MID-SIZE BANK COALITION OF AMERICA

July 17, 2023

Via email to comments@fdic.gov

James P. Sheesley
Assistant Executive Secretary
Attention: Comments-RIN 3064–AF93
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: RIN 3064-AF93 – Special Assessments Pursuant to Systemic Risk Determination

Ladies and Gentlemen:

The Mid-Size Bank Coalition of America (the **MBCA**) welcomes the opportunity to comment on the proposed rulemaking, *Special Assessments Pursuant to Systemic Risk Determination* (the **Proposed Rule**), issued by the Federal Deposit Insurance Corporation (the **FDIC**). The MBCA represents more than 100 mid-size banks across the country, with over 13,000 branches in all 50 states, Washington, D.C., and three U.S. territories. MBCA members hold over $2.6 trillion in deposits and have extended over $2.1 trillion in loans while employing over 300,000 people. Mid-size banks are an integral component of the nation's economy, typically serving as hometown banks with highly personal connections to their clients, and we write to share this unique perspective as mid-size banks.

The rapid failures of Silicon Valley Bank (**SVB**) and Signature Bank (**Signature**), and the subsequent systemic risk determination to extend deposit insurance coverage to uninsured deposits, highlight the significance of the role the FDIC and its Deposit Insurance Fund (the **DIF**) play in providing stability to the banking system. The MBCA fully supported the FDIC's actions in the wake of the failures of SVB and Signature (the **Regional Bank Failures**), and we appreciate the need to impose a special assessment to recover the costs incurred by the DIF (the **Special Assessment**). As proposed, however, the Special Assessment favors large banking organizations at the expense of mid-size banks across the country. This is because large banking organizations saw large inflows of deposits from mid-size banks and smaller banks after the systemic risk determination. To ensure that the Special Assessment falls fairly upon all banks, we urge the FDIC to consider our recommendations for making certain adjustments to the calculation of the assessment base and to the accounting treatment of the Special Assessment as explained in more detail below.

I. Certain Deposits Should Be Excluded from the Special Assessment Base

Under the Proposed Rule, the assessment base for the Special Assessment (the **Special Assessment Base**) would be equal to the estimated uninsured deposits of each insured depository institution (**IDI**) as of December 31, 2022, subject to certain adjustments. As the FDIC recognizes in the Proposed Rule, using the uninsured amount as the Special Assessment Base helps ensure fairness and proportionality because institutions with the largest amounts of uninsured deposits should be responsible for paying a larger share of the Special Assessment.

The MBCA fully agrees that institutions with more uninsured deposits should be apportioned a greater share of the Special Assessment. However, without deductions for certain types of deposits, the Special Assessment falls short of its goal of being fair and proportionate to the amount of risk posed by a particular bank.

A. Intercompany Account Deposits

Including intercompany account deposits from bank subsidiaries in the Special Assessment Base would inflate the actual amount of uninsured deposits that would be at risk in case of a bank failure and impose a disproportionate burden on institutions that have greater amounts of intercompany account deposits. As the FDIC itself has recognized, intercompany account deposits generally would not need to be protected under FDIC insurance in the event of a bank failure.[1] As such, we do not expect that the FDIC would need to cover such deposits in a bank resolution scenario even upon a systemic risk determination. Excluding bank subsidiary intercompany account deposits from the Special Assessment Base would fairly reflect that they do not pose any risk to the DIF.

B. Preferred Deposits

Certain collateralized deposits, also referred to as preferred deposits, should also be excluded from the Special Assessment Base. Virtually all states have enacted laws to protect deposits of public funds from state, county, and municipal entities which require IDIs to maintain a particular amount of collateral to hold public funds (such deposits, **preferred deposits**). For instance, in New Jersey, a participating depository institution must pledge collateral equal to at least 5% of the average amount of its public deposits and 100% of the average amount of its public funds in excess of the lesser of 75% of its capital funds or $200 million. If a participating institution fails and the FDIC does not insure or fully cover the preferred deposits, the collateral pledged to protect those funds would be liquidated and paid out. If the collateral was insufficient to cover the full extent of the preferred deposits, then other participating institutions are assessed a pro rata amount to recover the difference. Preferred deposits therefore pose little to no risk to the DIF.

We believe that mid-size banks, owing to our strong local presence, have proportionally more of these types of deposits than the largest banks. As discussed above, preferred deposits, though not FDIC-insured, are significantly more protected than other uninsured deposits because of the collateral requirements. The MBCA therefore urges the FDIC to exclude preferred deposits from the Special Assessment Base. Such an exclusion would incentivize continued participation in state and municipality preferred deposit programs, while appropriately recognizing the reduced risk profile of such deposits.

C. Other Collateralized Deposits

Mid-size banks often take certain trust-related deposits which are required to be collateralized under applicable federal or state law. For example, national banks must collateralize fiduciary funds awaiting investment or distribution, and the collateral must be of a certain quality and must be of a value equal to or exceeding the fiduciary funds.[2] As with preferred deposits, these deposits are significantly more protected because of the collateral requirement than other

[1] *See, e.g.*, Recordkeeping for Timely Deposit Insurance Determination, 12 C.F.R. § 370.4. ("Internal operational accounts, including intercompany accounts . . . are generally not covered by FDIC insurance and, therefore, are outside of the scope of Part 370, to the extent that these are bank-owned funds. In the event of failure, the FDIC will address these accounts through specific instructions.").

[2] *See* 12 C.F.R. § 9.10.

uninsured deposits that are not collateralized. Though such deposits are not currently reported in Reports of Condition and Income (i.e., call reports), we urge the FDIC to consider excluding such deposits from the Special Assessment Base. This could be facilitated by changing the call report form to include such deposits, which could be included as a part of a program of deposit insurance reform.

II. The "Deductible" for the Special Assessment Base Should Be Increased

The MBCA fully agrees that small banks should not be burdened by the Special Assessment and applauds the FDIC's proposal to exclude the first $5 billion of uninsured deposits from the Special Assessment Base (the **deductible**). We think, however, that the deductible should be raised to provide greater relief to more banks while fairly allotting more of the Special Assessment to the large banks which benefited the most from the stability provided by the systemic risk determination.

Not only did the largest banks benefit the most from the latest systemic risk determination, they have benefited, and continue to benefit, from the existence of the systemic risk mechanism. This is because many depositors view such institutions as "too big to fail" and flock to them in times of financial instability. This is evident from the significant amount of deposit outflows that mid-size and smaller banks have experienced in the wake of the Regional Bank Failures, while large banks saw far fewer outflows; some large banks even saw significant inflows of deposits. For instance, from Q4 2022 to Q1 2023, mid-size banks experienced approximately eight times greater deposit outflows than what the money center banks experienced. Increasing the deductible would properly recognize these dynamics and reduce the burden on the banks who have been most impacted by the instability and market dynamics following the Regional Bank Failures.

III. The Benchmark Date for the Special Assessment Base Should Be Postponed

Under the Proposed Rule, the Special Assessment Base would be determined using data reported as of December 31, 2022. The MBCA believes that the more appropriate data to use for the Special Assessment Base should be as of June 30, 2023 (or in the alternative, March 31, 2023) to better account for the disproportionate amount of deposit outflows experienced by mid-size and regional banks following the Regional Bank Failures.

Mid-size and regional banks experienced significantly greater deposit outflows than large banks in the wake of the Regional Bank Failures. As the FDIC recognizes, the banks which benefited the most from the systemic risk determination should bear a greater proportion of the Special Assessment. However, using December 31, 2022 as the benchmark date would result in mid-size and regional banks being assessed for deposits which they no longer hold, a portion of which in all likelihood flowed to larger banks. Using the data as of December 31, 2022 is also flawed because it includes the uninsured deposits of SVB and Signature, whose deposits presumably flowed to large banking organizations, as well as deposits from First Republic Bank which were absorbed by its acquirer, another large banking organization.

Larger banks would unfairly benefit from a benchmark date of December 31, 2022, while using June 30, 2023 (or March 31, 2023) as the benchmark dates would properly account for the movement of uninsured deposits and better reflect the financial realities of IDIs following the Regional Bank Failures. In determining who benefited the most from the systemic risk determination, we urge the FDIC adopt a broader interpretation of "benefit." The modest deposit outflows from large banks during the latest banking crisis demonstrates that the systemic risk

determination led the general population to believe that larger banks were safer than mid-size and regional banks. Postponing the benchmark date would therefore result in a more equitable solution.

IV. The Special Assessment Should Be Restructured to Allow for More Accounting Flexibility

Under the Proposed Rule, IDIs shall account for the Special Assessment in their financial reporting when the conditions for accrual have been met (i.e., when information indicates that it is probable that a liability has been incurred and the amount of loss is reasonably estimable). The American Bankers Association, and the banking industry writ large, take the view that if the Proposed Rule is adopted as-is, then a loss would be incurred on the date that the Special Assessment is published as a final rule in the Federal Register.[3] Once the loss is incurred on that date, the total amount of the Special Assessment would be reasonably estimable and should be recognized. Additionally, it would be inappropriate to recognize the loss prior to the publication of the final rule. As the FDIC notes, the loss would be treated as a one-time loss. While the one-time loss may have marginal effect on the financial statements of larger banks, it can have an outsized impact on mid-size and regional banks.

As a result, the MBCA requests the FDIC to consider restructuring the Special Assessment to allow for more flexibility with respect to the accounting treatment. In particular, the MBCA recommends that the Special Assessment be structured as a prepaid expense that can be amortized over a multi-year period rather than a one-time loss as of the date when the final rule is published. Given that the Special Assessment will be collected over eight quarters, the MBCA believes that this additional flexibility in accounting treatment would be fair and permit mid-size banks to better manage their accounting and financial reporting. This would not be without precedent as the FDIC previously required IDIs to prepay their assessments in 2009.[4]

V. Conclusion

Thank you once again for the opportunity to comment on the important matters raised by the Proposed Rule. To summarize, the MBCA supports most aspects of the Proposed Rule but recommends that certain adjustments be made to better protect the interests of the banking industry in general and mid-size banks. By adjusting the Special Assessment Base and allowing for more accounting flexibility, the FDIC can help ensure that the recovery efforts are equitable and sensible, and prevent cost of funds from being prohibitively expensive for mid-size banks moving forward. The MBCA also believes that these efforts fit meaningfully well within a larger program of deposit insurance reforms aimed at resolving inequities within the overall banking industry, on which the MBCA plans to share its views in an upcoming white paper.

[3] American Bankers Association, Accounting Analysis of the Proposed FDIC Special Assessment 3.
[4] *See* 12 C.F.R. § 327.12.

Should you have any questions or require any additional information, please do not hesitate to contact me at brent.tjarks@midsizebanks.com.

Respectfully submitted,

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