FDIC Federal Deposit Insurance Corporation

MEMO

TO: The Board of Directors

FROM: Patrick Mitchell
Director, Division of Insurance and Research

DATE: November 16, 2023

RE: Final Rule on The Special Assessment Pursuant to Systemic Risk Determination

RECOMMENDATION

Staff recommend that the FDIC's Board of Directors (Board) approve the attached final rule and authorize its publication in the *Federal Register*. The final rule implements a special assessment to recover the loss to the Deposit Insurance Fund (DIF or Fund) arising from the protection of uninsured depositors following the closures of Silicon Valley Bank, Santa Clara, CA, and Signature Bank, New York, NY. The Federal Deposit Insurance Act (FDI Act) requires the FDIC to take this action in connection with the systemic risk determination announced on March 12, 2023.

The assessment base for the special assessment is equal to an insured depository institution's (IDI) estimated uninsured deposits, reported for the quarter that ended December 31, 2022, adjusted to exclude the first $5 billion in estimated uninsured deposits from the IDI, or for IDIs that are part of a holding company with one or more subsidiary IDIs, at the banking organization level. The FDIC will collect the special assessment at an annual rate of approximately 13.4 basis points, over eight quarterly assessment periods, which it estimates will result in total revenue of $16.3 billion, the estimated losses attributable to the protection of uninsured depositors at the two failed banks. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, and because assessments collected may change due to corrective amendments to the amount of uninsured deposits reported for the December 31, 2022, reporting period, the FDIC retains the ability to cease collection early, extend the special assessment collection period, and impose a final shortfall special assessment to collect the difference between actual losses and the amounts collected after the receiverships for Silicon Valley Bank and Signature Bank terminate.

Staff recommend approval of the final rule, which adopts the proposal with a modification to apply any corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period to the calculation of the special assessment, following adoption of the final rule. The final rule will be effective April 1, 2024, with the first collection for the special assessment reflected on the invoice for the first quarterly assessment period of 2024 (i.e., January 1 through March 31, 2024), with a payment date of June 28, 2024.

BACKGROUND

A. Silicon Valley Bank, Signature Bank, and the Systemic Risk Exception

On March 10, 2023, Silicon Valley Bank was closed by the California Department of Financial Protection

Concur:

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Harrel M. Pettway
General Counsel

and Innovation, followed by the closure of Signature Bank by the New York State Department of Financial Services. The FDIC was appointed as the receiver for both institutions.[1]

Section 13(c)(4)(G) of the FDI Act permits the FDIC to take action or provide assistance to an IDI for which the FDIC has been appointed receiver as necessary to avoid or mitigate adverse effects on economic conditions or financial stability, following a recommendation by the Board, with the written concurrence of the Board of Governors of the Federal Reserve System (Board of Governors), and a determination of systemic risk by the Secretary of the U.S. Department of Treasury (Treasury) (in consultation with the President).[2]

On March 12, 2023, the Secretary of the Treasury, acting on the recommendation of the Board and Board of Governors, and after consultation with the President, invoked the statutory systemic risk exception to allow the FDIC to complete its resolution of both Silicon Valley Bank and Signature Bank in a manner that fully protects depositors.[3] The full protection of depositors, rather than imposing losses on uninsured depositors, was intended to strengthen public confidence in the nation's banking system.

B. Legal Authority and Policy Objectives

Under section 13(c)(4)(G) of the FDI Act, the loss to the DIF arising from the use of a systemic risk exception must be recovered from one or more special assessments on IDIs, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the FDIC determines to be appropriate.[4] As required by the FDI Act, the special assessment, detailed below, is intended and designed to recover the losses to the DIF incurred as the result of the actions taken by the FDIC to protect the uninsured depositors of Silicon Valley Bank and Signature Bank following a determination of systemic risk.[5]

Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses to the DIF as a result of a systemic risk determination. As detailed in the sections that follow, and as required by section 13(c)(4)(G) of the FDI Act, the FDIC considered the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, economic conditions, the effects on the industry, and such other factors as the FDIC deemed appropriate and relevant to the action taken or assistance provided.[6]

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[1] *See* FDIC PR-16-2023, "FDIC Creates a Deposit Insurance National Bank of Santa Clara to Protect Insured Depositors of Silicon Valley Bank, Santa Clara, California." March 10, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23016.html. See also* FDIC PR-18-2023*,* "FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY." March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23018.html*.

[2] 12 U.S.C. 1823(c)(4)(G). As used in the final rule, the term ''bank'' is synonymous with the term "insured depository institution" as it is used in section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

[3] 12 U.S.C. 1823(c)(4)(G). *See also:* FDIC PR-17-2023. "Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC." March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23017.html*. *See also*: "Remarks by Chairman Martin J. Gruenberg on Recent Bank Failures and the Federal Regulatory Response before the Committee on Banking, Housing, and Urban Affairs, United States Senate." March 27, 2023. *https://www.fdic.gov/news/speeches/2023/spmar2723.html*.

[4] 12 U.S.C. 1823(c)(4)(G)(ii)(I).

[5] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[6] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

C. The Proposed Rule

On May 11, 2023, the Board approved a notice of proposed rulemaking (the proposed rule, or proposal) to implement a special assessment, as required by the FDI Act, to recover the loss to the DIF arising from the protection of uninsured depositors following the closures of Silicon Valley Bank and Signature Bank.[7] The FDIC proposed to collect a special assessment that would be approximately equal to the losses attributable to the protection of uninsured depositors at these two failed banks, which were estimated to total $15.8 billion.

The FDIC proposed an annual special assessment rate that would be derived by dividing the loss estimate attributable to the protection of uninsured depositors by the assessment base calculated for all IDIs subject to the special assessment. The proposed assessment base (special assessment base) was equal to an IDI's estimated uninsured deposits as reported in the Consolidated Reports of Condition and Income (Call Report) or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) as of December 31, 2022, adjusted to exclude the first $5 billion of uninsured deposits at the banking organization level.[8]

In response to the proposal, the FDIC received 312 comment letters from depository institutions, depository institution holding companies, trade associations, members of Congress, and other interested parties.[9] As further detailed below, the majority of commenters expressed support for the proposal and for the scope of application of the proposed rule, including the $5 billion deduction applied to the special assessment base. Other comment letters suggested the exclusion, or different treatment, of certain types of uninsured deposits included in the special assessment base, different reporting dates of estimated uninsured deposits used to calculate the assessment base, or adjustment of the $5 billion deduction from the special assessment base. Commenters additionally discussed a range of other matters that are addressed in the relevant sections below.

THE FINAL RULE

A. Description of the Final Rule

After careful consideration of the comments received on the proposal and analysis of the applicable statutory factors, staff recommend that the Board adopt, as final, the proposed special assessment, with clarifications to promote transparency and a modification to apply any corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period to the calculation of the special assessment, following adoption of the final rule.

B. Estimated Special Assessment Amount

To determine the cost of the failures attributable to the cost of covering uninsured deposits pursuant to the determination of systemic risk, the FDIC determined the percentage of deposits that were uninsured at the time of failure and applied that percentage to the total cost of the failure for each bank.

At Signature Bank, for which 67 percent of deposits were uninsured at the time of failure, the portion of the total estimated loss of $0.9 billion that is attributable to the protection of uninsured depositors is $0.6 billion. The cost estimate for the sale of the Signature Bridge Bank to New York Community Bancorp decreased

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[7] *See* 88 FR 32694 (May 22, 2023).
[8] As used in the final rule, the term "banking organization" includes IDIs that are not subsidiaries of a holding company as well as holding companies with one or more subsidiary IDIs.
[9] *See* comments on the proposal, available at: *https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-special-assessments-systemic-risk-determination-3064-af93.html*.

following the issuance of the proposal from $2.4 billion to approximately $0.9 billion. The decline in the cost estimate was primarily attributable to recoveries from assets in receivership that were higher than previously estimated offset, in part, by higher costs of liabilities assumed by the receivership.

At Silicon Valley Bank, for which 88 percent of deposits were uninsured at the time of failure, the portion of the total estimated loss of $17.8 billion that is attributable to the protection of uninsured depositors is $15.7 billion. The cost estimate for the sale of the Silicon Valley Bridge Bank to First Citizens was revised following the issuance of the proposal from $16.1 billion to approximately $17.8 billion mainly due to recoveries from assets in receivership that were less than previously anticipated and higher costs of liabilities assumed by the receivership.

The revised cost estimates form the basis for the current special assessment calculation in this final rule. In total, of the $18.7 billion in estimated losses at the two banks and incurred by the DIF, the estimated loss attributable to the protection of uninsured depositors is $16.3 billion, an increase of approximately $500 million from the estimate of $15.8 billion described in the proposal.

As with all failed bank receiverships, these loss estimates will be periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred. The exact amount of losses incurred will be determined when the FDIC terminates the receiverships. As noted below, the amount of the special assessment will be adjusted as the loss estimates change.

C. Rate for the Special Assessment

The proposed special assessment rate was derived by dividing the loss estimate attributable to the protection of uninsured depositors by the assessment base calculated for all IDIs subject to the special assessment as of December 31, 2022. As described in detail below, the proposed assessment base was equal to estimated uninsured deposits reported for the quarter that ended December 31, 2022, after applying the $5 billion deduction.

Staff recommend adopting the proposed calculation of the special assessment rate as final. Under the final rule, the special assessment rate will equal 3.36 basis points quarterly, or approximately 13.4 basis points annually, an increase from the 12.5 basis point annual rate in the proposal.[10] Amendments to reported estimated uninsured deposits filed since the adoption of the proposed rule have resulted in a decline in the total assessment base. The decline in the total assessment base combined with the increase in the cost estimate have resulted in a higher annual rate relative to the proposal.[11] As of November 2, 2023, the total assessment base was $6.0 trillion. The special assessment rate will not change following the date of adoption of this final rule

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[10] The proposed rule noted that the special assessment rate in the proposal was subject to change prior to any final rule depending on any adjustments to the loss estimate, mergers or failures, or amendments to reported estimates of uninsured deposits. Estimates of the special assessment rate and expected effects in the proposed rule generally reflected any amendments to data reported through February 21, 2023, for the reporting period that ended December 31, 2022, while estimates for this final rule reflect any amendments reported as of November 2, 2023. Given the closure of First Republic Bank, San Francisco, CA, announced on May 1, 2023, estimates in the proposed rule and this final rule exclude First Republic Bank in addition to Silicon Valley Bank and Signature Bank. *See* FDIC: PR-34-2023. "JPMorgan Chase Bank, National Association, Columbus, Ohio Assumes All the Deposits of First Republic Bank, San Francisco, California." May 1, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23034.html*.

[11] The special assessment rate, base, and expected effects in this final rule reflect any amendments to data as of November 2, 2023, for the reporting period that ended December 31, 2022.

through the duration of the initial eight-quarter collection period.

D. Assessment Base and Scope of Application for the Special Assessment

Under the proposal, each IDI's assessment base for the special assessment would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 for the quarter that ended December 31, 2022, after applying the $5 billion deduction.[12] As a result of this deduction, most small IDIs and IDIs that are part of a small banking organization would not pay anything towards the special assessment. The special assessment would not be not applicable to any banking organizations with total assets under $5 billion.

1. Comments Received on the Calculation of the Special Assessment

The majority of commenters stated that community banks should be exempt from the special assessment. The FDIC received 63 comments related to the calculation of the special assessment base and the scope of application for the special assessment, or the calculation of the special assessment rate. Among these comments, 22 supported the resulting exclusion of community banks, or banking organizations with total assets of $5 billion or less, from the scope of application. Other commenters stated that certain groups of banks should be exempt from or pay less of the special assessment, while one commenter recommended that all banks be subject to the special assessment.[13]

One commenter noted that given that the FDIC is required by statute to recover the estimated amount of loss attributable to the protection of uninsured depositors following the determination of systemic risk, any changes to the proposed special assessment base will necessarily redistribute the obligation among banking organizations subject to the special assessment.

Several commenters recommended alternative measures for the special assessment base, including total assets, total deposits, uninsured deposits as a percentage of total deposits, an institution's regular risk-based deposit insurance assessment base, or to otherwise take a more risk-based approach to calculating the special assessment base.

Defining the assessment base for the special assessment as estimated uninsured deposits reported as of December 31, 2022, and deducting $5 billion from a banking organization's assessment base, serves several purposes. First, banking organizations that reported $5 billion or less in estimated uninsured deposits as of December 31, 2022, would not be subject to the special assessment. Banking organizations that reported more than $5 billion in estimated uninsured deposits would pay based on the marginal amounts of uninsured deposits they reported, helping to mitigate a "cliff effect" that might otherwise apply if a different method, such as applying an asset size threshold, were used to determine applicability, and thereby ensuring more equitable treatment. Otherwise, a situation may arise in which a banking organization just over a particular size threshold would pay a special assessment, while a banking organization just below such size threshold would pay none.

Second, the $5 billion deduction from the assessment base results in most small IDIs and IDIs that are

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[12] IDIs with less than $1 billion in total assets as of June 30, 2021, were not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

[13] Among the groups of banks commenters stated should be exempt from the special assessment were: banks under a range of other asset or uninsured deposit thresholds, banks not considered systemically important financial institutions, Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), rural banks, and mutual banks.

part of a small banking organization not paying anything towards the special assessment. The special assessment is not applicable to any banking organizations with total assets under $5 billion.[14]

Finally, deducting $5 billion from the assessment base of estimated uninsured deposits at the banking organization level rather than at the IDI level for banking organizations with more than one subsidiary IDI ensures that banking organizations with similar amounts of estimated uninsured deposits pay a similar special assessment, regardless of banking organization structure. For example, a banking organization with multiple IDIs with large amounts of estimated uninsured deposits will not have an advantage over other banking organizations with only one subsidiary IDI with a similarly large amount of estimated uninsured deposits because instead of excluding $5 billion of estimated uninsured deposits for each IDI in one banking organization, the $5 billion deduction will be distributed across multiple affiliated IDIs.

In implementing special assessments, the FDI Act requires the FDIC to consider the types of entities that benefit from any action taken or assistance provided pursuant to the determination of systemic risk.[15] The assessment base of estimated uninsured deposits with the $5 billion deduction ensures that the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment. For these reasons, staff recommend that the Board adopt the proposed exclusion of the first $5 billion from estimated uninsured deposits from the assessment base for the special assessment, without change.

2. Comments on the Reporting Date of Uninsured Deposits for Special Assessment Base

Two commenters expressed support for the proposed December 31, 2022, reporting date for uninsured deposits to determine the special assessment base. Thirteen commenters, including two trade associations and three letters from members of Congress, requested that estimated uninsured deposits reported as of a more recent date than December 31, 2022, be used to calculate the assessment base for the special assessment. Some commenters that supported a later reporting date said that institutions, particularly mid-sized and regional banks, that reported declines in uninsured deposit balances after December 31, 2022, should not be charged a special assessment on uninsured deposit balances that they no longer hold or that are now insured.

In staff's view, estimated uninsured deposits as of December 31, 2022, most closely approximate an institution's vulnerability to significant deposit withdrawals in the absence of the determination of systemic risk, and therefore reflect the institutions that most benefited from such determination. An assessment base that is calculated using the amount of uninsured deposits as of December 31, 2022, would result in transparent and consistent payments, best approximate an institution's vulnerability to deposit withdrawals, and would result in a more simplified framework for calculating the special assessment. For these reasons, staff is recommending the Board adopt as final the proposed special assessment base of estimated uninsured deposits as of December 31, 2022.

3. Comments Recommending Exclusions from Uninsured Deposits for Special Assessment Base

Multiple commenters supported the exclusion of, or different treatment for, certain types of uninsured deposits included in the proposed assessment base for the special assessment of estimated uninsured deposits reported as of December 31, 2022, less the $5 billion deduction.

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[14] Some IDIs that report less than $5 billion in estimated uninsured deposits will be subject to the special assessment if they are part of banking organizations with multiple IDIs that report a combined total of estimated uninsured deposits in excess of $5 billion.
[15] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

a. Collateralized Deposits

The FDIC received 25 comments requesting that the FDIC either exclude, or provide a different treatment for, collateralized deposits in the calculation of the special assessment base. According to the commenters, collateralized deposits are more stable than other uninsured deposits because they are secured and therefore pose little risk to the DIF.

In staff's view, the presence of collateral does not fully mitigate run risk. Collateral may not always be sufficient to cover the full amount of such a deposit, depending on the economic environment, and particularly in the event of a liquidity crisis during which loss in value may need to be realized. Further, in certain types of resolutions, collateralized deposits reduce the assets available to the FDIC as receiver to satisfy claims, including the FDIC's subrogated claim as deposit insurer, and result in a higher loss to the DIF in the event of a bank failure compared to a bank holding the same level of deposits that are not collateralized.

b. Custody Bank Adjustments

The FDIC received one joint comment from three custody banks stating that the special assessment base should be adjusted to mitigate the disproportionate and unwarranted impact on the custody bank business model and on sound asset-liability and risk management practices.

Staff disagree. The banks that benefited most from the assistance provided under the systemic risk determination were large banks and those that held greater amounts of uninsured deposits, regardless of the assets that those deposits were used to fund. Custody banks, especially those whose primary business is fiduciary and custodial and safekeeping, hold large amounts of uninsured deposits, including uninsured deposits are from depositors with large deposit balances. Further, while certain deposits held by custody banks, such as operational deposits, may be more stable than non-operational funding, in the event of idiosyncratic stress, counterparties likely would reduce the amount of their operational deposits.[16] The adjustments proposed in the joint comment letter would result in custody banks paying significantly lower amounts of the special assessment despite holding significant amounts of uninsured deposits.

c. Intercompany Deposits

The FDIC received 12 comments requesting the exclusion of, or different treatment for, intercompany deposits in the calculation of the special assessment base. Commenters argued that intercompany deposits, such as the deposits of subsidiaries that are not IDIs, deposits of other affiliates such as sister companies that are not IDIs, or deposits of a parent holding company of the IDI, are stable and present minimal run risk because entities within the banking organization's structure are unlikely to withdraw funds in a crisis.

There is no clear evidence that intercompany deposits are more stable relative to other deposits. Organizational structures, board members, governance, and decision making can differ between entities within the same banking organization. Likewise, the behavior of creditors, including uninsured depositors, of each entity can differ. Further, an affiliated entity's deposits at a bank are insured to the same extent as an unaffiliated entity's deposits in the event of the bank's failure. Each depositor is entitled to deposit insurance as permitted by law, and to pro rata receivership distribution on the remaining, uninsured balances. Additionally, it is not possible to accurately estimate the portion of uninsured deposits that are intercompany deposits using existing items on the Call Report.

Deposits are the most common funding source for many banks. Depositors and other creditors are often differentiated by their stability and customer profile characteristics. While some uninsured deposit

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[16] *See* 79 FR at 61502 (Oct. 10, 2014).

relationships remain stable when a bank is in good condition, such relationships might become less stable due to their uninsured status if a bank experiences financial problems or if the banking industry experiences stress events.

Any revisions to the methodology for calculating the special assessment base, such as excluding or adjusting for certain types of uninsured deposits, would change the allocation of the special assessment, but the FDIC is required by statute to recover the full amount of the losses to the DIF incurred as the result of the systemic risk determination. As a result, any exclusion for a type of uninsured deposits from the special assessment base would reduce the amount of the special assessment for banking organizations that hold those excluded, uninsured deposits, and increase the assessment burden for all other banks holding other types of uninsured deposits. For this reason, and for the reasons described above, and consistent with the proposal, staff recommend that the Board adopt the assessment base for the special assessment as proposed and decline to exclude any particular type of uninsured deposits.

4. Final Assessment Base for the Special Assessment

Following careful consideration of the comments, and for the reasons described above, staff recommend that the Board adopt as final the proposed assessment base for the special assessment, while applying any corrective amendments to estimated uninsured deposits reported for the December 31, 2022, reporting period in calculating the assessment base. The methodology for calculating the assessment base for the special assessment ensures that the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment.

Consistent with the proposal, each IDI's assessment base for the special assessment will be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 as of December 31, 2022, after applying the $5 billion deduction. The deduction of the first $5 billion from estimated uninsured deposits in the assessment base for the special assessment is applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs.

For a banking organization that has more than one subsidiary IDI, the assessment base for the special assessment is equal to the IDI's total estimated uninsured deposits reported as of December 31, 2022, less its share of the $5 billion deduction, which is based on its share of total estimated uninsured deposits held by all IDI affiliates in the banking organization.[17]

Based on data reported for the quarter that ended December 31, 2022, and as illustrated in Table 1 below, the staff estimate that 114 banking organizations, which include IDIs that are not subsidiaries of a holding company and holding companies with one or more subsidiary IDIs and which comprise 81.3 percent of industry assets, will be subject to the special assessment, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion would pay the special assessment, based on data as of

[17] As used in this final rule, the term "affiliate" has the same meaning as defined in section 3 of the FDI Act, 12 U.S.C. 1813(w)(6), which references the Bank Holding Company Act ("any company that controls, is controlled by, or is under common control with another company"). *See* 12 U.S.C. 1841(k).

December 31, 2022.[18]

Table 1 – Banking Organizations Required to Pay Special Assessment, Based on Data Reported for the December 31, 2022, Reporting Period[1]

Asset Size of Banking Organization	**Number of Banking Organizations Required to Pay Special Assessment**	**Percentage of All Banking Organizations in Asset Size Category Required to Pay Special Assessment** [Percent]	**Share of Special Assessment** [Percent]	**Share of Industry Assets** [Percent]
Greater than $50 billion	48	1.1	95.3	74.5
Between $5 and $50 billion	66	1.5	4.7	6.8
Under $5 billion	0	0.0	0.0	0.0
Total	114	2.6	100.0	81.3

[1]Reflects reporting amendments to estimated uninsured deposits, mergers, acquisitions, and failures through November 2, 2023.

5. Prior Period Amendments

Under the proposal, amendments to an IDI's Call Report for the December 31, 2022, reporting period made after the date of adoption of any final rule would not have affected an institution's rate or base for the special assessment.

Staff recommend that the Board finalize this aspect of the rule as proposed, but in calculating the special assessment, apply any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are confirmed through or, associated with the result of, the FDIC's review of an institution's reporting methodology (as described below).

Following the issuance of the proposed rule, the FDIC observed that some IDIs were reporting or filing amendments to the reporting of estimated uninsured deposits for the December 31, 2022, reporting period in a manner that is inconsistent with the instructions to the Call Report.

The FDIC did not receive any comments on the proposed treatment of prior period amendments. Some commenters, however, raised concerns about the accuracy of the amount of estimated uninsured deposits reported on the Call Report. The FDIC received two comment letters indicating that banks may be reporting uninsured deposits differently, or in an inconsistent manner, and one comment letter indicating that some banks were confused about whether to include collateralized deposits in the amount of estimated uninsured deposits reported on the Call Report.

On July 24, 2023, the FDIC issued a Financial Institution Letter (FIL) on Estimated Uninsured Deposits Reporting Expectations, reiterating longstanding instructions and stating that each IDI is responsible for the

[18] The special assessment rate, base, and expected effects in this final rule reflect any amendments to data as of November 2, 2023, for the reporting period that ended December 31, 2022. These estimates may change depending on any subsequent amendments to reported estimates of uninsured deposits.

accuracy of the data reported in its Call Report and for filing amendments as necessary to ensure Call Report accuracy.[19] The FIL stated that, consistent with the requirement to file accurate Call Reports, IDIs that incorrectly reported uninsured deposits should amend their Call Reports by making the appropriate changes to the data and submitting the revised data file.

As a general matter, the amount of estimated uninsured deposits reported on the Call Report is monitored as one of many indicators of safety and soundness, and its accuracy, as with all items collected on the Call Report, is of the utmost importance. The reported amount of estimated uninsured deposits is also used to determine the amount of estimated insured deposits in calculating the DIF reserve ratio, which is the ratio of the DIF balance to all insured deposits.[20]

The FDIC is conducting a review (Assessment Reporting Review) of the reporting methodology for estimated uninsured deposits and related items on the Call Report because of the importance of these items as indicators of safety and soundness.[21] The Assessment Reporting Review may result in amendments to uninsured deposits and related items reported on the Call Report.

Given the planned Assessment Reporting Review, staff are recommending that in calculating the special assessment, the final rule apply any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are either confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

Under the final rule, each institution's special assessment base has been calculated using estimated uninsured deposits for the December 31, 2022, reporting period as reported on November 2, 2023.[22] Amendments made to an institution's December 31, 2022, Call Report through November 2, 2023, have been accounted for in the calculations, as proposed. In addition, under the final rule, certain amendments filed after November 2, 2023, will affect the calculation of an institution's special assessment base. In particular, if as part of the FDIC's Assessment Reporting Review of an institution's reporting methodology (described above), the FDIC finds that as of November 2, 2023, an institution was not reporting uninsured deposits for the December 31, 2022, reporting period in accordance with the Call Report instructions, and corrective amendments are filed as a result of the FDIC's review after November 2, 2023, those amendments will affect the special assessment base for such institution, and any affiliates, as applicable, for all collection periods.

E. Collection Period for the Special Assessment

Under the proposal, the special assessment would be collected beginning with the first quarterly assessment period of 2024 (*i.e.,* January 1 through March 31, 2024), with an invoice payment date of June 28, 2024. In order to mitigate the risk of overcollecting as the loss estimates for the failed banks are periodically adjusted, to preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessment would be collected over eight quarters.

If, prior to the end of the initial eight-quarter collection period, the FDIC expects the loss to be lower

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[19] FDIC Financial Institution Letter (FIL 37-2023), Estimated Uninsured Deposits Reporting Expectations. *https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html*.
[20] Section 3(y)(3) of the FDI Act, 12 U.S.C. 1813(y)(3).
[21] Consistent with the FDIC's practice of conducting reviews under Section 7(b)(4) of the FDI Act to confirm the correctness of any assessment, the FDIC will review an institution's reporting methodology for estimated uninsured deposits and related items. *See* 12 U.S.C. 1817(b)(4).
[22] As proposed, the assessment base and rate would be calculated as of the date the final rule is adopted; however, under the final rule, this is calculated on November 2, 2023, shortly before the date of adoption, for operational and administrative reasons.

than the amount it expects to collect from the special assessment, the FDIC proposed to cease collection of the special assessment before the end of the initial eight-quarter collection period, in the quarter after it has collected enough to recover actual or estimated losses. Alternatively, if, at the end of the eight-quarter collection period, the estimated or actual loss exceeds the amount collected, the FDIC proposed to extend the collection period over one or more quarters as needed in order to collect the difference between the amount collected and the estimated or actual loss at the end of the eight-quarter collection period, (the shortfall amount).

In the likely event that a final loss amount at the termination of the receiverships is not determined until after the initial collection period and any extended collection period, and if losses at the termination of the receiverships exceed the amount collected through such special assessment, the FDIC proposed to impose a one-time final shortfall special assessment to collect the final shortfall amount.

Comments Received on the Collection Period

The FDIC received three comments on the length of the initial collection period, with one commenter requesting a longer collection period to help with cash flow, one commenter requesting a shorter collection period, and one commenter suggesting that banks should have the option to fully fund obligations prior to the end of the proposed collection period.

The FDIC is required by statute to place the excess funds collected through the special assessment in the DIF.[23] By spreading out the collection period over eight quarters, a length of time that would enable the FDIC to develop a more accurate estimate of loss, and allowing for early cessation after the FDIC has collected enough to recover actual or estimated losses, the FDIC mitigates the risk of overcollecting. Reducing the length of the collection period could also adversely impact liquidity. Therefore, staff recommend that the Board adopt the initial collection period of eight quarters as proposed, with a modification to apply any corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period to the calculation of the special assessment, following adoption of the final rule.

In the event that an extended collection period is needed, staff recommend finalizing its proposal to extend the collection period over one or more quarters to collect the difference between the amount collected and the estimated or actual loss at the end of the eight-quarter collection period. In the interest of consistency and predictability, the quarterly rate will not exceed the 3.36 basis point quarterly special assessment rate applied during the initial eight-quarter collection period, and such extended special assessment will be collected for the minimum number of quarters needed to recover the shortfall amount at such quarterly rate.

The FDIC received four comments on the one-time final shortfall special assessment. One supported the proposed calculation. One commenter recommended that if the amount collected exceeds the final loss estimate, that the excess collected should be credited against future assessments. One commenter requested that the assessment base methodology be adjusted to incorporate a risk-based component. One commenter said that the one-time final shortfall special assessment should be calculated at the end of a recommended one-year payment period.

The FDIC would only collect a one-time final shortfall special assessment if the final loss amount at the termination of the receiverships is not determined until after the initial collection period and any extended collection period, and if losses at the termination of the receiverships exceed the amount collected through such special assessment. Therefore, staff recommend that the Board adopt the one-time final shortfall special assessment as proposed, while accommodating amendments to the reported amount of uninsured deposits.

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[23] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

Given that the planned review of the reporting methodology for estimated uninsured deposits may result in amendments to uninsured deposits and related items reported on the Call Report, staff also recommend a modification to apply any corrective amendments that are confirmed through, or resulting from, the FDIC's review of an institution's reporting methodology to the reported amount of estimated uninsured deposits to the calculation of the assessment base for the initial eight-quarter collection period, any extended collection period, and for a one-time final shortfall special assessment, if needed.

F. Collection of Special Assessment and Any Shortfall Special Assessment

The special assessment and any shortfall special assessment will be collected at the same time and in the same manner as an IDI's regular quarterly deposit insurance assessment. Invoices for an IDI's regular quarterly deposit insurance assessment will disclose the amount of any special assessment or shortfall special assessment due.

Comments Received on Communication of Loss Estimate

Two commenters requested that the FDIC communicate any revisions to the loss estimate and updates on the collection of the special assessment. To increase transparency and in response to comments on the proposal, staff are recommending clarifications, including that the FDIC plans to communicate any changes to the loss estimate, as applicable, and to provide updates on the collection of the special assessment to banking organizations subject to the special assessment.

G. Mergers, Consolidations and Terminations of Deposit Insurance

Under the proposed rule, if an IDI were to acquire—through merger or consolidation—another IDI following the adoption of this final rule or during any collection period, the acquiring IDI would be required to pay the acquired IDI's special assessment, if any, including any unpaid special assessment, in addition to its own special assessment, from the quarter of the acquisition through the remainder of all special assessment collection periods. Under the proposal, in the event that the FDIC extends the collection period or imposes a one-time final shortfall assessment, each banking organization's assessment base would be adjusted for mergers or failures that occurred during the eight-quarter collection period.

Under the proposed rule, when the insured status of an IDI is terminated and the deposit liabilities of the IDI are not assumed by another IDI, the IDI whose insured status is terminating must, among other things, continue to pay assessments, including the special assessment, for the assessment periods that its deposits are insured, but not thereafter.[24]

When an IDI voluntarily terminates its deposit insurance under the FDI Act, the IDI whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured.[25]

Comments Received on Mergers, Consolidations, and Terminations of Deposit Insurance

One commenter expressed concern that use of the December 31, 2022, reporting date ignores recent acquisition activity while another commenter requested clarification that the estimates in the proposed rule exclude the uninsured deposits that New York Community Bank assumed following its acquisition of Signature

[24] *See* 12 CFR 327.6(c).
[25] *See* 12 CFR 327.6(c).

Bank in March 2023.[26] One commenter requested clarification of the point at which obligation to pay the special assessment would end if a bank were to voluntarily terminate its insured status during the collection period.

The uninsured deposits of First Republic Bank, Silicon Valley Bank, and Signature Bank, which failed prior to the adoption of the proposed rule, were excluded from the calculation of the assessment rate and base for the special assessment, and the estimated expected effects in the proposed rule and in this final rule. Staff recommend that such exclusion be adopted in the final rule. This exclusion was intended to prevent disincentivizing any potential future acquisition activity following the adoption of the proposed rule, particularly given the uncertainty in the banking sector at the time the proposal was adopted.

Staff recommend that the Board adopt as final the proposed provisions related to mergers, acquisitions, and terminations of deposit insurance, with two adjustments. First, in the event that the FDIC extends the collection period or imposes a one-time final shortfall assessment, each banking organization's assessment base will not be adjusted for mergers or failures that occurred after the adoption of this final rule or during the eight-quarter collection period. In staff's view, each banking organization's assessment base reflects its relative benefit from the assistance provided under the systemic risk determination. This treatment would ensure that an acquiring bank's special assessment, and any special assessment assumed for an acquired bank, continues to reflect each banking organization's relative benefit from the assistance provided under the systemic risk determination, and would have the result that a banking organization subject to the special assessment that acquires another banking organization also subject to the special assessment would derive benefit from the $5 billion deduction for both special assessment payments.

The FDIC is also clarifying that the special assessment base of the acquiring bank in a merger or consolidation that occurred prior to the March 12, 2023, determination of systemic risk would be adjusted to include the uninsured deposits of the acquired bank and would derive benefit of a single $5 billion deduction. Calculating the assessment base in this manner best reflects the structure of the banking organization at the time the determination of systemic risk was made, and reflects the organization's relative benefit from the assistance provided.

Second, in order to avoid incentivizing banks to voluntarily terminate their insured status to avoid paying the special assessment under the final rule, staff recommend that under the final rule, the FDIC require any bank that voluntarily terminates its insured status after the adoption of this final rule or during any special assessment collection period to pay the entire remaining amount of its special assessment at the same time its obligation to pay regular deposit insurance assessments would end.[27]

H. Accounting Treatment

Each institution should account for the special assessment in accordance with U.S. generally accepted accounting principles (GAAP). In accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 450, *Contingencies* (FASB ASC Topic 450), an estimated loss from a loss contingency shall be accrued by a charge to income if information indicates that it is probable that a liability has been incurred and the amount of loss is reasonably estimable.[28] Therefore, an institution will recognize in the Call Report and other financial statements the accrual of a liability and estimated loss (i.e., expense) from a loss contingency for the special assessment when the institution determines that the conditions for accrual under GAAP have been met. In addition, the General Instructions to the Call Report provide guidance on ASC Topic 855, Subsequent Events,

[26] FDIC PR-21-2023. "Subsidiary of New York Community Bancorp, Inc. to Assume Deposits of Signature Bridge Bank, N.A., From the FDIC." March 19, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23021.html*.
[27] *See* 12 CFR 327.6(c).
[28] FASB ASC paragraph 450-20-25-2.

which may be applicable.[29]

Similarly, each institution should account for any shortfall special assessment in accordance with FASB ASC Topic 450 when the conditions for accrual under GAAP have been met.

Comments Received on Accounting Treatment

The FDIC received two comments that supported restructuring the special assessment as a prepaid expense that could be amortized over a multi-year period.

Structuring the special assessment as a prepaid expense would reduce the one-time effect on income but would also reduce liquidity by the full amount of the special assessment at payment. In staff's view, the proposed structure of the special assessment best promotes maintenance of liquidity, which will allow institutions to absorb any potential unexpected setbacks while continuing to meet the credit needs of the U.S. economy. For these reasons, staff recommend against the Board restructuring the special assessment as a prepaid expense.

ANALYSIS AND EXPECTED EFFECTS

The following summarizes the factors considered in recommending adoption of the special assessment.[30]

A. The Types of Entities that Benefit

In implementing special assessments under section 13(c)(4)(G) of the FDI Act, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided pursuant to determination of systemic risk.[31]

With the rapid collapse of Silicon Valley Bank and Signature Bank in the space of 48 hours, concerns arose that risk could spread more widely to other institutions and that the financial system as a whole could be placed at risk. Shortly after Silicon Valley Bank was closed on March 10, 2023, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The extent to which IDIs rely on uninsured deposits for funding varies significantly. Uninsured deposits were used to fund nearly three-quarters of the assets at Silicon Valley Bank and Signature Bank. On March 12, 2023, the Board and the Board of Governors voted unanimously to recommend, and the Treasury Secretary, in consultation with the President, determined that the FDIC could use emergency systemic risk authorities under the FDI Act to complete its resolution of both Silicon Valley Bank and Signature Bank in a manner that fully protects depositors.[32] The full protection of depositors, rather than imposing losses on uninsured depositors, was

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[29] *See* General Instructions to the Call Report, available at: *https://www.fdic.gov/resources/bankers/call-reports/crinst-031-041/2022/2022-12-generalinstructions.pdf*.
[30] In prescribing special assessments, the FDIC is required by statute to consider:
(i) The types of entities that benefit from any action taken or assistance provided.
(ii) Economic conditions.
(iii) The effects on the industry.
(iv) Such other factors as the FDIC deems appropriate and relevant to the action taken or assistance provided.
Section 13(c)(4)(G)(ii)(III) of the FDI Act.
[31] 12 U.S.C. 1823(c)(4)(G)(ii)(III).
[32] 12 U.S.C. 1823(c)(4)(G). *See also:* FDIC PR-17-2023. "Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC." March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23017.html*.

intended to strengthen public confidence in the nation's banking system.

In the weeks that followed the determination of systemic risk, efforts to stabilize the banking system and stem potential contagion from the failures of Silicon Valley Bank and Signature Bank ensured that depositors would continue to have access to their savings, that small businesses and other employers could continue to make payrolls, and that other banks could continue to extend credit to borrowers and serve as a source of support. In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Indeed, shortly after Silicon Valley Bank was closed, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The failure of Silicon Valley Bank and the impending failure of Signature Bank raised concerns that, absent immediate assistance for uninsured depositors, there could be negative knock-on consequences for similarly situated institutions, depositors, and the financial system more broadly.

Uninsured deposit concentrations of IDIs, meaning the percentage of domestic deposits that are uninsured, vary significantly. At Silicon Valley Bank, 88 percent of deposits were uninsured at the point of failure compared to 67 percent at Signature Bank. On average, the largest banking organizations by asset size reported significantly greater uninsured deposit concentrations relative to smaller banking organizations, as illustrated in Table 2 below, based on data as of December 31, 2022. Banking organizations with total assets between $1 billion and $5 billion generally reported the lowest percentage of uninsured deposits to total domestic deposits, averaging 33.0 percent, compared with the largest banking organizations with total assets greater than $250 billion, which averaged 50.4 percent.

Table 2 – Uninsured Deposits as a Percentage of Total Domestic Deposits, By Banking Organization Asset Size, Based on Data for the December 31, 2022, Reporting Period[1]

[Percent]

Asset Size of Banking Organization	**Ratio of Uninsured Deposits to Total Domestic Deposits** [Percent]
$1 to $5 Billion	33.0
$5 to $10 Billion	35.0
$10 to $50 Billion	40.3
$50 to $250 Billion	42.8
Greater than $250 Billion	50.4

[1]Reflects reporting amendments to estimated uninsured deposits, mergers, acquisitions, and failures through November 2, 2023.

Following the announcement of the systemic risk determination, the FDIC observed a significant slowdown in uninsured deposits leaving certain institutions, evidence that the systemic risk determination helped stem the outflow of these deposits while providing stability to the banking industry.

Between December 31, 2022, and March 31, 2023, banks in all asset size groups experienced quarterly declines in uninsured deposit balances, but these declines were particularly severe and widespread among banks between $50 billion and $250 billion in total assets. In addition, between December 31, 2022, and March 31, 2023, the eight U.S. GSIBs reported a weighted average decline in uninsured deposits of 2.1 percent, albeit slower than the industry average of approximately eight percent. However, changes in uninsured deposit balances over this time period varied widely for the GSIBs. Two of the eight GSIBs experienced growth in uninsured deposits of 2.6 percent and 2.0 percent over this period while the other six GSIBs experienced

declines, some significant, ranging between less than two percent to nearly 17 percent.

Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. Under the final rule, the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment.

B. Effects on the Industry

In calculating the assessment base for the special assessment, the FDIC will deduct $5 billion from each IDI or banking organization's aggregate estimated uninsured deposits reported for the quarter that ended December 31, 2022. As a result, any institution that did not report any uninsured deposits as of December 31, 2022, will not be subject to the special assessment. Additionally, most small IDIs and IDIs that are part of a small banking organization will not pay anything towards the special assessment. Some small and mid-size IDIs will be subject to the special assessment if they are subsidiaries of a banking organization with more than $5 billion in uninsured deposits and such IDIs report positive amounts of uninsured deposits after application of the deduction, or if they directly hold more than $5 billion in estimated uninsured deposits as of December 31, 2022, which for smaller institutions would constitute heavy reliance on uninsured deposits.

Based on data reported for the quarter ended December 31, 2022, and as captured in Table 1 above, the FDIC estimates that 114 banking organizations will be subject to the special assessment upon adoption of the final rule, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion will pay a special assessment, based on data reported as of December 31, 2022. [33] It is anticipated that the same banking organizations subject to the special assessment would also be subject to any extended special assessment or one-time final shortfall special assessment, absent the effects of any amendments to estimated uninsured deposits, mergers, consolidations, failures, or other terminations of deposit insurance that occur through the determination of such extended special assessment or one-time final shortfall special assessment.

C. Capital and Earnings Analysis

Staff estimate that the FDIC will collect through the special assessment the estimated loss from protecting uninsured depositors at Silicon Valley Bank and Signature Bank of approximately $16.3 billion, over the initial eight-quarter collection period. Banking organizations will recognize the accrual of a liability and an estimated loss (i.e., expense) from a loss contingency for the special assessment when the institution determines that the conditions for accrual under GAAP have been met. This analysis assumes that the effects on capital and earnings of the entire amount of the special assessment to be collected over eight quarters would occur in one quarter only.

To estimate the effects of the special assessment relative to a banking organization's capital, the analysis considers the effective pre-tax cost of the special assessment, and assumes that an institution will maintain its dividend rate (that is, dividends as a percentage of net income) unchanged from the weighted average rate reported over the four quarters between July 1, 2022, and June 30, 2023.[34] Given the current loss

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[33] Some IDIs that report less than $5 billion in estimated uninsured deposits will be subject to the special assessment if they are part of banking organizations with multiple IDIs that report a combined total of estimated uninsured deposits in excess of $5 billion.

[34] For purposes of this analysis, Tier 1 capital to assets is used as the measure of capital adequacy. In the event that the ratio of Tier 1 capital to assets falls below four percent, however, this assumption is modified such that

estimate and the assumptions in the analysis, staff estimate that, on average, the special assessment will decrease the dollar amount of Tier 1 capital of banking organizations required to pay the special assessment by an estimated 62 basis points.[35] No banking organizations are estimated to fall below the minimum capital requirement (a four percent Tier 1 capital-to-assets ratio) as a result of the special assessment.

While the special assessment is allocated based on estimated uninsured deposits reported at the banking organization level, IDIs will be responsible for payment of the special assessment. Staff analyzed the effect of the special assessment on income reported at the IDI-level for IDIs subject to the special assessment that are not subsidiaries of a holding company or that are subsidiaries of a holding company with only one IDI subsidiary. For IDIs that are subsidiaries of a holding company with more than one IDI subsidiary, staff analyzed the effect of the special assessment by aggregating the income reported by all IDIs subject to the special assessment within each banking organization since the IDIs will be responsible for payment. Staff analyzed the impact of the special assessment on banking organizations that were profitable based on their average quarterly income from July 1, 2022, to June 30, 2023.[36]

The effects on income of the entire amount of the special assessment to be collected over eight quarters are assumed to occur in one quarter only. Given the assumptions and the estimated loss amount, staff estimate that the special assessment would result in an average one-quarter reduction in income of 20.4 percent for banking organizations subject to the special assessment.[37] Staff estimate that approximately 66 percent of profitable banking organizations subject to the proposal are projected to have a special assessment of less than 20 percent of income, including 23 percent with a special assessment of less than 5 percent of income. Another 34 percent of profitable banking organizations subject to the proposal are projected to have a special assessment equal to or exceeding 20 percent of income.

Comments Received on the Effect of the Special Assessment on Capital and Earnings

The FDIC received 13 comments, including three comments from trade associations, suggesting modifications to change the timing of, or otherwise mitigate the effect of the special assessment on capital, earnings, and regular deposit insurance assessments. Seven commenters supported an optional transition period or a similar approach to allow banking organizations to phase in the effects of the special assessment on their regulatory capital ratios over the eight-quarter collection period.

One commenter said that for purposes of calculating requirements and guidance related to levels of

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an institution retains the amount necessary to reach a four percent minimum and distributes any remaining funds according to the dividend payout rate. The analysis uses four percent as the threshold because IDIs generally need to maintain a Tier 1 leverage ratio of 4.0 percent or greater to be considered "adequately capitalized" under Prompt Corrective Action Standards. *See* 12 CFR 324.403(b)(2). Additionally, Federal Reserve Board-regulated institutions must generally maintain a Tier 1 leverage ratio of 4.0 percent or greater to meet the minimum capital requirements. *See* 12 CFR 217.10(a)(1).

[35] Estimated effects on capital are calculated based on data reported as of June 30, 2023, on the Call Report and the Consolidated Financial Statements for Holding Companies (FR Y-9C), respectively, for IDIs that are not subsidiaries of a holding company or that are part of a banking organization with only one subsidiary IDI required to pay the special assessment, and for banking organizations, to the extent that an IDI is part of a holding company with more than one subsidiary IDI required to pay the special assessment.

[36] There were two banking organizations that would be required to pay the special assessment that were unprofitable based on average quarterly income from July 1, 2022, to June 30, 2023.

[37] Earnings or income are quarterly income before assessments and taxes. Quarterly income is assumed to equal average income from July 1, 2022, through June 30, 2023.

dividends and stock repurchases, and for examination findings related to earnings, the reduction in earnings resulting from the payment of the special assessment should be disregarded, or at least be amortized over the collection period. The same commenter also requested an adjustment to eliminate the impact of the special assessment on regular quarterly deposit insurance assessments for large banks and highly complex banks.[38]

As described above, given the loss estimate and the assumptions applied in the analysis, staff estimate that, on average, the special assessment will decrease the dollar amount of Tier 1 capital of banking organizations subject to the special assessment by an estimated 62 basis points. No banking organizations are estimated to fall below the minimum capital requirement (a four percent Tier 1 capital-to-assets ratio) as a result of the special assessment. As described above, the effect of the special assessment on Tier 1 capital is minimal and is not estimated to cause any institutions to fall below the minimum capital requirement; therefore, staff do not recommend adoption of a transition period to phase-in the special assessment's effect on regulatory capital.

In order to preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessment will be collected over eight quarters. The special assessment is applicable for the first quarterly assessment period of 2024. Given that the proposal was approved by the Board and published in the *Federal Register* in May 2023, institutions were provided time to prepare and plan for the special assessment.

D. Economic Conditions

On September 7, 2023, the FDIC released the results of the Quarterly Banking Profile, which provided a comprehensive summary of financial results for all FDIC-insured institutions for the second quarter of 2023. Overall, key banking industry metrics remained favorable in the quarter.[39]

Net income declined from the previous quarter due to accounting gains on failed bank acquisitions that occurred in the first and the second quarter. However, excluding these nonrecurring gains, net income was relatively flat from the prior quarter. Net income remained relatively high by historical measures in the second quarter, although the banking industry reported a tighter net interest margin and funding pressures driven by increasing rates paid on deposits as well as high rates paid on non-deposit liabilities. Loan expansion continued, asset quality metrics were favorable, and the banking industry remained well-capitalized.

The banking industry continues to face significant downside risks from the effects of inflation, rising market interest rates, and geopolitical uncertainty. These risks could cause credit quality deterioration and weakness in profitability, which may result in more stringent underwriting standards, a slowdown in loan growth, higher provision expenses, and liquidity constraints. Also, commercial real estate portfolios are under pressure from higher interest rates as loans mature and require refinancing, and office properties are experiencing weak demand for space and softening property values.

Despite these challenges, the state of the U.S. banking system remains sound and institutions are well positioned to absorb a special assessment.

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[38] For regular deposit insurance assessment purposes, a large bank is generally defined as an institution with $10 billion or more in total assets, and a highly complex bank 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).
[39] FDIC Quarterly Banking Profile, Second Quarter 2023. *https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023jun/.*

ALTERNATIVES

While the FDIC is required by statute to recover the loss to the DIF arising from the use of a systemic risk determination through one or more special assessments, Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination.[40] Staff considered several alternatives while developing the proposal and this final rule, but believe, on balance, that the proposed special assessment is the most appropriate and most straightforward manner in which to collect the special assessment. Accordingly, and after consideration of the statutory factors as described above, staff recommend adopting as final the proposed special assessment, with changes to promote transparency and to apply any corrective amendments to the reporting of estimated uninsured deposits to the calculation of the special assessment.

CONCLUSION

In staff's view, the final rule reflects an appropriate balancing of the statutory requirement to apply the special assessment to the types of entities that benefited the most from the protection of uninsured depositors provided under the determination of systemic risk while ensuring equitable, transparent, and consistent treatment based on amounts of uninsured deposits at the time of the determination of systemic risk. The final rule also allows for payments to be collected over an extended period of time in order to mitigate the liquidity effects of the special assessment by requiring smaller, consistent quarterly payments. On balance, in staff's view, the final rule best promotes maintenance of liquidity, which will allow institutions to absorb any potential unexpected setbacks while continuing to meet the credit needs of the U.S. economy.

EFFECTIVE DATE AND APPLICATION DATE

Staff recommend issuing this final rule with an effective date of April 1, 2024. The first collection for special assessment will be reflected on the invoice for the first quarterly assessment period of 2024 (i.e., January 1 through March 31, 2024), with a payment date of June 28, 2024, and the FDIC will continue to collect the special assessment for an anticipated total of eight quarterly assessment periods. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, and to allow for any corrective amendments to the amount of uninsured deposits reported for the December 31, 2022, reporting period applied to the calculation of the special assessment, staff recommend that the FDIC retain the ability to cease collection early, impose an extended special assessment collection period after the initial eight-quarter collection period to collect the difference between losses and the amounts collected, and impose a one-time final shortfall special assessment after both receiverships terminate.

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[40] 12 U.S.C. 1823(c)(4)(G)(ii)(I). In implementing special assessments, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, effects on the industry, economic conditions, and any such other factors as the FDIC deems appropriate and relevant to the action taken or the assistance provided. *See* 12 U.S.C. 1823(c)(4)(G)(ii)(III).

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