FDIC
Federal Deposit Insurance Corporation
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Division of Insurance and Research

August 7, 2019

MEMORANDUM TO: The Board of Directors

FROM: Diane Ellis
Director, Division of Insurance and Research

SUBJECT: Notice of Proposed Rulemaking Re: the Use and Remittance of Certain Assessment Credits

RECOMMENDATION

Staff recommends that the FDIC Board of Directors (the Board) adopt and authorize publication of the attached notice of proposed rulemaking (NPR or proposal) with a 30-day comment period. The NPR would amend the deposit insurance assessment regulations that govern the use of small bank credits and one-time assessment credits (OTACs) awarded to insured depository institutions (IDIs). Together, the credits total to approximately $765 million. Most of the credits are small bank credits, which represent $764.4 million of the total. OTACs account for approximately $300,000.

In March 2016, the FDIC Board of Directors approved a final rule[1] that, among other things, implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requirement that the FDIC offset the effect of increasing the minimum reserve ratio of the Deposit Insurance Fund (DIF) from 1.15 percent to 1.35 percent on IDIs with less than $10 billion in assets (small IDIs).[2] Pursuant to the rule, upon reaching the statutory minimum reserve ratio of 1.35 percent, small IDIs will be awarded small bank credits for the portion of their assessments that contributed to the growth in the reserve ratio from 1.15 percent to 1.35 percent.[3] The FDIC's regulations provide that these small bank credits will be applied to quarterly deposit insurance assessments only when the reserve ratio is at least 1.38 percent.[4]

[1] 81 FR 16059 (Mar. 25, 2016).

[2] Pub. L. No. 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817 (note)).

[3] *See* 81 FR at 16066.

[4] 12 CFR 327.11(c)(11)(i)

Concur:

Nicholas J. Podsiadly
General Counsel

Through this NPR, the FDIC would propose that, once the DIF reserve ratio reaches 1.38 percent, and the FDIC begins to apply small bank credits to quarterly assessment invoices, such credits would continue to be applied as long as the DIF reserve ratio is at least 1.35 percent (instead of 1.38 percent, as currently provided). In addition, after small bank credits have been applied for eight quarterly assessment periods, the FDIC would remit the full amount of any remaining small bank credits in lump-sum payments to each IDI holding such credits in the next quarterly assessment period in which the reserve ratio reaches or exceeds 1.35 percent. Finally, at the same time that any remaining small bank credits are remitted, the FDIC also would remit the nominal value of any remaining OTACs in lump-sum payments to each IDI holding such credits.

The primary objective of this proposal is to make the application of small bank credits to quarterly assessments more predictable for IDIs with these credits, and to simplify the FDIC's administration of these credits, without materially impairing the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent. Staff recommends proposing an effective date of July 1, 2019.

BACKGROUND

Small Bank Assessment Credits

To offset the effect of increasing the minimum reserve ratio on small IDIs, on March 25, 2016, the FDIC published a final rule (the 2016 final rule) that, among other things, provided assessment credits for the portion of regular assessments paid by small IDIs that contributed to the growth in the reserve ratio between 1.15 percent and 1.35 percent (small bank credits).[5, 6] Under the current assessment regulations, upon reaching the statutory minimum reserve ratio of 1.35 percent, the FDIC awarded small bank credits to eligible IDIs, and the FDIC will apply the credits to quarterly deposit insurance assessments when the reserve ratio is at or above 1.38 percent.[7]

As of September 30, 2018, the DIF reserve ratio reached 1.36 percent, exceeding the statutorily required minimum reserve ratio of 1.35 percent. All small IDIs, including small IDI affiliates of large IDIs, at any time during the "credit calculation period"[8] were awarded a share

[5] Pub. L. No. 111–203, 334(e), 124 Stat. 1376, 1539 (12 U.S.C. 1817 (note)).

[6] *See* 83 FR 14565 (April 5, 2018) (making technical amendments to FDIC's assessment regulations, including an amendment clarifying that small bank credits will be applied in assessment periods in which the reserve ratio is at least 1.38 percent).

[7] 12 CFR 327.11(c)(11); *see also* 83 FR 14565 (April 5, 2018) (making technical amendments to FDIC's assessment regulations, including amendment clarifying that small bank credits will be applied in assessment periods in which the reserve ratio is at least 1.38 percent).

[8] The "credit calculation period" covers the period beginning July 1, 2016 (the quarter after the reserve ratio first reached or exceeded 1.15 percent) through September 30, 2018 (the quarter in which the reserve ratio first reached or exceeded 1.35 percent). *See* 12 CFR 327.11(c)(2).

of credits.[9] The aggregate amount of small bank credits awarded is $764.4 million.[10] As of March 31, 2019, the reserve ratio had not reached or exceeded 1.38 percent, so small bank credits have not yet been applied to IDIs' quarterly deposit insurance assessments.

One-Time Assessment Credits

The Federal Deposit Insurance Reform Act of 2005 (FDI Reform Act) required the FDIC to provide one-time assessment credits (OTACs) to IDIs that existed on December 31, 1996, and paid a deposit insurance assessment prior to that date, or that were successors to such an institution.[11, 12] In October 2006, the FDIC adopted a final rule implementing the OTAC requirement.[13] The FDIC began to apply OTACs to offset the collection of deposit insurance assessments beginning with the first assessment period of 2007. As of March 31, 2019, only two IDIs have outstanding OTACs totaling approximately $300,000. The FDIC estimates that OTACs will continue to be applied for more than 13 years.

DISCUSSION OF THE PROPOSAL

Application of Small Bank Credits as Long as Reserve Ratio is at or above 1.35 Percent

FDIC staff recommends that the Board adopt and authorize publication of the attached proposal to amend the deposit insurance assessment regulations so that small bank credits would continue to be applied if the reserve ratio falls below 1.38 percent, as long as it does not fall below the statutory minimum reserve ratio of 1.35 percent. Staff believes that the proposed changes would reduce the likelihood that the application of small bank credits would be suspended due to small variations in the reserve ratio. In particular, the proposed changes would reduce the likelihood that small bank credits would be applied in the quarter when the reserve ratio first reaches 1.38 percent and then immediately suspended in the next quarter if the reserve ratio falls below 1.38 percent. The proposal is expected to result in more stable and predictable application of small bank credits to quarterly assessments, permitting IDIs to better budget for

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[9] If a small IDI acquired another small IDI through merger or consolidation during the credit calculation period, the acquiring small IDI's regular assessment bases for purposes of determining its credit base included the acquired IDI's regular assessment bases for those quarters during the credit calculation period that were before the merger or consolidation.

[10] In January 2019, aggregate small bank credits of $764.7 million were awarded to 5,381 institutions. Since then, due to mergers, IDI failures, and voluntary liquidations, 5,212 remaining institutions have small bank credits and the aggregate amount of outstanding small bank credits is $764.4 million.

[11] The FDI Reform Act was included as Title II, Subtitle B, of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 2107(a), 120 Stat. 18, 1539 (12 U.S.C. 1817(e)(3)).

[12] By statute, the aggregate amount of credits equaled the amount that would have been collected if the FDIC had imposed a 10.5 basis point assessment on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001. Individual shares were required to be based on the ratio of the institution's assessment base on December 31, 1996, to the aggregate assessment base of all eligible IDIs on that date.

[13] 12 CFR 327 Subpart B (327.30 *et seq.*).

their assessment cash flow, and could benefit certain IDIs that, under the proposal, might realize the full value of their credits at an earlier date.

The FDIC is also proposing a related change to the assessment regulations to allow for the recalculation of small bank credits applied each quarter as a result of subsequent amendments to quarterly regulatory reports.[14]

Remitting Small Bank Credits and One-Time Assessment Credits after Eight Quarterly Assessment Periods

The FDIC also proposes to remit the remaining balance of any small bank credits in lump-sum payments to each IDI holding credits after such credits have been applied for eight quarterly assessment periods. At the same time that any remaining small bank credits are remitted, the FDIC proposes to also remit any remaining OTACs to IDIs holding such credits.

Staff believes that adopting a maximum duration for the use of small bank credits and OTACs would accelerate the time at which IDIs would receive the benefit of such credits, and would permit more efficient administration of the DIF on a going-forward basis. These benefits would not have an impact on the long-term adequacy of the DIF because the total amount of credits awarded would not change.

Proposed Effective Date and Application Date

Under the Administrative Procedure Act, "[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule."[15] Under the proposal, the amendments to the FDIC's deposit insurance assessment regulations would be effective immediately upon publication in the *Federal Register*. The FDIC finds good cause that the publication of a final rule implementing this proposal can be less than 30 days before its effective date because IDIs would benefit from more stable and predictable application of small bank credits before the final rule would otherwise become effective.

Because the FDIC invoices for quarterly deposit insurance assessments in arrears, invoices for the third assessment period of 2019 would be made available to IDIs in December 2019, with a payment date of December 30, 2019. To address any possibility that the reserve ratio may reach or exceed 1.38 percent as of June 30, 2019 (the end of the second quarterly assessment period), then decrease below 1.38 percent as of September 30, 2019 (the end of the third quarterly assessment period), the FDIC is proposing to apply the rule beginning with the third quarterly assessment period of 2019. This application date would provide certainty to IDIs with small bank credits that the proposed rule would apply to the third assessment period of 2019, and that the FDIC could apply small bank credits even if the DIF reserve ratio is less than 1.38 percent (but at least 1.35 percent) for that assessment period.

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[14] Quarterly regulatory reports include the Consolidated Reports of Condition and Income and the quarterly Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

[15] 5 U.S.C. 553(d).

Expected Effects

The proposal would not change the total amount of credits awarded, but it could affect when the FDIC would apply credits. Based on quarterly regulatory reports data as of March 31, 2019, the aggregate amount of outstanding small bank credits, $764.4 million, represented less than one basis point of the reserve ratio. Based on the same data as of March 31, 2019, staff estimates that approximately 41 percent of the aggregate amount of small bank credits will be used in the first quarter that credits are applied and would not be affected by the proposal. Application of small bank credits in future quarters would represent a substantially smaller portion of the reserve ratio. The largest quarterly effect subsequent to the first application of credits would be approximately equal to one-third of a basis point of the reserve ratio. Therefore, the application of small bank credits in any one quarter would not be sufficient on its own to cause the reserve ratio to fall below 1.35 percent.

Using the same data, staff estimates that 5,025 IDIs (or 96.4 percent) will exhaust their individual shares of small bank credits within four assessment periods of use, and another 178 IDIs (or 99.8 percent) will exhaust their individual shares within eight assessment periods of use. After applying small bank credits for eight assessment periods, the FDIC estimates that nine IDIs would hold $1.75 million in credits. Under the proposal, the FDIC would remit any remaining individual small bank credit balances in a lump-sum payment.

Similarly, the proposal also would require the FDIC to remit the outstanding balances of OTACs. As of March 31, 2019, two IDIs held OTACs totaling approximately $300,000, and staff estimates that approximately $248,000 in OTACs will remain after eight more quarters of use. Under the proposal, at the same time that the FDIC remits the remaining balances of small bank credits (after eight quarters of use), the FDIC also would remit the remaining individual OTAC balances to each of these two IDIs in a lump-sum payment.

Conclusion

FDIC staff recommends that the Board approve the attached notice of proposed rulemaking for publication in the Federal Register with a 30-day comment period. The proposal seeks comment on all aspects of the proposed rulemaking.

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