SUPPORTING STATEMENT
PREPAID ASSESSMENTS EXEMPTION APPLICATION AND TRANSFER NOTICE

INTRODUCTION

Initially the FDIC determined that there would be no collection under this rule involving 10 or more respondents. Upon subsequent analysis, it was determined that there may be collections after all. Therefore, the FDIC immediately published notice to seek comments. The FDIC is requesting OMB approval for two collections of information related to a proposed amendment to the FDIC's assessment regulations that would require insured depository institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The FDIC would begin to offset prepaid assessments on March 30, 2010, representing payment for the fourth quarter of 2009. Any prepaid assessment not exhausted by December 30, 2014, would be returned to the institution. The notice of proposed rulemaking appears at 74 Fed. Reg. 51063 (Oct. 2, 2009).

Under the proposal, an insured depository institution could apply to the FDIC for an exemption from all or part of its assessment prepayment; the application would explain why the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship, would contain a full explanation of the need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability to pay the assessment, and any other relevant information, including any information the FDIC may request.

In addition, when an insured depository institution enters into an agreement to transfer any portion of its prepaid assessment to another insured depository institution, it would be required to notify the FDIC's Division of Finance of that transaction by submitting a written agreement signed by the legal representatives of both institutions, including documentation that each representative has the legal authority to bind the institution.

A. JUSTIFICATION

1. Circumstances and Need

The FDIC's assessment authority is set forth in Section 7 of the Federal Deposit Insurance Act, 12 U.S.C. § 1817(b) and (c) and the FDIC relies upon this authority in the present rulemaking. Under the proposal, the FDIC would – proactively – exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. The FDIC would consult with the institution's primary federal regulator in making this determination, but would retain the ultimate authority to exercise such discretion. The FDIC would notify any affected institution of its exemption by December 24, 2009.

In addition to the FDIC's review on its own initiative, an insured depository institution could also apply to the FDIC for an exemption from all or part of the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship. The FDIC would consider exemption requests on a case-by-case basis and expects that only a few would be received.

Written applications for exemption from the prepayment obligation would be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by fax or electronic mail. In order for an application to be accepted and considered by the FDIC, the application must contain a full explanation of the need for the exemption and include supporting documentation, such as current financial statements and cash flow projections, a description of management's plans to correct the circumstances that caused the inability to prepay the assessment, and any other relevant information that the FDIC deems appropriate.

The FDIC would notify any insured depository institution that has made such a request by December 24, 2009, of the FDIC's determination whether the institution is eligible for exemption from the prepaid assessment.

In addition, an insured depository institution would be permitted to transfer any portion of its prepaid assessment to another insured depository institution, provided that the institutions notify the FDIC's Division of Finance and submit a written agreement signed by the legal representatives of both institutions. In their submission to the FDIC, the institutions must include documentation that each representative has the legal authority to bind their institutions. Adjustments to the institutions' prepaid assessments would be made by the FDIC on the next assessment invoice that is made available via FDIC*connect* at least 10 days after the FDIC receives the written agreement.

2. Use of Information Collected

Exemption applications: The FDIC would use the information collected in the exemption application to determine whether the prepayment would adversely affect the safety and soundness of the institution in question. The information obtained would supplement any information used when the FDIC on its own initiative reviewed that institution's condition for purposes of the prepaid assessment exemption.

Transfer information: Institutions would be required to notify the FDIC of the transfer of any portion of their prepaid assessments so that the FDIC can accurately track the transfer of prepaid assessments and apply the prepaid assessments to the appropriate institution. The need for credit transfer information would expire when the prepaid assessments have been exhausted or when remaining prepaid assessments are returned to the institution after December 30, 2014.

3. Use of Technology to Reduce Burden

Because the FDIC on its own initiative will review the condition of all insured institutions and exempt those whose safety and soundness would be adversely affected by the prepaid assessments collection, exemption applications would likely involve supplemental information that the FDIC would be receiving for the first time. Transfer information would be provided in the same manner that institutions now provide transfer information for the one-time assessment credits issued by the FDIC in 2007. The FDIC requires a written agreement signed by the legal representatives of both institutions, with documentation as to legal authority to bind the institution. As a result, no special efforts have been undertaken by the FDIC to use improved information technology to reduce the burden associated with preparing and filing the exemption application or the transfer information.

4. Efforts to Identify Duplication

Because the FDIC on its own initiative will review the condition of all insured institutions and exempt those whose safety and soundness would be adversely affected by the prepaid assessments collection, exemption applications would likely involve supplemental information that the FDIC would be receiving for the first time.

Transfer information regarding prepaid assessments would be available only from the parties to any transfer and not from any other source.

5. Minimizing the Burden on Small Banks

The FDIC would review on its own initiative the condition of all insured institutions – including small institutions – and would exempt those whose safety and soundness would be adversely affected by the prepaid assessments collection, likely eliminating the need for the institution to submit an application. For this reason, the FDIC expects that only a few exemption requests would be made by small institutions. Providing transfer information regarding prepaid assessments would be no more burdensome for small institutions than the present process for notifying the FDIC of transfer of the one-time assessment credits issued by the FDIC in 2007.

6. Consequences of Less Frequent Collection

The exemption application would be a one-time only application and the FDIC expects that only a few would be made. Transfer information would be required only when an institution transferred all or a portion of its prepaid assessments. The FDIC would require the information so that it could accurately track the transfer of prepaid assessments and apply the prepaid assessments to the appropriate institution. Because the prepaid assessments will be exhausted or returned to institutions after December 30, 2014, the need to provide this information will expire at that time.

7. Special Circumstances

There are no special circumstances.

8. Summary of Public Comments

No comments have yet been received on the Paperwork Reduction Act implications of the proposal.

9. Payment of Gift to Respondents

No payment or gift will be provided to respondents.

10. Confidentiality

The exemption application would relate to the supervisory condition of an institution and would likely contain confidential supervisory information.

11. Information of a Sensitive Nature

The exemption application would relate to the supervisory condition of an institution and would likely contain confidential supervisory information.

12. Estimate of Annual Burden

Number of annual respondents (Exemption Applications)	200
Number of annual respondents (Transfer Information)	75 (first year, declining thereafter)
Reports per annual respondent per year	1
Hours required to prepare Exemption Application	8
Hours required to prepare Transfer Information	
Total burden in hours	1750

13. Estimate of Total Annual Cost Burden

Not applicable.

14. Estimate of Total Annual Cost to the Federal Government

None

15. Reason for Program Changes or Adjustments

The collection of prepaid assessments is new.

16. Publication

The information collected in exemption applications would be confidential supervisory information and would not be published or publicly disclosed. Transfer information would be used by the FDIC to accurately track the transfer of prepaid assessments and apply the prepaid assessments to the appropriate institution and would not be publicly disclosed.

17. Display of Expiration Date

    Not applicable.

18. Exceptions to Certification

    None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.