

## FDIC Law, Regulations, Related Acts

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### 1000 - Federal Deposit Insurance Act

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SEC. 7 (a)(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.--The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of

the Office of Thrift Supervision, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.--In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, [{{12-29-06 p.1112}}](#) furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to--

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person that the Federal banking agency determines to be appropriate.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c). The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided*, That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign depository institutions shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further*, That outstanding drafts (including advices and authorizations to charge depository institution's balance in another bank) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does

not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

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(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and demand deposits shall consist of all deposits other than time and saving deposits.

(6) LIFELINE ACCOUNT DEPOSITS.--In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in [section 232\(a\)](#)(3)(C) of the Bank Enterprise Act of 1991) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, may by regulation define the terms "cash items" and "process of collection", and shall classify deposits as "time", "savings", and "demand" deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9) DATA COLLECTIONS.--In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that--

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution, information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution.

In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in [section 38](#)) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this Act.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(11) STREAMLINING REPORTS OF CONDITION.--

(A) REVIEW OF INFORMATION AND SCHEDULES.--Before the end of the 1-year period beginning on the date of enactment of the Financial Services Regulatory Relief Act of 2006 and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) Reduction or elimination of information found to be unnecessary.--After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

*[Codified to 12 U.S.C. 1817(a)]*

*[Source: Section 2[7(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 876), effective*

September 21, 1950, as amended by section 2 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 547), effective January 1, 1961; section 910(g) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1812), effective December 31, 1970; [{{12-29-06 p.1114}}](#)sections 6(c)(8), (9), and (10) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 617), effective September 17, 1978; sections 302 and 310(a) and (b) of title III of the Act of November 10, 1978 (Pub. L. No. 95--630; 92 Stat. 3676 and 3678), effective March 10, 1979; section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1514), effective December 26, 1981; sections 113(d), (e) and (f) of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1473), effective October 15, 1982; sections 201(a) and (b) and 208(1)--(3) of title II and sections 911(c) and 931(a) of title IX of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187--188, 206--207, 479 and 493, respectively), effective August 9, 1989; section 141(c) of title I, section 232(b)(1) of title II, section 302(e)(2) of title III, and section 474 of title IV of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2277, 2310, 2349, and 2386, respectively), effective December 19, 1991; section 1606(i)(1) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4089), effective December 19, 1991; section 303(b)(1) of title III of the Act of October 28, 1992 (Pub. L. No. 102--558; 106 Stat. 4224), effective March 1, 1992; sections 305(b), 308(b), and 348 of title III and section 602(a)(4) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2217, 2218, 2241 and 2288, respectively), effective September 23, 1994; section 8(a)(2) of the Act of October 30, 2004 (Pub. L. No. 108-386; 118 Stat. 2231), effective October 30, 2004; Section 3(a)(1) of the Act of February 15, 2006 (Pub. L. No. 100--173; 119 Stat. 3605), effective date shall take effect on the date that the final regulations required under section 2109(a)(5) of the Federal Deposit Insurance Reform Act of 2005 take effect; section 604 of title VI and section 707(a) of title VII of the Act of October 13, 2006 (Pub. L. No. 109--351; 120 Stat. 1980 and 1987)

(b) ASSESSMENTS.--

(1) RISK-BASED ASSESSMENT SYSTEM.--

(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.--The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) PRIVATE REINSURANCE AUTHORIZED.--In carrying out this paragraph, the Corporation may--

(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

(ii) base that institution's assessment (in whole or in part) on the cost of the reinsurance.

(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.--For purposes of this paragraph, the term "risk-based assessment system" means a system for calculating a depository institution's assessment based on--

(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to--

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) SEPARATE ASSESSMENT SYSTEMS.--The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) Information concerning risk of loss and economic conditions.--

(i) SOURCES OF INFORMATION. -- For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, such as reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other [{{12-29-06 p.1114.01}}](#)regulators of financial institutions, and any information available from credit rating

entities, and other private economic or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES. --

(I) IN GENERAL. -- Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS. -- In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.--No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

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(F) Modifications to the risk-based assessment system allowed only after notice and comment.--In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) SETTING ASSESSMENTS.--

(A) IN GENERAL.--The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

(B) FACTORS TO BE CONSIDERED.--In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

(C) NOTICE OF ASSESSMENTS.--The Corporation shall notify each insured depository institution of that institution's assessment.

(D) NO DISCRIMINATION BASED ON SIZE.--No insured depository institution shall be barred from the lowest-risk category solely because of size.

(E) BANK ENTERPRISE ACT REQUIREMENT.--The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) DESIGNATED RESERVE RATIO.--

(A) ESTABLISHMENT.--

(i) IN GENERAL.--Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

(ii) RULEMAKING REQUIREMENT.--Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

(B) RANGE.--The reserve ratio designated by the Board of Directors for any year.--

(i) may not exceed 1.5 percent of estimated insured deposits; and

(ii) may not be less than 1.15 percent of estimated insured deposits.

(C) FACTORS.--In designating a reserve ratio for any year, the Board of Directors shall--

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institution;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to

decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) PUBLICATION OF PROPOSED CHANGE IN RATIOS.--In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the [{{4-28-06 p.1116}}](#) Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF RESTORATION PLANS.--

(i) IN GENERAL.--Whenever--

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made, the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.--A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 5-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

(iii) RESTRICTION ON ASSESSMENT CREDITS.--As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) LIMITATION ON RESTRICTION.--Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of--

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) TRANSPARENCY.--Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) Depository institution required to maintain assessment-related records.--Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of--

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

(5) Emergency special assessments.--In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary--

(A) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under [section 14\(a\)](#) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 14(d); or

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(C) for any other purpose that the Corporation may deem necessary.

(6) COMMUNITY ENTERPRISE CREDITS.--The Corporation shall allow a credit against any

assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under [section 233\(a\)\(1\)](#) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.

*[Codified to 12 U.S.C. 1817(b)]*

*[Source: Section 2[7(b)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 877), effective September 21, 1950, as amended by section 2 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 548), effective January 1, 1961; section 910(h) of title IX of the Act of December 31, 1970 (Pub. L. No. 91--609; 84 Stat. 1812), effective December 31, 1970; section 6(c)(11) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 617), effective September 17, 1978; section 310(c) of title III of the Act of November 10, 1978 (Pub. L. No. 95--630; 92 Stat. 3678), effective March 10, 1979; section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97--110; 95 Stat. 1514), effective December 26, 1981; section 505(a) of title V of the Act of August 10, 1987 (Pub. L. No. 100--86; 101 Stat. 633), effective August 10, 1987; sections 201(a) and 208(4) and (6) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 102 Stat. 187 and 212, respectively), effective August 9, 1989; sections 2002, 2003(a) and (b), and 2004 of title II of the Act of November 5, 1990 (Pub. L. No. 101--508), effective November 5, 1990; sections 103(b), 104, and 113(c) of title I and sections 232(b)(2) and 232(b)(3) of title II of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2238, 2239, 2247, and 2310, respectively), effective December 19, 1991; section 302(a) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2345), effective the earlier of-- 1) 180 days after the date on which final regulations promulgated in accordance with section 302(c) of the Act become effective; or 2) January 1, 1994, and section 311(a)(2) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2363), effective December 19, 1991; sections 931(a)--(b) and 1603(a)(1) of titles IX and XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 3888 and 4078), effective December 19, 1991; sections 303(a)(2), 303(b)(7) and 303(b)(8) of title III of the Act of October 28, 1992 (Pub. L. No. 102--558; 106 Stat. 4224, 4225), effective March 1, 1992; section 8(h) of the Act of December 17, 1993 (Pub. L. No. 103--204; 107 Stat. 2388), effective January 1, 1994; section 602(a)(5) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2288), effective September 23, 1994; sections 2703(b), 2707 and 2708 of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--486, 3009--496 and 3009--497, respectively), effective September 30, 1996; sections 2104(a) and (b) of title II of the Act of February 8, 2006 (Pub. L. No. 109--171; 120 Stat. 12), effective date shall take effect on the date the final regulations required under section 9(a)(2) take effect; sections 2105 of title II of the Act of February 8, 2006 (Pub. L. No. 109--171; 120 Stat. 14), effective date shall take effect on the date that the final regulations required under section 9(a)(1) take effect; section 2106 of title II of the Act of February 8, 2006 (Pub. L. No. 109--171; 120 Stat. 15), effective February 8, 2006; section 3(a)(2), (3) and (4) of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3605), effective date shall take effect on the date that the final regulations required under section 2109(a)(5) of the Federal Deposit Insurance Reform Act of 2005 take effect; section 8(a)(8) of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3611), effective date shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to the Federal Deposit Insurance Reform Act of 2005]*

(c) CERTIFIED STATEMENTS; PAYMENTS.--

(1) CERTIFIED STATEMENTS REQUIRED.--

(A) IN GENERAL.--Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's assessment.

(B) FORM OF CERTIFICATION.--The certified statement required under subparagraph (A) shall--

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and [belief](#), the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

(2) PAYMENTS REQUIRED.--

(A) IN GENERAL.--Each insured depository institution shall pay to the Corporation the assessment imposed under subsection (b).

(B) FORM OF PAYMENT.--The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) NEWLY INSURED INSTITUTIONS.--To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the initial assessment period in which a depository institution becomes insured.

(4) Penalty for failure to make accurate certified statement.--

(A) FIRST TIER.--Any insured depository institution which--

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.--Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false and misleading information is not corrected.

(C) THIRD TIER.--Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.--Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.--Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. [Section 8\(h\)](#) shall apply to any proceeding under this subparagraph.

*[Codified to 12 U.S.C. 1817(c)]*

*[Source: Section 2[7(c)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 877), effective September 21, 1950, as amended by section 2 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 550), effective January 1, 1961; sections 201(a)(1) and 208(7) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187 and 213, respectively), effective August 9, 1989; section 302(b) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2348), effective the earlier of-- (1) 180 days after the date on which final regulations promulgated in accordance with section 302(c) of the Act become effective; or 2) January 1, 1994, and section 313(a) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2368), effective December 19, 1991; section [p.1119](#)1605(b)(1) and (2) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4086), effective December 19, 1991; section 3(a)(5) of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3605), effective date shall take effect on the date that the final regulations required under section 2109(a)(5) of the Federal Deposit Insurance Reform Act of 2005 take effect]*

(d) Corporation Exempt From Apportionment.--Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United



States Code, or under any other authority.

[Codified to 12 U.S.C. 1817(d)]

[Source: Section 2[7(d)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 877), effective September 21, 1950, as amended by section 3 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 551), effective January 1, 1961; section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96--221; 94 Stat. 147 and 148), effective March 31, 1980; section 117 of title I of the Act of October 15, 1982 (Pub. L. No. 97--320; 96 Stat. 1479), effective October 15, 1982; sections 201(a)(1) and 208(5) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 102 Stat. 187 and 210, respectively), effective August 9, 1989; section 2003(c) of title II of the Act of November 5, 1990 (Pub. L. No. 101--508), effective November 5, 1990; section 233(c) of title II and section 302(e)(3) of title III of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2314 and 2349, respectively), effective December 19, 1991; section 303(b)(3) of title III of the Act of October 28, 1992 (Pub. L. No. 102--558; 106 Stat. 4224), effective March 1, 1992]

(e) REFUNDS, DIVIDENDS, AND CREDITS.--

(1) REFUNDS OF OVERPAYMENTS.--In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may--

- (A) refund the amount of the excess payment to the insured depository institution; or
- (B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) Dividends from excess amounts in deposit insurance fund.--

(A) Reserve ratio in excess of 1.5 percent of estimated insured deposits.--If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) Reserve ratio equal to or in excess of 1.35 percent of estimated insured deposits and not more than 1.5 percent.--If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.5 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of the estimated insured deposits as dividends to be paid to insured depository institutions.

(C) BASIS FOR DISTRIBUTION OF DIVIDENDS.--

(i) IN GENERAL.--Solely for the purposes of dividend distribution under this paragraph, the Corporation shall determine each insured depository institution's relative contribution to the Deposit Insurance Fund (or any predecessor deposit insurance fund) for calculating such institution's share of any dividend declared under this paragraph, taking into account the factors described in clause (ii).

(ii) FACTORS FOR DISTRIBUTION.--In implementing this paragraph in accordance with regulations, the Corporation shall take into account the following factors:

(I) The ratio of the assessment base of an insured depository institution (including any predecessor) on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date.

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(II) The total amount of assessments paid on or after January 1, 1997, by an insured depository institution (including any predecessor) to the Deposit Insurance Fund (and any predecessor deposit insurance fund).

(III) That portion of assessments paid by an insured depository institution (including any predecessor) that reflects higher levels of risk assumed by such institution.

(IV) Such other factors as the Corporation may determine to be appropriate.

(D) NOTICE AND OPPORTUNITY FOR COMMENT.--The Corporation shall prescribe by regulation, after notice and opportunity for comment, the method for the calculation, declaration, and payment of dividends under this paragraph.

(E) \* LIMITATION.--The Board of Directors may suspend or limit dividends paid under

subparagraph (B), if the Board determines in writing that--

- (i) a significant risk of losses to the Deposit Insurance Fund exists over the next 1-year period; and
- (ii) it is likely that such losses will be sufficiently high as to justify a finding by the Board that the reserve ratio should temporarily be allowed--
  - (I) to grow without requiring dividends under subparagraph (B); or
  - (II) to exceed the maximum amount established under subsection (b)(3)(B)(i).

(F) CONSIDERATIONS.--In making a determination under subparagraph (E), the Board shall consider--

- (i) national and regional conditions and their impact on insured depository institutions;
- (ii) potential problems affecting insured depository institutions or a specific group or type of depository institution;
- (iii) the degree to which the contingent liability of the Corporation for anticipated failures of insured institutions adequately addresses concerns over funding levels in the Deposit Insurance Fund; and
- (iv) any other factors that the Board determines are appropriate.

(G) REVIEW OF DETERMINATION.--

(i) ANNUAL REVIEW.--A determination to suspend or limit dividends under subparagraph (E) shall be reviewed by the Board of Directors annually.

(ii) ACTION BY BOARD.--Based on each annual review under clause (i), the Board of Directors shall either renew or remove a determination to suspend or limit dividends under subparagraph (E), or shall make a new determination in accordance with this paragraph. Unless justified under the terms of the renewal or new determination, the Corporation shall be required to provide cash dividends under subparagraph (A) or (B), as appropriate.

(3) One-time credit based on total assessment base at year-end 1996.--

(A) IN GENERAL.--Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

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(B) CREDIT LIMIT.--The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(C) Eligible insured depository institution defined.--For purposes of this paragraph, the term "eligible insured depository institution" means any insured depository institution that--

- (i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or
- (ii) is a successor to any insured depository institution described in clause (i).

(D) APPLICATION OF CREDITS.--

(i) IN GENERAL.--Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.--The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

(iii) REGULATIONS.--The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

(E) Limitation on amount of credit for certain depository institutions.--In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the

beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(F) SUCCESSOR DEFINED.--The Corporation shall define the term successor' for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

(4) ADMINISTRATIVE REVIEW.--

(A) IN GENERAL.--The regulations prescribed under paragraphs (2)(D) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) ADMINISTRATIVE REVIEW.--Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

*[Codified to 12 U.S.C. 1817(e)]*

*[Source: Section 2[11(e)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by sections 6(c)(18) and (19) of the Act of September 17, 1978 (Pub. L. No. 95--369; 92 Stat. 619), effective September 17, 1978; section 212(a) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 222), effective August 9, 1989; section 161(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2285), effective December 19, 1991; section 325 of Title III and section 602(a)(26) and (27) of title VI of the Act of September 23, 1994 (Pub. L. No. 103--325; 108 Stat. 2228 and 2289, respectively), effective September 23, 1994; section 501(c)(2) of title V of the Act of October 22, 1994 (Pub. L. No. 103--394; 108 Stat. 4143, effective October 22, 1994; section 2706 of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--496), effective September 30, 1996; section 2107(a) [\[2-29-08 p.1120.02\]](#) of title II of the Act of February 8, 2006 (Pub. L. No. 109--171; 120 Stat. 16), effective February 8, 2006]*

(f) Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

*[Codified to 12 U.S.C. 1817(f)]*

*[Source: Section 2[7(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 878), effective September 21, 1950, as amended by section 3 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 551), effective January 1, 1961; sections 201(a)(1) and 208(7) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187 and 213, respectively), effective August 9, 1989]*

(g) ASSESSMENT ACTIONS.--

(1) IN GENERAL.--The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

(2) STATUTE OF LIMITATIONS.--The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

*[Codified to 12 U.S.C. 1817(g)]*

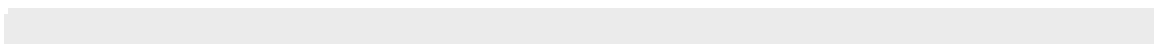
*[Source: Section 2[7(g)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 878), effective September 21, 1950, as amended by section 3 of the Act of July 14, 1960 (Pub. L. No. 86--671; 74 Stat. 551), effective January 1, 1961; sections 201(a)(1) and 208(7) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187 and 213, respectively), effective August 9, 1989; section 2104(d) of title II of the Act of February 8, 2006 (Pub. L. No. 109--171; 120 Stat. 13), effective date shall take effect on the date that the final regulations required by section 9(a)(1) take effect]*

(h) Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this Act, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended, the Federal Reserve Act, as [\[2-29-08 p.1120.02-A\]](#) amended, or this Act, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended. The remedies provided in this subsection and in the two preceding subsections shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

*[Codified to 12 U.S.C. 1817(h)]*

*[Source: Section 2[7(h)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by section 3 of the Act of July 14, 1960 (Pub. L. [\[12-29-06 p.1120.03\]](#)) No. 86--671; 74 Stat. 551), effective January 1, 1961; section 201(a)(1) of title II of the Act of August 9, 1989 (Pub. L. No. 101--73; 103 Stat. 187), effective August 9, 1989]*

<sup>\*</sup> *Editor's note:* Section 5 of the Act of February 15, 2006 (Pub. L. No. 109--173; 119 Stat. 3606) provides that: SEC. 5. REPORT TO CONGRESS ON REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND. (a) SUBMISSION.--Any determination under section 7(e)(2)(E) of the Federal Deposit Insurance Act, as added by section 2107(a) of the Federal Deposit Insurance Reform Act of 2005, shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not later than 270 days after making such determination. (b) CONTENT.--The report submitted under subsection (a) shall include-- (1) a detailed explanation for the determination; and (2) a discussion of the factors required to be considered under section 7(e)(2)(F) of the Federal Deposit Insurance Act, as added by section 2107(a) of the Federal Deposit Insurance Reform Act of 2005. [Go Back to Text](#)



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