Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF85

Assessments, Amendments To Incorporate Troubled Debt Restructuring Accounting Standards Update

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation seeks comment on a proposed rule that would incorporate updated accounting standards in the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs. The FDIC calculates deposit insurance assessment rates for large and highly complex IDIs based on supervisory ratings and financial measures, including the underperforming assets ratio and the higher-risk assets ratio, both of which are determined, in part, using restructured loans or troubled debt restructurings (TDRs). The FDIC is proposing to include modifications to borrowers experiencing financial difficulty, an accounting term recently introduced by the Financial Accounting Standards Board (FASB) to replace TDRs, in the underperforming assets ratio and higher-risk assets ratio for purposes of deposit insurance assessments.

DATES: Comments must be received no later than August 26, 2022.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF85 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF85, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

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SUPPLEMENTARY INFORMATION:

I. Policy Objective

The FDIC's objective in setting forth this proposal is to ensure that the risk-based deposit insurance assessment system applicable to large and highly complex banks conforms to recently updated accounting standards.[1] In March 2022, FASB issued Accounting Standards Update No. 2022–02 (ASU 2022–02), ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' that eliminates the recognition and measurement guidance of TDRs and, instead, introduces new requirements related to financial statement disclosure of certain modifications of receivables made to borrowers experiencing financial difficulty, or ''modifications to borrowers experiencing financial difficulty.''[2] Risk-based deposit insurance assessments for large and highly complex banks are determined, in part, using TDRs. Therefore, to incorporate the updated accounting standards, the proposed amendment would include modifications to borrowers experiencing financial difficulty in the description of the underperforming assets ratio, which includes restructured loans, and definitions used in the higher-risk assets ratio, which reference TDRs. Both of these ratios are used to determine risk-based deposit insurance assessments for large and highly complex banks.

II. Background

A. Deposit Insurance Assessments

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a risk-based deposit insurance assessment system.[3] The FDIC charges all IDIs an assessment for deposit insurance equal to the IDI's deposit insurance assessment base multiplied by its risk-based assessment rate.[4] An IDI's assessment base and assessment rate are determined each quarter using supervisory ratings and information collected from the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign

[1] For deposit insurance assessment purposes, large IDIs are generally those that have $10 billion or more in total assets. A highly complex IDI is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company. *See* 12 CFR 327.8(f) and (g). As used in this proposed rule, the term ''large bank'' is synonymous with ''large institution,'' and the term ''highly complex bank'' is synonymous with ''highly complex institution,'' as those terms are defined in 12 CFR 327.8.

[2] FASB Accounting Standards Update No. 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,'' March 2022 available at *https://www.fasb.org/page/getarticle?uid=fasb_Media_Advisory_03-31-22.*

[3] 12 U.S.C. 1817(b).

[4] *See* 12 CFR 327.3(b)(1).

Banks (FFIEC 002), as appropriate. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[5]

An IDI's assessment rate is calculated using different methods dependent upon whether the IDI is classified for deposit insurance assessment purposes as a small, large, or highly complex bank.[6] Large and highly complex banks are assessed using a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large or highly complex bank poses to the Deposit Insurance Fund (DIF).[7] The score that each large or highly complex bank receives is used to determine its deposit insurance assessment rate. One scorecard applies to most large banks and another applies to highly complex banks. Both scorecards use quantitative financial measures that are useful for predicting a large or highly complex bank's long-term performance. Two of the measures in the large and highly complex bank scorecards, the credit quality measure and the concentration measure, are determined using restructured loans or TDRs. These measures are described in more detail below.

B. Credit Quality Measure

Both the large bank and the highly complex bank scorecards include a credit quality measure. The credit quality measure is the greater of (1) the criticized and classified items to the sum of Tier 1 capital and reserves score or (2) the underperforming assets to the sum of Tier 1 capital and reserves score.[8] Each risk measure, including the criticized and classified items ratio and the underperforming assets ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.[9]

The underperforming assets ratio is described identically in the large and highly complex bank scorecards as the sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and other real estate owned (ORE), excluding the maximum amount recoverable from the U.S. Government, its agencies, or Government-sponsored agencies, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.[10]

The specific data used to identify the "restructured loans" referenced in the above description are those items that banks disclose in their Call Report on Schedule RC–C, Part I, Memorandum items 1.a. through 1.g, "Loans restructured in troubled debt restructurings that are in compliance with their modified terms." The portion of restructured loans that is guaranteed or insured by the U.S. Government are excluded from underperforming assets. This data is collected in Call Report Schedule RC–O, Memorandum item 16, "Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government."

C. Concentration Measure

Both the large and highly complex bank scorecards also include a concentration measure. The concentration measure is the greater of (1) the higher-risk assets to the sum of Tier 1 capital and reserves score or (2) the growth-adjusted portfolio concentrations score.[11] Each risk measure, including the criticized and classified items ratio and the underperforming assets ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.[12] The higher-risk assets ratio captures the risk associated with concentrated lending in higher-risk areas. Higher-risk assets include construction and development (C&D) loans, higher-risk commercial and industrial (C&I) loans, higher-risk consumer loans, nontraditional mortgage loans, and higher-risk securitizations.[13]

Higher-risk C&I loans are defined, in part, based on whether the loan is owed to the bank by a higher-risk C&I borrower, which includes, among other things, a borrower that obtains a refinance of an existing C&I loan, subject to certain conditions. Higher-risk consumer loans are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default within two years is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan. A refinance for purposes of higher-risk C&I loans and higher-risk consumer loans is defined in the assessment regulations and explicitly does not include modifications to a loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a TDR.

D. FASB's Elimination of Troubled Debt Restructurings

On March 31, 2022, FASB issued ASU 2022–02.[14] This update eliminated the recognition and measurement guidance for TDRs for all entities that have adopted ASU 2016–13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" and the Current Expected Credit Losses (CECL) methodology.[15] The rationale was that ASU 2016–13 requires the measurement and recording of lifetime expected credit losses on an asset that is within the scope of ASU 2016–13, and as a result, credit losses from TDRs have been captured in the allowance for credit losses. Therefore, stakeholders observed and asserted that the additional designation of a loan modification as a TDR and the related accounting were unnecessarily complex and provided less meaningful information than under the incurred loss methodology.[16]

The update eliminates the recognition of TDRs and, instead, introduces new financial statement disclosure requirements related to certain modifications of receivables made to borrowers experiencing financial difficulty, or "modifications to borrowers experiencing financial difficulty." Such modifications are limited to those that result in principal forgiveness, interest rate reductions, other-than-insignificant payment delays, or term extensions in the current reporting period. Modifications to borrowers experiencing financial difficulty may be different from those previously captured in TDR disclosures because an entity no longer would have to determine whether the creditor has granted a concession, which is a current requirement to determine whether a modification represents a TDR. The update requires entities to disclose information about (a) the types of modifications provided, disaggregated by modification type, (b) the expected

[5] *See* 12 CFR 327.5.

[6] *See* 12 CFR 327.8(e), (f), and (g).

[7] *See* 12 CFR 327.16(b); *see also* 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

[8] *See* 12 CFR 327.16(b)(1)(ii)(A)(*2*)(*iv*).

[9] *See* 12 CFR part 327, appendix B.

[10] *See* 12 CFR part 327, appendix A.

[11] *See* 12 CFR 327.16(b)(1)(ii)(A)(*2*)(*iii*).

[12] *See* 12 CFR part 327, appendix C.

[13] *Id.*

[14] FASB Accounting Standards Update No. 2022–02, "Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures" available at *https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf.*

[15] FASB Accounting Standards Update No. 2016–13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," available at *https://www.fasb.org/Page/ShowPdf?path=ASU+2016-13.pdf.*

[16] FASB Accounting Standards Update No. 2022–02, at BC19, pp. 57–58.

financial effect of those modifications, and (c) the performance of the loans after modification.

For entities that have adopted CECL, ASU 2022–02 is effective for fiscal years beginning after December 15, 2022.[17] FASB also permitted the early adoption of ASU 2022–02 by any entity that has adopted CECL. For regulatory reporting purposes, if an institution chooses to early adopt ASU 2022–02 during 2022, Supplemental Instructions to the Call Report specify that the institution should implement ASU 2022–02 for the same quarter-end report date and report ''modifications to borrowers experiencing financial difficulty'' in the current TDR Call Report line items.[18] These line items include Schedule RC–C, Part I, Memorandum items 1.a. through 1.g., which are used to identify ''restructured loans'' for the underperforming asset ratio used in the large and highly complex bank scorecards, described above. As a result, a large or highly complex institution that has early adopted ASU 2022–02 and is reporting modifications to borrowers experiencing financial difficulty in the current TDR Call Report line items will be assigned a deposit insurance assessment rate that relies, in part, on this reporting. The FDIC and other members of the Federal Financial Institutions Examination Council (FFIEC) are planning to revise the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022–02 for the first quarter of 2023.

III. Proposed Rule

A. Summary

The FDIC proposes to incorporate into the large and highly complex bank assessment scorecards the updated accounting standard that eliminates the recognition of TDRs and, instead, requires new financial statement disclosures on ''modifications to borrowers experiencing financial difficulty.'' The FDIC is proposing to expressly define restructured loans in the underperforming assets ratio to include ''modifications to borrowers experiencing financial difficulty.'' The FDIC is also proposing to amend the definition of a refinance for the purposes of determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan, both elements of the higher-risk assets ratio. Under the proposal, a refinance would not include modifications to a loan that otherwise would meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty. This proposal would not affect the small bank deposit insurance assessment system.

B. Underperforming Assets Ratio

The FDIC proposes to amend the underperforming assets ratio used in the large and highly complex bank pricing scorecards to conform to the updated accounting standards in ASU 2022–02. The amended text explicitly defines restructured loans for large and highly complex banks that have adopted CECL and ASU 2022–02 as modifications to borrowers experiencing financial difficulty. For the remaining large and highly complex banks that have not yet adopted CECL and ASU 2022–02, the FDIC would continue to use TDRs for restructured loans, and the amended text would explicitly define restructured loans for these banks as TDRs.

The FDIC has included restructured loans in the underperforming assets ratio since the introduction of the large and highly complex bank scorecards in 2011. Restructured loans, in the context of the underperforming assets measure, typically present an elevated level of credit risk because they represent loans to borrowers unable to perform according to the original contractual terms. The FDIC believes it is important to capture such elevated credit risk in its measurement of credit quality. The FDIC believes the accounting term introduced by FASB in ASU 2022–02, ''modifications to borrowers experiencing financial difficulty,'' will provide a similar and meaningful indicator of credit risk.

C. Higher-Risk Assets Ratio

The FDIC proposes to amend the definition of a refinance, in determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan for deposit insurance assessment purposes, to conform to the updated accounting standards in ASU 2022–02. Specifically, a refinance of a C&I loan would not include a modification or series of modifications to a commercial loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022–02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks. For purposes of higher-risk consumer loans, a refinance would not include modifications to a loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022–02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks.

Question 1: The FDIC invites comment on its proposal to include modifications to borrowers experiencing financial difficulty in the definition of restructured loans, used in part to determine the underperforming assets ratio, and in the definition of refinance, used in part to determine the higher-risk assets ratio. Does the proposal appropriately meet the objective to incorporate updated accounting standards under ASU 2022–02 into the large and highly complex bank scorecards?

IV. Expected Effects

As of December 31, 2021, the FDIC insured 148 banks that were classified as large or highly complex for deposit insurance assessment purposes, and that would be affected by this proposed rule.[19] The FDIC expects most of these institutions will adopt CECL by January 1, 2023, the proposed effective date of the rule.

The primary expected effect of the proposed rule is the change in underperforming assets, and consequent change in assessment rates, that could occur as a result of the difference between the amount of TDRs that most banks are currently reporting and the amount of modifications to borrowers experiencing financial difficulty that banks will report upon adoption of ASU 2022–02. The effect of this proposed rule on assessments paid by large and highly complex banks is difficult to estimate since most banks are not yet reporting modifications to borrowers experiencing financial difficulty, and the FDIC does not know how the amount of reported modifications to borrowers experiencing financial difficulty will compare to the amount of TDRs that affected banks report.

In general, the FDIC expects that the initial amount of modifications made to borrowers experiencing financial difficulty will be lower than previously

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[17] Generally speaking, entities that are U.S. Securities and Exchange Commission (SEC) filers, excluding smaller reporting companies as defined by the SEC, were required to adopt CECL beginning in January 2020. Most other entities are required to adopt CECL beginning in January 2023.

[18] *See* Financial Institution Letter (FIL) 17–2022, Consolidated Reports of Condition and Income for First Quarter 2022. *See also* Supplemental Instructions, March 2022 Call Report Materials, First 2022 Call, Number 299, available at *https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202203.pdf.*

[19] FDIC Call Report data December 31, 2021.

reported TDRs. This is because under ASU 2022–02, reporting of modifications to borrowers experiencing financial difficulty should be applied prospectively and would therefore apply only to modifications made after a bank adopts the standard. However, in the long term it is possible that the amount of modifications to borrowers experiencing financial difficulty could be higher or lower than the amount of TDRs that banks would have reported prior to adoption of ASU 2022–02. Therefore, under the proposed rule, the underperforming assets ratio could be higher or lower due to the adoption of ASU 2022–02, and the resulting ratio may or may not affect an individual bank's assessment rate, depending on whether it is the binding ratio for the credit quality measure.

The FDIC does not have the information necessary to estimate the expected effects of the proposal to incorporate the new accounting standard into the large and highly complex bank scorecards. However, the following analysis illustrates a range of potential outcomes based on TDRs reported prior to ASU 2022–02, as the amount of modifications to borrowers experiencing financial difficulty could be higher, lower, or similar to previously reported TDRs. The analysis shows the effect on assessments of higher or lower TDRs in calculating the underperforming assets ratio for deposit insurance assessment purposes.

The FDIC calculated some illustrative examples of the effect on assessments if modifications made to borrowers experiencing financial difficulty are lower than certain amounts of previously reported TDRs. For example, if all large and highly complex banks had reported zero TDRs as of December 31, 2021, before FASB issued ASU 2022–02, the impact on the underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately $90 million; if modifications were 50 percent lower than TDRs reported as of December 31, 2021, annualized assessments would have decreased by $52 million.

Alternatively, as an extreme and unlikely scenario, if all large and highly complex banks had reported zero TDRs during a period when overall risk in the banking industry was higher, such as December 31, 2011, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately $957 million. Between 2015 and 2019, if TDRs were zero, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by about $279 million annually, on average.

Over time, however, under ASU 2022–02 large and highly complex banks will begin to report modifications to borrowers experiencing financial difficulties. As noted above, the effect on assessments will depend on how the newly reported modifications compare to the TDRs that would have been reported under the prior accounting standard. For example, if all large and highly complex banks had reported modifications to borrowers experiencing financial difficulty that were 25 percent greater than the TDRs reported as of December 31, 2021, the impact on the underperforming assets ratio would have increased total deposit insurance assessment revenue by an annualized amount of approximately $30 million; if the modifications exceeded TDRs by 50 percent, annualized assessments would have increased by $65 million; and if the modifications exceeded TDRs by 100 percent, annualized assessments would have increased by $137 million.

The analysis presented above serves as an illustrative example of potential effects of the proposed rule. The analysis does not estimate potential future modifications to borrowers experiencing financial difficulty or how those amounts, once reported, will compare to previously reported TDRs for a few reasons. First, banks were granted temporary relief from reporting TDRs that were modified due to the COVID–19 pandemic, so recent reporting of TDRs is likely lower than it may otherwise have been.[20] Second, the amount of modifications or restructurings made by large or highly complex banks vary based on economic conditions and future economic conditions are uncertain. Third, a restructuring of a debt constitutes a TDR if the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider, while a modification to borrowers experiencing financial difficulty is not evaluated based on whether or not a concession has been granted. Finally, future Call Report revisions and instructions on how modifications to borrowers experiencing financial difficulties should be reported will affect the future reported amount of modifications to borrowers experiencing financial difficulty.

With regard to the higher-risk assets ratio, the effect on assessments paid by large and highly complex banks is likely to be more muted. The assessment regulations define a higher-risk C&I or consumer loan as a loan or refinance that meets certain risk criteria. The proposed rule would exclude modifications to borrowers experiencing financial difficulty from the definition of a refinance for purposes of the higher-risk assets ratio. As a result, if a modification to a C&I or consumer loan results in the classification of the loan as a TDR, under the current regulations, or as a modification to borrowers experiencing financial difficulty, under the proposed rule, a large or highly complex bank would not have to re-evaluate whether the modified loan meets the definition of a higher-risk asset. For example, if a higher-risk C&I loan was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it would not be considered a refinance and, therefore, would continue to be considered a higher-risk asset. Conversely, if a C&I loan that does not meet the definition of a higher-risk asset was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it would not be considered a refinance and, therefore, would not have to be re-evaluated to determine if it meets the definition of a higher-risk asset. The FDIC assumes that these possible outcomes are offsetting and the change to the rule will have minimal to no effect on deposit insurance assessments for large and highly complex banks.

The proposed rule would pose no additional reporting burden for large and highly complex banks.

Question 2: The FDIC invites comments on the expected effects of the proposal on large and highly complex institutions.

V. Alternatives Considered

The FDIC considered two reasonable and possible alternatives as described below. On balance, the FDIC believes the current proposal would determine deposit insurance assessment rates for large and highly complex banks in the most appropriate, accurate, and straightforward manner.

One alternative would be to require banks to continue to report TDRs specifically for deposit insurance

[20] On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. Section 4013 of the CARES Act, ''Temporary Relief From Troubled Debt Restructurings,'' provided banks the option to temporarily suspend certain requirements under U.S. GAAP related to TDRs to account for the effects of COVID–19. Division N of the Consolidated Appropriations Act, 2021 (Title V, subtitle C, section 541) was signed into law on December 27, 2020, extending the provisions in Section 4013 of the CARES Act to January 1, 2022. This relief applied to certain loans modified between March 1, 2020 and January 1, 2022.

assessment purposes, even after they have adopted CECL and ASU 2022–02. This alternative would maintain consistency of the data used in the underperforming assets ratio and higher-risk assets ratio with prior reporting periods. However, this alternative would impose additional reporting burden on large and highly complex banks. This alternative would also fail to recognize the potential usefulness of the new data on modifications to borrowers experiencing financial difficulty. Ultimately, the FDIC does not believe any benefits from continued reporting of TDRs expressly for assessment purposes would justify the cost to affected banks.

The FDIC also considered a second alternative: removing restructured loans from the definition of underperforming assets entirely and not incorporating the new data on modifications to borrowers experiencing financial difficulty. Similar to the first alternative, this second alternative would apply uniformly to all large and highly complex banks, regardless of their early adoption status. However, this alternative fails to recognize that data on modifications to borrowers experiencing financial difficulty provide a meaningful indicator of credit risk throughout economic cycles and should be captured in credit quality measures such as the underperforming assets ratio and the higher-risk assets ratio. The FDIC believes that the new modifications data required under ASU 2022–02 can provide valuable information and would not impose additional reporting burden. Incorporating this new data in place of TDRs would be the most reasonable option to ensure that large and highly complex banks are assessed fairly and accurately, all else equal.

Question 3: The FDIC invites comment on the reasonable and possible alternatives described in this proposed rule. Are there other reasonable and possible alternatives that the FDIC should consider?

VI. Comment Period, Effective Date, and Application Date

The FDIC is issuing this proposal with a 30-day comment period. Following the comment period, the FDIC expects to issue a final rule with an effective date of January 1, 2023, and applicable to the first quarterly assessment period of 2023 (*i.e.,* January 1–April 1, 2023). Most institutions that have implemented CECL, will adopt FASB's ASU 2022–02 in 2023, unless an institution chooses to early adopt in 2022. Institutions (those with a calendar year fiscal year) implementing CECL on January 1, 2023, will also adopt, FASB's ASU 2022–02 at that time. Therefore, by the first quarter of 2023, ASU 2022–02 also will be in effect for most, if not all, large and highly complex banks. The FDIC believes that coordinating the assessment system amendments to conform to the new accounting standards will promote a more efficient transition and will result in affected banks reporting their data in a consistent manner based on the correct accounting concepts.

VII. Request for Comment

The FDIC is requesting comment on all aspects of the notice of proposed rulemaking, in addition to the specific requests for comment above.

VIII. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[21] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $750 million.[22] Certain types of rules, such as rules relating to rates, corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[23] Because the proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each bank's assessment rate, the proposed rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on Call Report data as of December 31, 2021, the FDIC insures 4,848 IDIs, of which 3,478 are defined as small entities by the terms of the RFA.[24] The proposed rule, however, would apply only to institutions with $10 billion or greater in total assets which, by definition, do not meet the criteria to be considered small entities for the purposes of the RFA. Since no small entities would be affected by the proposed rule, the FDIC certifies that the proposed rule would not have a significant economic effect on a substantial number of small entities.

B. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[25] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[26]

The proposed rule would not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. Nevertheless, the requirements of RCDRIA have been considered in setting the proposed effective date. The FDIC invites comments that will further inform its consideration of RCDRIA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays

[21] 5 U.S.C. 601 *et seq.*

[22] The SBA defines a small banking organization as having $750 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 87 FR 18627, effective May 2, 2022). In its determination, the SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates. *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[23] 5 U.S.C. 601.

[24] FDIC Call Report data, December 31, 2021.

[25] 12 U.S.C. 4802(a).

[26] 12 U.S.C. 4802(b).

a currently valid Office of Management and Budget (OMB) control number.[27] The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The proposed rule does not revise any of these existing assessment information collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review. However, the proposed rule affects the agencies' current information collections for the Call Report (FFIEC 031 and FFIEC 041, but not FFIEC 051). The agencies' OMB control numbers for the Call Reports are: OCC OMB No. 1557–0081; Board OMB No. 7100–0036; and FDIC OMB No. 3064–0052. Proposed changes to the Call Report forms and instructions will be addressed in a separate **Federal Register** notice.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [28] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority for 12 CFR part 327 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817–19, 1821.

■ 2. Amend appendix A to subpart A in section IV, as proposed to be redesignated on July 1, 2022, at 87 FR 39409, by:

■ a. In the entries for ''Balance Sheet Liquidity Ratio'', ''Potential Losses/Total Domestic Deposits (Loss Severity Measure)'', and ''Market Risk Measure for Highly Complex Institutions'', redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8, respectively;

■ b. Redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8 at the end of the table;

■ c. Revising the entry for ''Credit Quality Measure''; and

■ d. Adding a new footnote 5 at the end of the table.

The revision and addition read as follows:

Appendix A to Subpart A of Part 327—Method To Derive Pricing Multipliers and Uniform Amount

* * * * *

VI. DESCRIPTION OF SCORECARD MEASURES

Scorecard measures [1]	Description
* *	* * * * *
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/Tier 1 Capital and Reserves [2].	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary Federal regulator have graded ''Special Mention'' or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[4] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. Government, its agencies, or Government-sponsored enterprises, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves [2].	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans [5] (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. Government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.
* *	* * * * *

[1] The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

[2] The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves.

* * * * * * *

[27] 44 U.S.C. 3501–3521.

[28] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[4] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

[5] Restructured loans include troubled debt restructurings and modifications to borrowers experiencing financial difficulty, as these terms are defined in the glossary to the Call Report, as they may be amended from time to time.

* * * * *

■ 3. Amend appendix C to subpart A by:

■ a. In section I.A.2., under the heading ''Definitions'', revising the entry for ''Refinance''; and

■ b. In section I.A.3., revising the ''Refinance'' section preceding section I.A.4.

The revisions read as follows:

Appendix C to Subpart A of Part 327—Description of Concentration Measures

I. * * *

A. * * *

2. * * *

Definitions

* * * * *

Refinance

For purposes of a C&I loan, a refinance includes:

(a) Replacing an original obligation by a new or modified obligation or loan agreement;

(b) Increasing the master commitment of the line of credit (but not adjusting sub-limits under the master commitment);

(c) Disbursing additional money other than amounts already committed to the borrower;

(d) Extending the legal maturity date;

(e) Rescheduling principal or interest payments to create or increase a balloon payment;

(f) Releasing a substantial amount of collateral;

(g) Consolidating multiple existing obligations; or

(h) Increasing or decreasing the interest rate.

A refinance of a C&I loan does not include a modification or series of modifications to a commercial loan other than as described above or modifications to a commercial loan that would otherwise meet this definition of refinance, but that result in the classification of a loan as a troubled debt restructuring (TDR) or a modification to borrowers experiencing financial difficulty, as these terms are defined in the glossary of the Call Report instructions, as they may be amended from time to time.

* * * * *

3. * * *

Refinance

For purposes of higher-risk consumer loans, a refinance includes:

(a) Extending new credit or additional funds on an existing loan;

(b) Replacing an existing loan with a new or modified obligation;

(c) Consolidating multiple existing obligations;

(d) Disbursing additional funds to the borrower. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. A material increase in the amount of a line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit; however, a temporary increase in a credit card line of credit is not a material increase;

(e) Increasing or decreasing the interest rate (except as noted herein for credit card loans); or

(f) Rescheduling principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months.

A refinance for this purpose does not include:

(a) A re-aging, defined as returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due, provided:

(i) The re-aging is part of a program that, at a minimum, adheres to the re-aging guidelines recommended in the interagency approved Uniform Retail Credit Classification and Account Management Policy; [12]

(ii) The program has clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and monitoring their effectiveness; and

(iii) The bank monitors both the number and dollar amount of re-aged accounts, collects and analyzes data to assess the performance of re-aged accounts, and determines the effect of re-aging practices on past due ratios;

(b) Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR or modification to borrowers experiencing financial difficulty;

(c) Any modification made to a consumer loan pursuant to a government program, such as the Home Affordable Modification Program or the Home Affordable Refinance Program;

(d) Deferrals under the Servicemembers Civil Relief Act;

(e) A contractual deferral of payments or change in interest rate that is consistent with the terms of the original loan agreement (*e.g.,* as allowed in some student loans);

(f) Except as provided above, a modification or series of modifications to a closed-end consumer loan;

(g) An advance of funds, an increase in the line of credit, or a change in the interest rate that is consistent with the terms of the loan agreement for an open-end or revolving line of credit (*e.g.,* credit cards or home equity lines of credit);

(h) For credit card loans:

(i) Replacing an existing card because the original is expiring, for security reasons, or because of a new technology or a new system;

(ii) Reissuing a credit card that has been temporarily suspended (as opposed to closed);

(iii) Temporarily increasing the line of credit;

(iv) Providing access to additional credit when a bank has internally approved a higher credit line than it has made available to the customer; or

(v) Changing the interest rate of a credit card line when mandated by law (such as in the case of the Credit CARD Act).

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on July 19, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–15763 Filed 7–26–22; 8:45 am]

BILLING CODE 6714–01–P

[12] Among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

[NCUA–2022–0099]

RIN 3133–AF47

Cyber Incident Notification Requirements for Federally Insured Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: Due to the increased frequency and severity of cyberattacks on the financial services sector, the NCUA Board is proposing to require a federally insured credit union that experiences a reportable cyber incident to report the incident to the NCUA as soon as possible and no later than 72 hours after the federally insured credit union reasonably believes that it has experienced a reportable cyber incident. This notification requirement provides an early alert to the NCUA and does not require credit unions to provide a