and computed the assessment owed to the FDIC. Since 1995, however, the information used to complete the certified statement is drawn from Call Reports/TFRs previously attested to by officers of the insured depository institutions and stored electronically by the FDIC. In effect, the information on the certified statements that institutions are required to certify and return is already certified and transmitted to the FDIC when the Call Reports/TFRs are filed. Unlike the certified statement, however, institutions are not required to return the completed Call Report/TFR signature and attestation page to the appropriate Federal banking agency. Instead, the attestation page is signed and attached to the hard-copy record of the completed Call Report/TFR, which the institution retains in its own files.

For these reasons, return of certified statements to the FDIC has been identified under the FDIC's ongoing EGRPRA program as an outdated, redundant, and burdensome process, both for the industry and for the FDIC.

## II. The Final Rule

Under the final rule, the two quarterly assessment invoices issued during a semiannual period will each be a component of the required semiannual certified statement. The two quarterly certified statement invoices combined will reflect an institution's total assessment payment for each semiannual period, just as the invoice and certified statement do now. The FDIC, however, will no longer mail out paper copies of certified statement invoices to insured institutions. Instead, insured institutions will access their quarterly certified statement invoices each quarter via the FDIC's transaction-based e-business website, *FDICconnect*. In addition, Notices of Assessment Risk Classification, formerly mailed with the first quarterly invoice each semiannual period (see 12 CFR 327.4(a)), will be provided with the first quarterly certified statement invoice each semiannual period on *FDICconnect*.

*FDICconnect* access to quarterly certified statement invoices was expressly supported by a majority (12) of the commenters. One bank stated its desire to "eliminate as many paper processes as possible." Another appreciated "the regulatory effort under the Economic Recovery and Regulatory Paperwork Reduction Act (EGRPRA) to reduce our filing and compliance burdens." A third pronounced Internet access to quarterly certified statement invoices "an excellent move." Others expressed "favor" for the proposal, saw "no problem" with it, agreed in principle with the FDIC's goal, and were "supportive" of the amendments. This group of twelve commenters included institutions of various sizes, plus the Independent Community Bankers of America.

In addition, two other institutions supported the amendments by inference, asking for e-mail notification of the availability of the quarterly certified statement invoices on *FDICconnect*. A third did not have Internet access yet and inquired about alternative notice; a fourth favored the proposal albeit incorrectly describing *FDICconnect* as receipt of quarterly certified statement invoices "via e-mail"; and one other commenter opposed downloading of the quarterly certified statement invoices, for security reasons, but favored e-mailing them. Overall, 17 of the 22 comment letters were generally supportive of the change to *FDICconnect*.

Five of the comment letters expressed an overall negative opinion, but in varying degrees. The five negative comments were based largely on opposition to the requirement that institutions retrieve their invoices electronically through *FDICconnect*. However, none of these comments opposed the concepts of quarterly certified statement invoices, eliminating return of correct quarterly certified statement invoices to the FDIC, or treating amendments as automatic requests for review of the corresponding assessment payments. One commenter favored the prior system of mailed certified statements, arguing that it was uncomplicated and required only a pen and a 37 cent stamp. Another objected that the FDIC should not "force" institutions to access their own quarterly certified statement invoices on *FDICconnect*. A third observed: "It would be just as efficient, if not more efficient, to e-mail the certification to a bank's president with a 2nd copy to be e-mailed to the individual responsible for compiling the Call Reports." Two commenters, however, based their opposition on the fear that institutions

<sup>4</sup> An institution's assessment for the first semiannual period of each year (January 1 through June 30) is calculated on the deposits reported on the previous September and December Call Report/TFR. The first installment (due January 2) is based on the September deposits and the second installment (due March 30) is based on the December deposits. The assessment for the second semiannual period (July 1 through December 31) is calculated on the deposits reported on the previous March and June Call Report/TFR. The first installment (due June 30) is based on the March deposits, and the second installment (due September 30) is based on the June Deposits. See 12 CFR 327.3.

would forget to download the invoice every quarter. One of these complained that electronic retrieval "Makes it really easy to overlook, the receiving of the assessment prompts us to reply." The other urged that "Your proposal adds another level of burden on the banks by way of them having one more thing they have to remember to do, without the benefit of receiving a notice, statement or bill." The FDIC's courtesy e-mail notification of quarterly certified statement invoice availability each quarter may substantially relieve these two commenters' concerns.

The FDIC believes that the benefits of Internet access to quarterly certified statements inure to insured institutions and the FDIC. FDICconnect access to quarterly certified statement invoices is another step toward providing business processes between insured institutions and the FDIC electronically. With the advent of electronic business practices, the effort and expense inherent in mailing out and returning over 9,000 paper certified statement invoices each quarter can be eliminated. Further, most insured institutions already have Internet service and regard access to quarterly certified statements as another favorable step in the direction of increasing electronic business practices. As one bank noted "We have already researched FDICconnect and plan to sign up." A bank CFO was "pleased that the FDIC continues to progress towards providing regulatory burden relief to insured depository institutions under the EGRPRA. I believe that these changes \* \* \* will reduce time and effort by my institution and others required to comply with the assessment and certified statement process."<sup>5</sup>

Two of the commenters requested that quarterly certified statement invoices be e-mailed to institutions rather than downloaded from FDICconnect. The FDIC, however, believes that the security infrastructure built into FDICconnect makes retrieval by insured institutions superior to e-mailing invoices directly to institutions. For this reason, the FDIC has determined that FDICconnect is the better approach to electronic dissemination of insured institutions' quarterly certified statement invoices.<sup>6</sup> In addition,

quarterly certified statement invoices will be provided as PDF files, as one commenter requested, a secure format less vulnerable to manipulation.

Eleven comment letters specifically requested that the FDIC remind institutions each quarter to download the invoices and pay the assessment amounts. Several of the comments supporting the amendments specifically requested that the FDIC include a notification element in the final rule. One commenter (a small bank—assets less than \$100 million) suggested that "an e-mail be sent to [the] registered recipient for each bank. It should be sent when the assessments are available on the FDICconnect site." A medium-size thrift (\$500 million assets) urged: "e-mail notification is the first thing I thought of when I began reading the proposed changes. Thus, I find the considered e-mail notification desirable and would be most appreciative of such a service." Another commenter, a very large institution (assets greater than \$10 billion) said: "Notification would serve as a reminder, making daily searches around notice time unnecessary. It would also ensure timely payments of assessment amounts." The Independent Community Bankers of America also advocated for e-mail notification: "Such email notification would ensure that banks do not neglect to check their certified statements online or overlook funding their account in a timely manner for the FDIC's direct debit."

The FDIC agrees that it would be beneficial to remind institutions to retrieve their assessment invoices each quarter. The final rule states that the FDIC will send e-mail notification to all individuals at insured institutions who have FDICconnect access to quarterly certified statement invoices each quarter when the invoices are available to download (no less than 15 days prior to the ACH payment date). In addition, the final rule also provides that the FDIC may communicate with insured institutions by e-mail regarding quarterly certified statement invoices and other assessment-related matters as well.

Four commenters requested that the FDIC provide an alternative invoice delivery method. One commenter indicated that it would be a burden for institutions to get Internet access and maintain the hardware necessary to retrieve invoices electronically. Another commenter—a small thrift (assets less than \$100 million)—observed: "As we do not have internet access, we are concerned whether these proposals will include some sort of alternative method to obtain our assessments and invoices." In addition, the Independent

Community Bankers of America commented that "some banks may not have ready access to the Internet" and urged the FDIC to offer an alternative delivery method for those banks, suggesting either fax or mail. The FDIC recognizes that some institutions may not yet have Internet access. Accordingly, the final rule includes a process for institutions without Internet access to request a renewable exemption for up to one year, during which they will continue to receive their quarterly certified statement invoices through the mail. Any quarterly certified statement invoice mailed to an insured institution will be treated in all respects as if it had been downloaded from FDICconnect. Under this provision, exemptions may be requested in writing from the Chief of the Assessments Section, FDIC Division of Finance.

Once institutions have obtained their quarterly certified statement invoices via FDICconnect, return of those statements to the FDIC—if the institution believes the invoice is correct—will no longer be required. If an institution agrees with its quarterly certified statement invoice, an officer of the institution will simply retain it in the institution's files for the five-year record retention period established in the FDI Act. See 12 U.S.C. 1817(b)(5).<sup>7</sup> Because the data used to complete the quarterly certified statement invoice has been previously attested to on the institution's Call Report/TFR, signing the quarterly certified statement invoice will no longer be required. Instead, the institution will simply pay the assessment indicated on the quarterly certified statement invoice—by funding its designated account and permitting the FDIC's direct debit—and the invoice data will be deemed certified by the institution in conformity with both the final rule and the FDI Act.

If an institution disagrees with the Call Report/TFR data used to compute the assessment amount listed on a quarterly certified statement invoice, the institution will simply amend its Call Report/TFR data (as it has in the past), return it to the FDIC, and the FDIC will automatically treat the amendment as a request for revision of assessment computation under 12 CFR 327.3(h). Similarly, if an institution disagrees with the calculation of the assessment amount (with no change required to Call Report/TFR data), the institution will simply annotate the quarterly certified statement invoice with the correct information, certify its accuracy by

<sup>5</sup> Accessing quarterly certified statement invoices via FDICconnect is consistent with the provisions of the Government Paperwork Elimination Act, under which agencies offer on-line alternatives to paper-based processes.

<sup>6</sup> Access to FDICconnect as provided under the final rule requires that each institution register an employee (or employees) as FDICconnect Designated Coordinator(s). The Designated Coordinator(s) will then be able to access the quarterly certified statement invoice or grant access for that purpose to other individuals.

<sup>7</sup> The quarterly certified statement invoice will also remain accessible on FDICconnect for that same five-year period.

signing, and return it to the FDIC within the specified timeframe. The FDIC will automatically treat the amended invoice as a request for revision of assessment computation under section 327.3(h). In either case, no separately filed request for revision will be needed.<sup>8</sup> In the event of an assessment dispute, the FDIC can request from an insured institution the quarterly certified statement invoice retained in the institution's files.

Under the final rule, quarterly certified statement invoices from prior semiannual periods will still be subject to change should an institution discover errors and seek to amend its Call Report/TFR. The FDIC considers such requests for assessment changes for the full five-year statute of limitations period for assessments. Institutions, however, must in every case ensure that the debit to the institution's designated ACH account is adequately funded and authorized.

The final rule provides several benefits to the industry and the FDIC. By accessing *FDICconnect*, institutions will obtain their assessment invoice data more quickly, more reliably, and at less cost to the FDIC. Lowered costs to the FDIC will ultimately benefit financial institutions because the FDIC is funded by assessments from the industry. The official(s) delegated with the responsibility for an institution's FDIC assessments will retrieve quarterly certified statement invoices at his or her convenience 24 hours a day (allowing limited downtime for maintenance during off hours) without mail or internal routing delays. Institutions may facilitate internal distribution by authorizing more than one person to access *FDICconnect*. Signing and returning correct quarterly certified statement invoices will be eliminated. Because each quarterly certified statement invoice is a component of the institution's semiannual certified statement, the payment and certification processes become synchronized, and the confusion caused by the prior requirement that institutions return every other invoice will be eliminated. In addition, insured institutions' officers will benefit from fewer steps in their review process. Under the prior system, institutions were required to review their first invoice data twice—once on the first invoice and again when it was reiterated on the certified statement. This needless repetition will be eliminated, reducing the regulatory

burden imposed by the certified statement process. Finally, the amendment will simplify and streamline the FDIC's review process for assessment payment changes; when an amended quarterly certified statement invoice is returned to the FDIC, a separately filed request for revision of assessment computation will not be required.

### III. Effective Date

The final rule will become effective on March 1, 2005. Quarterly certified statement invoices for the quarter beginning April 1, 2005, will be available on *FDICconnect* on or about March 15, 2005. The delayed effective date will allow time for insured institutions that have not already registered with *FDICconnect* to do so.

### IV. Paperwork Reduction Act

This final rule results in a reduction in burden for a collection of information entitled "Certified Statement for Semi-annual Deposit Insurance Assessment," subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* No person is required to respond to, nor shall any person be subject to a penalty for a failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. The FDIC solicited public comment on the change in burden for the information collection in accordance with 44 U.S.C. 3506(c)(2)(B). No comments were received. The FDIC also submitted the change in burden resulting from this final rule to OMB for review in accordance with 44 U.S.C. 3507(d). The OMB has approved the change in burden to the collection of information under control number 3064-0057.

### V. Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final rule affects all insured depository institutions (there are approximately 9,700 at present). Of the total number of insured institutions, approximately 60% are small business entities (assets of \$150 million or less). The final rule slightly reduces the regulatory burden (from an estimated 30 minutes per response to an estimated 20 minutes per response) imposed by the certified statement process, and therefore does not have a significant

economic impact on any insured depository institution.

The final rule changes the manner in which insured institutions file certified statements. Under the final rule, institutions will access their quarterly certified statement invoices via the FDIC's e-business Web site, *FDICconnect*, rather than by mail. No significant burden is anticipated in this requirement because the FDIC believes that very few institutions do not already have Internet access or cannot readily obtain it (the final rule provides for an exemption for up to one year). Return of correct invoices is eliminated. An insured institution reviews each quarterly certified statement invoice only once, unlike the prior system. Only quarterly certified statement invoices that the institution believes are not correct are returned to the FDIC, amended to show corrections. The FDIC will treat amended certified statement invoices as requests for review, eliminating the need for institutions to make a separate filing under 12 CFR 327.3(h). The final rule requires that institutions retain a copy of the quarterly certified statement invoice for their records, but no significant burden is anticipated in this requirement because insured institutions already retain copies of their certified statements and invoices. Access to quarterly certified statement invoices via *FDICconnect* will be more secure than the mail, will eliminate much internal routing of statements within institutions, will permit 24-hour access to quarterly certified statement invoices (with minimal maintenance downtime), and will eliminate significant FDIC tracking and processing. In short, the final rule will reduce the regulatory burden on insured institutions.

### VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

### VII. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 *et seq.*, requires banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments

<sup>8</sup> The requirements for filing a request for review of an institution's assessment risk classification under 12 CFR 327.4(d) are unaffected by this change.

on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

### VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

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

Assessments, Bank deposit insurance, Banks, Banking, Financing Corporation, Freedom of information, Hearing and appeal procedures, Record retention, Reporting and record keeping requirements, Savings associations.

■ For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 327 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, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

■ 2. Section 327.2 of subpart A is revised to read as follows:

##### § 327.2 Certified statements.

(a) *Required.* (1) Each insured depository institution shall file and certify its semiannual certified statement in the manner and form set forth in this section.

(2) The semiannual certified statement shall be comprised of the two quarterly assessment invoices issued during each semiannual period as prescribed in § 327.3(c) and (d). The two quarterly certified statement invoices combined shall reflect the institution's semiannual assessment base, assessment computation, and semiannual assessment amount.

(3) Any rule applicable to the certified statement shall apply to each quarterly certified statement invoice.

(b) *Availability and access.* (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business website *FDICconnect* two quarterly certified statement invoices during each semiannual period.

(2) Insured depository institutions shall access their quarterly certified

statement invoices via *FDICconnect*, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices. A quarterly certified statement invoice delivered by any alternative means will be treated as if it had been downloaded from *FDICconnect*.

(3) Institutions that do not have Internet access may request a renewable one-year exemption from the requirement that quarterly certified statement invoices be accessed through *FDICconnect*. Any exemption request must be submitted in writing to the Chief of the Assessments Section.

(4) Each quarter, the FDIC will provide courtesy e-mail notification to insured depository institutions indicating that new quarterly certified statement invoices are available and may be accessed on *FDICconnect*. E-mail notification will be sent to all individuals with *FDICconnect* access to quarterly certified statement invoices.

(5) E-mail notification may be used by the FDIC to communicate with insured depository institutions regarding quarterly certified statement invoices and other assessment-related matters.

(c) *Review by institution.* The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution.* If the appropriate officer of the insured depository institution agrees that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice and shall retain the quarterly certified statement invoice in the institution's files for five years as specified in section 7(b)(5) of the Federal Deposit Insurance Act.

(e) *Amendment by institution.* If the appropriate officer of the insured depository institution determines that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is not true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice, and may:

(1) Amend its Report of Condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary Federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the quarterly payment date for that invoice as specified in § 327.3(c) and (d).

(f) *Certification.* Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its Reports of Condition, or other similar reports, filed with the institution's primary Federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that invoice shall be deemed true, correct, complete, and certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation.* (1) The timely filing of an amended Report of Condition or other similar report, or an amended quarterly certified statement invoice, that will result in a change to deposit insurance assessments owed or paid by an insured depository institution shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(h).

(2) The rate multiplier shown on the quarterly certified statement invoice shall be amended only if it is inconsistent with the assessment risk classification assigned to the institution in writing by the Corporation for the current semiannual period pursuant to § 327.4(a). Agreement with the rate multiplier shall not be deemed to constitute agreement with the assessment risk classification assigned.

By order of the Board of Directors.

Dated in Washington, DC, this 15th day of November, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Executive Secretary.*

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