SUPPORTING STATEMENT
ASSESSMENT RATE ADJUSTMENT GUIDELINES
FOR LARGE AND HIGHLY COMPLEX INSTITUTIONS

INTRODUCTION

The FDIC is requesting OMB approval for a collection of information related to the Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions that would allow a large and highly complex insured depository institution to request that the FDIC make an adjustment to its total score determined under the large institution assessment scorecard or the highly complex institution assessment scorecard. The notice of proposed guidelines and request for comment appears at 76 Fed. Reg. 21,256 (April 15, 2011). The final guidelines appear at 76 Fed. Reg. 57993 (September 19, 2011).

Institutions can submit a written request for an adjustment to the FDIC's Director of the Division of Insurance and Research in Washington, D.C. Similar to FDIC-initiated adjustments, an institution's request for an adjustment is considered only if it is supported by evidence of a material risk or risk-mitigating factor that is not adequately accounted for in the scorecard. The FDIC considers these requests as part of its ongoing effort to identify and adjust scores that require adjustment. An institution-initiated request would not preclude a subsequent request for review (under 12 CFR § 327.4(c)) or appeal pursuant to the assessment appeals process.

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). Pursuant to this statutory authority, the FDIC recently promulgated regulations that revamped the assessment system for large and highly complex insured depository institutions. (76 Fed. Reg. 10,672 (Feb. 25, 2011)). These regulations also set out the process for making adjustments to the total score of these institutions. (76 Fed. Reg. at 10,714, to be codified at 12 C.F.R. § 327.9(b)(3)). Further, the regulations set out the parameters of the adjustment process, including the scorecard point range for adjustments (up or down a maximum of 15 points), the requirement that the FDIC provide the institution and its primary federal regulator with notice and an opportunity to respond when proposing an upward adjustment or removal of a previously implemented downward adjustment, the requirement that the FDIC consider the response of the institution and its primary federal regulator, and the ability of the FDIC to make adjustments without notice under limited circumstances. In the preamble to the recent rulemaking, the FDIC stated that it would not adjust assessment rates for large and highly complex institutions until updated guidelines were published for comment and approved by the FDIC Board of Directors. 76 Fed. Reg. at 10,699.

The guidelines supersede the large bank pricing adjustment guidelines published by the FDIC on May 15, 2007 (the 2007 Guidelines) (72 Fed. Reg. 27,122 (May 14, 2007)). The 2007 Guidelines set out the adjustment process for the large bank assessment system then in effect and contain analytics that do not apply to the revised large bank pricing system (the new regulatory scorecards capture risks previously caught through the adjustment process). Consequently, new analytical guidelines are being implemented. The procedural aspects of the 2007 Guidelines remain largely unchanged, except for the inclusion of a new process through which large and highly complex institutions can - for the first time - request an assessment adjustment from the FDIC.

Under these guidelines, the FDIC – proactively – focuses on identifying institutions for which a combination of risk measures and other information suggests either a materially higher or lower risk than their total scores indicate. The FDIC primarily focuses on two types of information in determining whether to make a large bank adjustment: a scorecard ratio or measure that exceeds the maximum cutoff value for a ratio or measure or is less than the minimum cutoff value for a ratio or measure along with the degree to which the ratio or measure differs from the cutoff value (scorecard measure outliers); and information not directly captured in the scorecard, including complementary quantitative risk measures and qualitative risk considerations. Adjustments will be made only if the comprehensive analysis of an institution's risk, generally based on these two types of information, and the institution's relative risk ranking, warrant a meaningful adjustment of the institution's total score (generally, an adjustment of five points or more on the scorecard).

The FDIC will consult with an institution's primary federal regulator and appropriate state banking supervisor before making any decision to adjust an institution's total score (and before removing a previously implemented adjustment).

The FDIC will give institutions advance notice of any decision to make an upward adjustment to a total score, or to remove a previously implemented downward adjustment. The notice will include the reasons for the proposed adjustment or removal, the size of the proposed adjustment or removal, specify when the adjustment or removal would take effect, and provide institutions with up to 60 days to respond.

The FDIC will re-evaluate the need for total score adjustments on a quarterly basis.

The FDIC proposal willl allow institutions to make a written request to the FDIC for an adjustment. In making such a request, the institution will provide support by including evidence of a material risk or risk-mitigating factor that is not adequately accounted for in the scorecard. In this way, the FDIC will further ensure that the adjustment process is accessible, fair and transparent, and that any decision to adjust is well-supported.

As in the 2007 Guidelines, an institution will be able to request review of or appeal an upward adjustment, the magnitude of an upward adjustment, removal of a previously implemented downward adjustment or an increase in a previously implemented upward adjustment through the FDIC's internal review process set forth at 12 C.F.R. § 327.4(c).

An institution can similarly request review of or appeal a decision not to apply an adjustment following a request by the institution for an adjustment.

An institution will request that the FDIC make an adjustment to its score by submitting a written request to the FDIC's Director of the Division of Insurance and Research in Washington, D.C.

2. Use of Information Collected

The FDIC will use the information collected with a request for adjustment to ensure that the adjustment process is fair and transparent and that any decision to adjust is well-supported. The information obtained will supplement any information used when the FDIC on its own initiative reviewed the requesting institution's condition for purposes of determining whether to adjust an institution's assessment rate under the large and highly complex institution adjustment process.

3. Use of Technology to Reduce Burden

Because the FDIC on its own initiative will review the condition of all large and highly complex insured institutions as part of the adjustment process, adjustment requests will likely involve supplemental information that the FDIC will be receiving for the first time. The FDIC may, in the normal course of business, receive supervisory material from large and highly complex institutions as part of the assessment process. No special efforts have been undertaken by the FDIC to use improved information technology to reduce the burden associated with preparing and filing the request for adjustment.

4. Efforts to Identify Duplication

Because the FDIC on its own initiative will review the condition of all large and highly complex institutions and initiate adjustments where warranted, adjustment requests would likely involve supplemental information that the FDIC would be receiving for the first time.

5. Minimizing the Burden on Small Banks

Because only large and highly complex institutions (i.e., those with over $10 billion in total assets) are subject to the assessment adjustment process, no burden will be imposed on small banks.

6. Consequences of Less Frequent Collection

Large and highly complex institutions may request an adjustment to their total score when they believe such an adjustment is merited. Because the FDIC will on its own initiative review every large and highly complex institution for potential adjustments every quarter, it is anticipated that the number of requests will be limited. Institutions may make such requests at their own discretion.

7. Special Circumstances

There are no special circumstances.

8. Summary of Public Comments

Public comment was solicited on the Paperwork Reduction Act implications of this proposal. 76 Fed. Reg. 21,256 (April 15, 2011). The FDIC received eight comments.

In addition to comments on the Guidelines, the FDIC also received a number of comments related to the scorecard methodology and measures used in the scorecard. The FDIC, however, previously provided two opportunities to comment on the scorecard methodology and all measures through the publication of two notices of proposed rulemaking on the large bank pricing system.\8\ The FDIC received a large number of comments on these issues in response to the two notices of proposed rulemaking and carefully considered them before finalizing the Amended Assessment Regulations in February 2011. Since the Amended Assessment Regulations are final, and the FDIC has not proposed changing them, suggestions or comments related to the scorecard methodology or the measures used within the scorecard have not been considered in finalizing these adjustment guidelines. Rather, the FDIC has focused on comments related to the guidelines and how the guidelines will apply when making a large bank adjustment.

\8\ 75 FR 23516 (May 3, 2011); 75 FR 72612 (Nov. 24, 2010).

The FDIC received several comments regarding risk mitigants considered in the large bank adjustment process. One commenter agreed that the FDIC should retain the ability to adjust an institution's total score based upon risks that are not adequately or fully captured in the scorecard, while another commenter suggested that loss mitigants should be directly factored into the pricing model. Two commenters stated that more detail should be provided regarding consideration of mitigants and the potential impact such mitigants may have on the large bank adjustment process. These same two commenters noted that any adjustment methodology regarding higher risk concentrations should include consideration of an institution's historical risk and loss data. One commenter stated that the FDIC should consider offsetting outliers as a mitigant when considering whether an adjustment is warranted for a different outlier.

Loss mitigants and their effect on individual institutions tend to be idiosyncratic. While the FDIC agrees that it would be ideal for all risk mitigants to be factored into the scorecard model for deposit insurance assessment purposes, it is impossible in practice to include all potential risk mitigants, particularly mitigants of a qualitative nature, into a quantitative scoring model. For similar reasons, the FDIC is unable to provide precise details of how mitigants will be specifically considered in the adjustment process. The FDIC will consider each institution's risk profile, including consideration of loss mitigants, offsetting outliers, and historical data, when determining the institution's pricing and relative risk ranking among the universe of large institutions. The FDIC believes, however, that historical loss or risk data may be insufficient in isolation to warrant an adjustment given the forward looking nature of the scorecard.

One commenter recommended that the FDIC use the large bank adjustment process to eliminate the effect of FAS 166/167 in the growth-adjusted portfolio concentration measure. As noted in the Amended Assessments Regulation, the FDIC will consider exclusion of the effect of FAS 166/167 through the adjustment process where the FDIC receives sufficient information to make an adjustment and the possible adjustment would have a material effect on an institution's total score.

The FDIC received a comment suggesting that the definition of Residential Mortgage Lenders as a peer group should clarify whether the definition is limited to residential mortgages and whether home-equity lines of credit are included. The FDIC agrees. The definition has been clarified to include residential mortgages, including home-equity lines of credit and residential mortgage-backed securities.

The FDIC received three positive comments regarding the FDIC's willingness to explicitly permit written requests from institutions for a large bank adjustment. One commenter suggested that the FDIC provide the number of challenges to deposit insurance assessment adjustments and rulings for or against such challenges in its quarterly publication of statistics. Another commenter recommended that the FDIC provide a prompt response for any downward adjustment request. Finally, one commenter requested clarification about whether the national or regional office of the FDIC would recommend an adjustment to a large institution's total score, stating that the national office is better suited to consider the entire banking industry when determining outliers for pricing purposes.

As noted in the Amended Assessment Regulations, the FDIC will publish aggregate statistics on adjustments each quarter. The FDIC's Assessment Appeals Committee publishes all appeals and the results of such appeals. In addition, the FDIC will respond promptly to all well-supported requests for a downward large bank adjustment. As noted previously, a well-supported request (the requests must also be material, as defined above) should be received by the FDIC within 35 days after the end of the quarter for which the adjustment is being requested. Finally, the FDIC will ensure that appropriate staff is involved in the decision-making process relevant to large bank adjustments.

One commenter stated that the proper size of an adjustment would be subject to differences of opinion. The FDIC agrees that there is subjectivity involved in the large bank adjustment process; however, the FDIC expects that differences of opinion on the appropriate size of the adjustment should be limited. The FDIC will only initiate adjustments or consider reviews for adjustment if the comprehensive analysis of the institution's risk and the institution's relative risk ranking warrant a material adjustment of the institution's total score.

To reduce the potential subjectivity regarding the precision of the size of an adjustment, the FDIC has determined that any adjustment will be limited to a minimum of 5 points and generally limited to 5, 10, or 15 point increments. The FDIC believes a minimum 5 point adjustment provides a threshold that clarifies how the FDIC will determine whether an adjustment is material. In addition, the discrete adjustment levels should reduce potential disagreements regarding the appropriate size of any adjustment applied.

One commenter recommended that any adjustment to an institution's total score should require concurrence by an institution's primary federal regulator, rather than simply consultation. The FDIC disagrees. Large bank adjustments are made only after consideration of the institution's relative risk ranking among the entire large bank universe. Such consideration requires knowledge and data of the total scores for every institution in the large bank universe, which is information that other primary federal regulators do not have. Furthermore, only the FDIC has the legal authority to assess institutions for deposit insurance. Therefore, the FDIC will continue to consult with an institution's primary federal regulator and consider the primary federal regulator's comments prior to making a large bank adjustment, but, ultimately, the decision concerning any adjustment will be made by the FDIC. This process is consistent with the procedure used in the 2007 Guidelines.

9. Payment of Gift to Respondents

No payment or gift will be provided to respondents.

10. Confidentiality

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

11. Information of a Sensitive Nature

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

12. Estimate of Annual Burden

Respondents:	Large and highly complex depository institutions
Number of annual respondents (Adjustment Requests):	0 - 11
Frequency of response:	On occasion
Hours required to prepare Adjustment Request:	8 - 80

Total burden in hours:	0 - 880

13. Estimate of Total Annual Cost Burden

Not applicable.

14. Estimate of Total Annual Cost to the Federal Government

Not applicable

15. Reason for Program Changes or Adjustments

This is a new collection; no program changes or adjustments are being made to an existing collection.

16. Publication

The information collected in adjustment requests would be confidential supervisory information and would not be published or publicly disclosed.

17. Display of Expiration Date

Not applicable.