



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS
Deputy Commissioner | Mónica Rodríguez Villa, Esq. | monicar@ocif.pr.gov

VIA ELECTRONIC MAIL: COMMENTS@FDIC.GOV

July 19, 2023

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

**RE: PUERTO RICO OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS /
COMMENTS TO SPECIAL ASSESSMENTS PURSUANT TO SYSTEMIC RISK
DETERMINATION / RIN 3064-AF93**

Dear Mr. Sheesley:

The Puerto Rico Office of the Commissioner of Financial Institutions¹ (the “OCFI”) appreciates the opportunity to provide its comments to the Federal Deposit Insurance Corporation’s (the “FDIC”) Notice of Proposed Rulemaking Regarding Special Assessments Pursuant to Systemic Risk Determination, 88 Fed. Reg. 32694, May 22, 2023 (the “Proposed Rules”).

The Proposed Rules seek to “impose special assessments to recover the loss to the Deposit Insurance Fund (“DIF”) arising from the protection of uninsured depositors ... following the closures of Silicon Valley Bank ... and Signature Bank”. See Proposed Rules, pg. 32694. To recover such loss, the FDIC seeks to collect a special assessment on an “insured depository institution’s (“IDI”) estimated uninsured deposits, reported as of December 31, 2022, adjusted to exclude the first \$5 billion in estimated uninsured deposits”. See Proposed Rules, pg. 32694.

¹ The OCFI is Puerto Rico primary regulatory and oversight governmental agency for the financial institutions that operate or do business within our jurisdiction. The OCFI covers a wide array of financial institutions, from mortgage servicing to casinos, from commercial banks to pawnshops. The OCFI regulates over a dozen of sectors within the financial industry.

OCFI understands and supports the FDIC's efforts to protect uninsured depositors from these failed banks, to support the U.S. financial system's stability following these closures, and to do so using a "methodology [that] ensures that the banks that benefited most from the assistance provided under the systemic risk determination would be charged special assessments to recover losses to the DIF resulting from the protection of uninsured depositors". See Proposed Rule, pg. 32699; see also 12 USC § 1823(c)(4)(G)(ii)(I).

Nonetheless, OCFI is concerned by, and thus provides comments to address, the FDIC's proposed inclusion of preferred deposits in its calculation of an IDI's total uninsured deposits subject to the special assessment, as this inclusion seems to directly contradict the FDIC's proposed methodology and the purpose of the Proposed Rules. Specifically, OCFI believes that including preferred deposits—i.e., uninsured deposits of a public sector entity which are secured or collateralized as required under State law— in the base for the special assessment is contrary to the goal of charging these assessments to those who benefitted most from the systemic risk determination.

As noted above, OCFI is the primary Puerto Rico regulatory and oversight entity for financial institutions that operate or do business in Puerto Rico. OCFI is particularly concerned with the FDIC's proposal to include preferred deposits in the special assessment base because our supervised financial institutions would bear a disproportionate share of the burden. This is because certain of the leading financial institutions in Puerto Rico have business models that involve a high degree of services for Puerto Rico public sector entities—as a result, those institutions have large amounts of preferred deposits as a percentage of overall uninsured deposits. For these reasons and those discussed in more detail below, OCFI respectfully recommends that the FDIC exclude preferred deposits from the special assessment base.

Preferred deposits are uninsured "deposits of any public unit... at any insured depository institution which are secured or collateralized as required under State law".² These deposits are different from

² 12 U.S.C. § 1813(m)(4). Pursuant to 12 U.S.C. § 1813(a)(3), when used in § 1813, "[t]he term 'State' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands." Where "State" is capitalized in this comment letter, we intend it to have the same meaning.



other uninsured deposits in that they must be collateralized by the depository bank in accordance with applicable law.

In Puerto Rico, “[a]ll government entities’ funds [must be] . . . be deposited in financial institutions that can answer with sufficient collateral, consisting of previously-selected securities or instruments (including irrevocable letters of credit).³ To satisfy such requirements, financial institutions in Puerto Rico may pledge short-term securities or irrevocable letters of credit issued by US or Puerto Rico-based entities rated AAA or AA or their equivalent by Moody’s, Standard & Poor’s, Fitch, or any other internationally recognized credit rating agency.⁴ This ensures that the pledged collateral is not only safer, but also that its market value is readily ascertainable.

Further, under Puerto Rico law, a financial institution is required to enter into an effective and valid pledge against third parties and in favor of the Secretary of the Treasury of the Commonwealth of Puerto Rico (the “Secretary”) with respect to an amount of securities or irrevocable letters of credit with a market value sufficient to secure 100% of the public deposits held by the institution.⁵ To ensure that there is sufficient collateral to satisfy all public deposits, the Secretary is required to assess the market value of the collateral from time to time, requiring that an institution supplement pledged collateral in the event the value of pledged securities falls below the value of public deposits at the institution.⁶

This legal framework, similar to the frameworks implemented in other States, is aimed at protecting government deposits and ensuring that, in the event of a bank failure, there is a viable path to recourse and to recovery of all of such deposits. As a result, preferred deposits represent a substantially lower risk to the FDIC and, thus, to the DIF, in the event of a systemic risk determination. In other words, in the event of a bank failure, these preferred deposits would likely not be satisfied through payments made from the DIF, but rather would be satisfied from funds received because of the sale of the underlying securities and irrevocable letters of credit pledged as collateral. This is underscored by the fact that the FDIC’s policy is to, “[i]n the event of the failure of the bank, . . . honor the collateralization agreement [associated with preferred deposits] if the agreement is valid and

³ 7 LPR § 251a.

⁴ 7 LPR § 252a.

⁵ 7 LPR §§ 252a, 252b.

⁶ *Id.*



enforceable under applicable law.”⁷ Finally, the collateralization of preferred deposits represents a significantly more stable funding source for IDIs because, among other reasons, the collateralization requirement mitigates any incentives from preferred depositors to withdraw deposits due to concerns about a bank’s solvency.

For these reasons, OCFI believes that including preferred deposits in the calculation of the special assessment base for IDIs would be inconsistent with the stated rationale of allocating the burden of the special assessment to institutions that benefited most from the assistance provided under the systemic risk determination. IDIs holding preferred deposits did not benefit from the systemic risk determination as much as IDIs holding regular uninsured deposits, given they faced a much lower risk of preferred deposit withdrawal than the risk of ordinary uninsured deposit withdrawal faced by holders of such deposits. Furthermore, preferred deposits do not represent the same risk as uninsured deposits to the DIF given that, in the event a bank holding preferred deposits were to fail, the FDIC would not be faced with the decision of whether to make whole uninsured preferred depositors, in that pledged collateral could instead be sold in satisfaction of the obligations owed to them.

Therefore, to better align the proposed special assessment methodology with the stated goals of the assessment, we respectfully submit that the proposed special assessment methodology should be modified such that preferred deposits are disregarded in determining an IDI’s special assessment base.

Sincerely,



⁷ Federal Deposit Insurance Corporation, “Deposit Insurance for Accounts Held by Government Depositors”, <https://www.fdic.gov/deposit/deposits/factsheet.html>, last accessed June 12, 2023.

