American Bankers Association
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July 21, 2023

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

RE: RIN 3064–AF93, Special Assessment Pursuant to the Systemic Risk Determination

Dear Mr. Sheesley:

The American Bankers Association[1] appreciates the opportunity to comment on the FDIC's proposed rule (the Proposal) that would impose a special assessment to recover losses to the Deposit Insurance Fund (DIF) in connection with the systemic risk determination[2] related to the closures of Silicon Valley Bank and Signature Bank. Under the proposal, the FDIC would assess 12.5 basis points, over eight quarterly periods, against an institution's estimated uninsured deposits as of December 31, 2022. The FDIC proposes to adjust the assessment to exclude the first $5 billion in estimated uninsured deposits. The first quarterly assessment period beginning on January 1, 2024.

ABA represents banks of all sizes, from the smallest community banks to midsize and regional banks and the largest globally active institutions. Each of these cohorts plays a unique and valuable role in their communities and in the U.S. banking system, which lies at the heart of the U.S. economy. Given this diversity, there is a broad range of viewpoints on the Proposal among our membership, since every institution will be affected differently. As we have stated repeatedly and publicly, ABA supports that the FDIC proposes to carve out community banks with under $5 billion in uninsured deposits. We also urge the FDIC to continue to do everything possible to reduce the size of the assessment further through prudent asset sales and other steps to limit the financial impact on institutions scoped into the assessment.

Because any changes to the Proposal regarding the assessment base will necessarily redistribute the obligation among members subject to the assessment, we are neutral on the proposed assessment base other than to encourage the FDIC to take into consideration the comments of each and every

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[1] The American Bankers Association is the voice of the nation's $23.7 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2.1 million people, safeguard $18.7 trillion in deposits and extend $12.2 trillion in loans.
[2] FDIC, Notice of Proposed Rulemaking: Special Assessments Pursuant to Systemic Risk Determination, 88 Federal Register 32694, May 22, 2023 (www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf).

institution that chooses to share perspectives on the Proposal. Instead, we offer technical recommendations as well as suggest improvements for future special assessments and related actions. As a threshold matter, we do not believe that the proposed special assessment should set a precedent for future special assessments. ABA recommends that the FDIC bolster its processes to ensure future systemic risk exceptions, resolutions and special assessments collectively are fair, evidence-based, transparent and predictable.

We acknowledge and appreciate that the FDIC, together with the Treasury and the Federal Reserve, worked quickly to stem-growing stress in the wake of Silicon Valley Bank's (SVB) failure, exacerbated and magnified by equity market pressures and both social and traditional media. As discussed further below, ABA believes it is important for the FDIC to provide additional details regarding its approach to the resolutions of SVB and Signature, so that banks and other stakeholders can better understand the FDIC's reasoning, which is not yet clear. To enhance predictability, transparency and ensure fairness going forward, we recommend that the FDIC create a principles-based framework, through notice and comment, that identifies conditions and circumstances that may warrant a systemic risk determination, the methodology it will use to identify beneficiaries for purposes of a subsequent special assessment, and the factors the agency will consider in developing any future special assessment methodology.

Relatedly, ABA is concerned that the Proposal's focus on uninsured deposits could lead to an unwarranted and negative taint of uninsured deposits that would be damaging to banks of all sizes. The term "uninsured deposits" encompasses a diverse set of deposits from retail, business, state and local government, agricultural, commercial and institutional customers, and a broad array of deposit products offered by banks of all sizes and business models. Driving the focus on uninsured deposits is the presumption that they were the primary factor in the failures of SVB and Signature Bank. We do not agree with this presumption. A bank failure is typically the result of a series of business decisions and market circumstances over an extended period. SVB and Signature Bank are no exception. As has been reported by the Government Accountability Office,[3] Federal Reserve,[4] and the FDIC[5], the failures of these institutions were a result of a number of unique factors, at the heart of which were the banks' poor management of interest rate, liquidity, and extreme concentration risks, combined with rapid growth and supervisory shortcomings. Given these facts, we believe that it is incomplete and inaccurate to view uninsured deposits as the primary driver of the failures, focus on a single factor behind the failures, or imply that uninsured deposits are, in and of themselves, inherently risky or undesirable. We caution that stigmatizing such a broad and diverse category of bank funding will create significant economic harm.

With respect to timing of the assessment, since the FDIC is not required to charge a special assessment within a particular timeframe following an invocation of the systemic risk determination, ABA requests that the FDIC not issue a final rule until the fourth quarter of 2023. Additionally, we request that a transition option be granted that allows banking organizations to phase in over the eight-quarter collection period the adverse effects of the assessment on their regulatory capital ratios. Further, we recommend that the FDIC "true up" the final quarterly assessment to prevent under or overpayment.

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[3] Preliminary Review of Agency Actions Related to March 2023 Bank Failure GAO-23-106736 April 2023.

[4] Silicon Valley Bank Review – Supervisory Materials. https://www.federalreserve.gov/supervisionreg/silicon-valley-bank-review-supervisory-materials.htm

[5] FDIC's Supervision of Signature Bank. April 2023. www.fdic.gov/news/press-releases/2023/pr23033a.pdf

The term "uninsured deposits" is insufficient to assess a bank's funding stability or exposure to liquidity risk.

The stability of a deposit depends on a number of factors, including demographics, location, the depositor's relationship with the bank, a bank's experience with certain customers and products, and a combination thereof. Further, the level of uninsured deposits is dynamic, with flows based on financial and seasonal factors such as planting and harvest, taxation, large purchases, pending investments, disbursement of funds to plan beneficiaries, and payroll and other cash management services for businesses of all sizes. The Proposal, however, paints all uninsured deposits with the same brush, noting simply: "While some uninsured deposit 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."[6] We do not agree that all uninsured deposits behave this way, nor do we agree with the FDIC's conjecture that all uninsured deposits "might become less stable" during a period of stress. Moreover, this runs counter to the liquidity coverage ratio (LCR), which assumes different outflow rates for different counterparties and deposit product features.[7]

Discouraging banks from either accepting deposits over the insured limit or accommodating uninsured deposit flows will narrow the provision of banking services to communities and entities vital to economic growth, including in periods of stress when stability is most needed. Banks of all sizes are well accustomed to understanding and managing their customers' banking needs, with the vast majority of banks practicing robust liquidity and asset-liability management that allows them to serve their customers, both insured and uninsured, without undue risk. Rather than discouraging banks from holding uninsured deposits, the FDIC, together with the OCC and Federal Reserve, should continue to focus on assessing the extent to which a bank is effectively managing the risks associated with its particular funding mix and its overall balance sheet.

Moreover, how banks report uninsured deposits in the Call Report may be confusing for examiners, policymakers, depositors, equity and bond investors and other stake holders as the line item represents a broad, heterogenous mix of counterparties and deposit product types[8] making their behavior difficult, if not impossible, to generalize. Relatedly, given the mix of deposits contained in the current category "estimated uninsured deposits," that line item is not an appropriate basis for assessments going forward, or any future special assessments.

The FDIC should ensure future special assessments are clear and transparent

ABA is concerned about the absence of robust public information regarding the analysis the FDIC used to determine the institutions that benefited from the systemic risk determination, particularly given the short timeframe between the failures of SVB and Signature Bank and the issuance of the Proposal.

[6] 88 FR 32694 (May) 2023.

[7] 12 CFR Part 329

[8] For example, included in this category are: public funds and other collateralized deposits; deposits protected by other government insurance funds; intra-institutional deposits from a bank's subsidiary, affiliate or holding company; operational deposits, as defined by the LCR and contractual deposits not otherwise reported.

We understand and acknowledge that the FDIC has wide discretion to design the special assessment but is required by statute to consider three broad factors—(i) the types of entities that benefit from the systemic risk determination, (ii) economic conditions, and (iii) the effects on the industry—as well as any other factors that it deems "appropriate and relevant to the action taken or the assistance provided."[9] ABA believes, however, that it is incumbent on the FDIC to release details about the relevant background data and analysis behind its decision-making with respect to special assessment, and the failures and resolutions of SVB and Signature Bank. This would include a robust analysis that provides evidence for the statements about which institutions benefited from the systemic risk determination, and in what manner. We do not believe the FDIC has done this to date, and urge the FDIC to provide significantly more detail regarding its methodology with respect to any future special assessments.

Additionally, to ensure fairness, when considering who benefited from a future systemic risk determination, we suggest the FDIC establish a set of parameters it will use to determine beneficiaries and, to the extent practical, the types of data it will use to support the analysis. Going forward, ABA suggests that this framework consider a variety of risk-related factors, including sufficiency of capital, liquidity, exposure to credit and other risks, and overall risk management. This would better align future special assessments with the principles under the risk-based assessment framework, enhancing clarity and transparency.

The FDIC should ensure its resolutions options are transparent and predictable

ABA believes that the FDIC's approach to the resolution of SVB and Signature Bank was unclear and the process lacked transparency with regard to the decision-making process at the agencies. Going forward, it would help public understanding and provide a level of certainty if the FDIC, together with the Federal Reserve and Treasury as appropriate, share the high-level parameters or circumstances under which their resolution options would be used, including in the case of a systemic risk exception. Adding such clarity would give certainty to banks, their clients and markets on what they can expect in an FDIC resolution process and any future special assessments.

In addition, it is important that the FDIC look to maximize the efficiency and cost-effectiveness of resolving failed banks, making full use of its legal authority to deal with the assets and liabilities of a failed institution. The lack of transparency and clarity on why the initial bids failed where these met relevant legal parameters has raised questions about the resolution process applied by the FDIC, the impact of this decision making on the need for a systemic risk determination, and subsequently the requirement of this special assessment. Further details on why none of these bids could be accepted by the FDIC would increase clarity and transparency around the FDIC's resolution process and decision-making, and would provide assurance as to why the agencies believed the systemic risk exception was the best available option in these kinds of circumstances.

A robust resolution process should minimize both the cost of bank failures and the disruption they may cause, including the need for a future systemic risk determination and the size of any resulting special assessment. Though choice of the best resolution strategy will vary with the specifics of each situation, maintaining flexibility and taking all available tools into consideration is essential in making the optimal choice.

[9] 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 the systemic risk determination. 12 U.S.C. 1823(c)(4)(G)(ii)(III)

The FDIC should "true up" the final quarterly assessment

ABA recommends that the final quarterly "special assessment" be adjusted to cover no more than the amount estimated when that assessment is billed for the portion of SVB's and Signature Bank's resolution costs attributable to application of the systemic risk determination.

ABA appreciates that the FDIC intends to reevaluate the costs of resolving SVB and Signature Bank each quarter then adjust the number of quarterly special assessment charged if fewer or more are needed. Sometime after the last quarterly special assessment, after the receiverships from these institutions are terminated, the FDIC will, if needed, assess a one-time shortfall special assessment to collect any amount of the ultimately determined systemic risk determination cost. According to the stated proposal, "Any special assessments collected under this section that exceed the losses to the DIF, as of termination of the receiverships to which the March 12, 2023, systemic risk determination applied, shall be placed in the DIF."[10] This process would effectively require the institutions paying the special assessment to pay more than the expected systemic risk determination cost through the quarterly final special assessment, and result in non-interest-bearing loans from the payers to the FDIC against any possible additional ultimate additional resolution cost – loans that, according to the FDIC, could be years in duration.[11] Should the ultimate cost be less than the earlier estimate, these long-term loans will simply be written off.

ABA objects to this proposed plan. The law requires a special assessment to cover only the cost of a systemic risk determination and does not permit the FDIC to collect more.[12] To assure that paying institutions pay no more than required in statute, the FDIC should adjust the final quarterly payment to the amount estimated at that time to cover the "systemic risk exception" cost. Should that estimate ultimately turn out to understate the cost, then an additional one-time special assessment can be billed. Conversely, if the ultimate cost ends up less than previously estimated and paid, the excesses should be credited against the payers' future assessments.

Banks should have the option to phase in the adverse impact on capital over the collection period.

The proposal notes that institutions scoped into the special assessment will need to account for the expected quarterly special assessments in the quarter that the rule is finalized. The magnitude of these premiums will significantly impact the earnings and capital of institutions in that quarter, as noted in the proposal.[13] To minimize this, ABA requests that the final rule be withheld until near the end of this year to allow banks time to compensate particularly for the impact on capital. Since the first quarterly special assessment will be billed and paid in June 2024, they would then have at least six months advance notice of the actual charge. Such an action would be consistent with the statutory requirement to consider the "effects on the industry" and the general mandate of the prudential agencies to ensure the safety and soundness of the banking system – especially when imposing additional costs within their control.

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[10] 88 Federal Register 32709
[11] 88 Federal Register 32696
[12] 12 U.S.C. 1823(c)(4)(G)(ii)(I)
[13] 88 Federal Register 32703-32703

Moreover, ABA concurs with the Accounting Treatment noted in the Proposal[14] to accrue a charge to income when information indicates that it is probable that a liability has been incurred and the amount of loss is reasonably estimable. With this in mind, however, ABA requests that a transition option be granted that allows banking organizations to phase in over the eight quarter collection period the adverse effects of the assessment on their regulatory capital ratios. We note that a similar phase-in period was granted by the agencies related to the implementation of the CECL credit loss accounting standard, due to uncertainties that implementation would have at the time of adoption. We believe such an option for the assessment would be consistent in assisting banks that, despite otherwise adequate capital and liquidity planning, are newly responsible to bear these costs.

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Today, the banking system is healthy, with most banks well capitalized and liquid. While it is important to understand the causes of recent stress in the banking system, the failures of SVB, Signature and First Republic Bank were largely idiosyncratic, and the result of lax risk management that led to outsized and unreasonable concentrations and balance sheets that were significantly underprepared for rising interest rates. However, these failures have raised important questions about, among other things, whether FDIC insurance coverage has kept pace with changes to the banking marketplace and allows banks to compete for customers on equitable footing. ABA and its members are looking closely at the recent FDIC report, *Options for Deposit Insurance Reform*, and the choices outlined in it. We appreciate the FDIC's initiative in starting a public dialogue on deposit insurance and look forward to working with the FDIC and other policy makers on this important issue.

ABA would welcome the opportunity to discuss these comments or related issues with you. If you have any questions, please contact the undersigned at atouhey@aba.com or Rob Strand, rstrand@aba.com.

Sincerely,

Alison Touhey

[14] The Proposal cites FASB Accounting Standards Codification Topic 450 – Contingencies as the basis for this treatment.