July 21, 2023

Via Electronic Mail: comments@fdic.gov

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

Re: Notice of Proposed Rulemaking on Special Assessments Pursuant to Systemic Risk Determination. RIN 3064-AF93.

Ladies and Gentlemen:

FirstBank Puerto Rico ("FirstBank") wishes to thank the FDIC for the opportunity to provide its comments with respect to the Federal Deposit Insurance Corporation's ("FDIC") Notice of Proposed Rulemaking regarding Special Assessments Pursuant to Systemic Risk Determination (the "Notice"). The proposal is intended, according to the Notice, to allow the FDIC to recover costs to the Deposit Insurance Fund ("DIF") incurred as a result of the FDIC's actions taken in order to protect those uninsured depositors of Silicon Valley Bank and Signature Bank. Specifically, the FDIC proposes to do this by means of a special assessment charged to insured depository institutions' ("IDIs") based on the amount of each IDI's estimated uninsured deposits reported as of December 31, 2022, adjusted to exclude an IDI's first $5 billion of uninsured deposits.

FirstBank is a member bank of the Puerto Rico Bankers Association, which has submitted a separate comment letter responding to the Notice (the "PRBA Comment Letter").[1] We strongly endorse the PRBA Comment Letter, and we urge the FDIC to adopt the recommendation made in that letter (and numerous others) that the collateralized deposits of public sector entities be excluded from the special assessment base.[2] As explained in the PRBA Comment Letter, the inclusion of these collateralized deposits—also referred to as "preferred deposits"—in the special assessment base unduly penalizes IDIs for providing banking services

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1 Puerto Rico Bankers Association's Comment Letter regarding Special Assessments Pursuant to Systemic Risk Determination, submitted to the FDIC on July 18, 2023 (here).

2 *See*, *e.g.*, Mississippi Bankers Association comment Letter of May 12, 2023 (here); UMB Financial Corporation Comment Letter of June 7, 2023 (here); FirstBank Holding Company Comment Letter of July 7, 2023 (here); Home BancShares Comment Letter of June 14, 2023 (here); Bank of Oklahoma Comment Letter of July 11, 2023 (here); Community Spirit Bank Comment Letter of July 11, 2023 (here); Fifth Third, Huntington, KeyCorp Comment Letter of July 12, 2023 (here); Independent Bankers Association of Texas Comment Letter of July 17, 2023 (here); Mid-Size Bank Coalition of America Comment Letter of July 17, 2023 (here).

to state and municipal governments and, in particular, shifts a disproportionate share of the burden to Puerto Rico institutions such as FirstBank.

We write to call the FDIC's attention to two additional concerns that we believe should be reflected in the FDIC's implementation of any special assessment. First, we respectfully submit that Minority Depository Institutions ("MDIs") should be excluded from the scope of IDIs that are subject to the proposed special assessment, as would be consistent with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and the FDIC's policy statement on MDIs. Second, we believe that levying the proposed special assessment on IDIs such as FirstBank, which is fundamentally different from Signature Bank and Silicon Valley Bank in terms of its risk characteristics, business model, asset growth and other features that led to the collapse of those institutions, would effectively punish IDIs that operated conservatively and that make more prudent choices in terms of asset growth, funding strategy, and interest rate and liquidity risk management.

A. Excluding FirstBank and Similarly Situated MDIs Would Be Consistent with FIRREA and the FDIC's Policy Statement on MDIs.

In carrying out the FDIC's statutory mandate to recover any losses sustained as a result of a systemic risk determination, the FDIC has broad discretion to take into account "such other factors as the Corporation deems appropriate" in prescribing regulations in furtherance of that mandate.[3] We believe that an appropriate factor that the FDIC should take into account is the MDI status of an IDI. The FDIC has an opportunity to give effect to its long-standing policy aims with respect to MDIs by excluding those institutions from the special assessment.

Section 308 of FIRREA establishes several policy goals related to MDIs,[4] including "preserving the number of MDIs" and "promoting and encouraging creation of new MDIs." The FDIC, together with the other federal banking agencies, implements these goals through a program that is the subject of annual reports to Congress.[5] As stated in the FDIC Statement of Policy Regarding Minority Depository Institutions, "[t]he FDIC has long recognized the importance of minority depository institutions in the financial system and their unique role in promoting the economic viability of minority and under-served communities."[6] To that end, "[t]he FDIC historically has implemented programs to preserve and promote these financial institutions."[7]

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3 12 USC § 1823(c)(4)(G)(ii)(III).

4 A "minority depository institution," as defined in FIRREA, is any federally insured depository institution where 51 percent or more of the voting stock is owned by one or more "socially and economically disadvantaged individuals." The FDIC maintains a list of those MDIs that are also IDIs, one of which is FirstBank. *See* 86 Fed. Reg. 32372 (Jun. 23, 2021). For a list of MDIs as of the First Quarter of 2023, see the link under the heading "MDI Lists," available here.

5 *See, e.g.*, FDIC, Preservation and Promotion of Minority Depository Institutions – Report to Congress for 2021, *available at* https://www.fdic.gov/regulations/resources/minority/congress/report-2021/complete-report.pdf.

6 86 Fed. Reg. 32372, 32372 (Jun. 23, 2021).

7 *Id.*

Unfortunately, as of February 1, 2022, there were only 148 MDIs across the United States, representing just 3% of U.S. banks. This number is down from 186 MDIs in 2012, a decrease of approximately 20%. With combined assets of $320 billion, MDIs held just 1% of U.S. bank assets at that time.

Continuing the FDIC's mission of promoting and preserving MDIs is critically important for communities and for economic development more broadly. As recognized by the Federal Reserve Bank of Dallas, MDIs "bring[ ] financial services to typically underserved areas and at risk populations," with "[a]bout 45 percent of their branches and branch deposits in counties the Centers for Disease Control and Prevention (CDC) designates as socially vulnerable and prone to economic, health and safety challenges, including illness and natural disaster."[8] Given this fact, the Federal Reserve Bank of Dallas recognized that "[e]fforts to support MDIs could be expected to have positive impacts on vulnerable minority communities, including greater financial inclusion in underserved areas, more intermediation to minority-owned businesses and higher levels of economic development."[9]

Given the FDIC's statutory grant of flexibility with respect to crafting its special assessment methodology, the FDIC is currently in a position to exclude MDIs, such as FirstBank, which provide important services to underserved and socially vulnerable communities. In doing so, the FDIC would take a step towards preserving and promoting these IDIs, consistent with the Congressional mandate in FIRREA and the FDIC's own long-standing policy.

B. FirstBank Does Not Share the Key Characteristics of Signature Bank and Silicon Valley Bank that Are Identified as Factors Leading to their Failures.

Signature Bank and Silicon Valley Bank ("SVB") shared certain characteristics rendering them uniquely vulnerable to collapse and, thus, of particular risk to the stability of the financial system. Notable shared characteristics, according to reports prepared by the FDIC in its supervisory capacity with respect to Signature Bank and by the Board of Governors of the Federal Reserve System's ("FRB") in its capacity with respect to SVB, were: (1) rapid growth without equivalent increases in managerial oversight or liquidity and interest rate risk management; (2) concentration of deposits within certain industry categories, such as cryptocurrency and venture capital firms focused on tech startups, and amongst a small number of customers; and (3) overreliance on uninsured deposits as a funding mechanism.

8 *See* Jill Cetina, et al., "Minority Depository Institutions Have Vital Role Serving Vulnerable Communities", Federal Reserve Bank of Dallas, Feb. 1, 2022, https://www.dallasfed.org/research/economics/2022/0201#:~:text=Despite%20this%20asset%20growth%2C%20over,a%20result%20of%20voluntary%20mergers.

9 *Id.*

Both Signature Bank and SVB grew rapidly in the years leading up to their failure.[10] As the FDIC Report on Signature Bank and FRB Report on SVB observe, this growth resulted from increasing exposure to digital asset or cryptocurrency companies and venture capital-backed start-ups, respectively.[11] And in both cases, deposits were concentrated among a small group of "very large depositors."[12] During this period of growth, neither bank developed risk management practices commensurate with its increased scale and the degree of its exposure, according to the FDIC Report on Signature Bank and the FRB Report on SVB.[13] Likewise, neither bank implemented appropriate interest rate and liquidity risk management practices.[14] Compounding these problems, both banks relied heavily on uninsured deposits as a mechanism for funding other operations at the bank.[15] As a result of the combination of these factors, both banks were ill-equipped to handle shocks caused by a rising interest rate environment, coupled with a loss of depositor confidence, which resulted in the banks' failure and the resulting FDIC systemic risk determination.

FirstBank shares none of these characteristics. As compared with the exponential growth of Signature Bank and SVB, FirstBank has instead grown at a steady rate. Over the course of the ten-year period ending December 31, 2022, FirstBank's total assets grew by approximately $550,000,000 each year.

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[10] Signature Bank increased its total assets by 175 percent from the end of 2017 to the end of 2021. FDIC, *Supervision of Signature Bank* (April 28, 2023) ("FDIC Report on Signature Bank") at 7. Silicon Valley bank tripled in size (based on assets) between 2019 and 2021. FRB, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank* (April 28, 2023) ("FRB Report on SVB") at 18.

[11] FDIC Report on Signature Bank at 13 ("SBNY's board and management employed a strategy of rapid growth and expansion into the digital asset markets") and 55 (explaining that, as of September 30, 2022, digital asset deposits represented 21 percent of Signature Bank's total assets). FRB Report on SVB at 18 ("SVBFG's client base was heavily concentrated in venture capital-backed (VC-backed) and early-stage start-up firms").

[12] *See* FDIC Report on Signature Bank at 11 ("Similar to SVB, SBNY had also developed a concentration of very large depositors. Approximately 60 clients held deposit account balances in excess of $250 million, representing about 40 percent of total deposits... Four separate depositors, each comprised greater than 2 percent of total assets, and together held 14 percent of total assets. Three of these depositors were digital asset-related clients.") According to Signature Bank's and SVB's December 31, 2022 Federal Financial Institutions Examination Council Call Reports, as of December 31, 2022, Signature Bank had an average deposit balance per account of $508,324, and SVB had an average deposit balance per account of $1,120,261.

[13] FRB Report on SVB at 2 ("[SVB] did not take sufficient steps in a timely fashion to build a governance and risk-management framework that kept up with its rapid growth and business model risks."); FDIC Report on Signature Bank at 2 ("[T]he root cause of SBNY's failure was poor management. SBNY['s] board and management pursued rapid, unrestrained growth without adequate risk management practices….")

[14] FRB Report on SVB at 3 ("[SVB's] rapid failure can be linked directly to its governance, liquidity, and interest rate risk-management deficiencies"); FDIC Report on Signature Bank at 9 ("Despite repeated criticisms from FDIC supervisors, SBNY never adequately addressed… liquidity risk management concerns. These weaknesses figured prominently into the bank's failure.")

[15] FDIC Report on Signature Bank at 2 ("[Signature Bank] funded its rapid growth through an overreliance on uninsured deposits without implementing fundamental liquidity risk management practices and controls."); FRB Report on SVB at 52 ("[SVB's] funding inherently relied on large, concentrated, and uninsured deposits.")

As compared with the concentrated nature of Signature Bank's and SVB's deposit base, FirstBank's depositors include a diverse mix of commercial and retail accounts, with an average deposit balance per account of approximately $25,500 as of December 31, 2022 (as compared with $1,120,261 and $508,324 for SVB and Signature Bank, respectively).[16] FirstBank believes that its diverse customer base, with its relatively small average deposit balance, was among the factors that explain why FirstBank was largely unafflicted by the rash of withdrawals that brought down Signature Bank and SVB. FirstBank experienced miniscule deposit outflows, amounting to just over 1% of core deposits, during the first quarter of 2023.[17]

Furthermore, FirstBank has maintained a strong emphasis on liquidity and interest rate risk management. To ensure adequate liquidity regardless of market scenarios, FirstBank employs an operating strategy with a strong focus on the continued development of customer-based funding, the maintenance of direct relationships with wholesale market funding providers, and the maintenance of the ability to liquidate certain assets when, and if, requirements warrant. In addition, FirstBank conducts forward-looking analyses of its liquidity position under various operating circumstance and maintains contingency funding plans to address various scenarios, however unlikely.[18]

In light of this approach to liquidity risk management, FirstBank was well positioned throughout the tumult facing the financial system in the first quarter of 2023. To wit, as of the end of Q1 2023, FirstBank had on hand total unused available liquidity of approximately 1.14 times the amount of its uninsured deposits, excluding preferred deposit.[19] FirstBank maintained a basic liquidity ratio (which includes cash, free high-quality liquid securities, and available secured lines of credit with the Federal Home Loan Bank) of 21.4% of total assets and exhibited a strong capital position, with a Common Equity Tier-1 ratio of 16.3% at that time.[20]

With respect to interest rate risk management, FirstBank manages its asset and liability position to limit the effects of changes in interest rates on net interest income and to maintain stability and profitability under varying interest rate scenarios. To that end the Management's Investment and Asset Liability Committee monitors, *inter alia*, current and

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16 Data derived from each institution's December 31, 2022 Federal Financial Institutions Examination Council Call Report.

17 *See* Exhibit 2 to First BanCorp.'s April 25, 2023 8-K, page 6 (here). The term "core deposits" excludes brokered CDs and government deposits.

18 For more information on FirstBank's liquidity risk management, *see* First BanCorp.'s Q1 2023 10-K, page 92-93, filed with the SEC on May 10, 2023. At FirstBank, a group of senior management officers, including Chief Executive Officer, the Chief Financial Officer, the Chief Risk Officer, the Corporate Strategic and Business Development Director, the Treasury and Investments Risk Manager, the Financial Planning and Asset and Liability Management Director, and the Treasurer make up the Management's Investment and Asset Liability Committee, which is responsible for managing liquidity and interest rate risk and which reports to the Board of Directors' Asset and Liability Committee.

19 *Id.* at page 4.

20 *Id.*

expected conditions in global financial markets, competition and prevailing rates in the local deposit market, liquidity, loan originations pipeline, securities market values, recent or proposed changes to the investment portfolio, alternative funding sources and related costs, hedging and the possible purchase of derivatives such as swaps and caps, and any tax or regulatory issues which may be pertinent to these areas. FirstBank regularly conducts consolidated net interest income simulations over varying time horizons, assuming both upward and downward yield curve shifts and reacts accordingly to the results of the simulations.[21] Through these and other measures, FirstBank has endeavored to position itself for stability despite the rising interest rate environment.

Although uninsured deposits make up a sizeable proportion of FirstBank's deposits as compared to some other IDIs, the fact that these are largely (approximately 36%)[22] comprised of *preferred* deposits renders them fundamentally different from those uninsured deposits maintained by SVB and Signature Bank.[23] Preferred deposits are uninsured "deposits of any public unit… at any insured depository institution which are secured or collateralized as required under State law."[24] These deposits must be collateralized with high quality and highly liquid assets, which must be marked to market and supplemented with additional collateral on a regular basis and when necessary.[25] Because, among other reasons, the FDIC will honor collateral agreements associated with preferred deposits in the unlikely event of a bank failure and given the bespoke nature that is a typical feature of public entities' relationships with IDIs at which they maintain preferred deposits, these deposits are particularly stable even in the face of concerns regarding the IDI's solvency or short-term "run" behavior on the part of other depositors. Because they are pledged as collateral, preferred deposits may not be used to fund separate bank operations.

Given FirstBank's history of sustainable growth, effective interest rate and liquidity risk management, coupled with its diverse customer base and relative stability of its deposits, not to mention the fact that its preferred deposits are subject to collateralization requirements and therefore cannot be used to fund asset growth in the same manner as other deposits, FirstBank is fundamentally different than Signature Bank or SVB. FirstBank did not benefit from the FDIC's systemic risk determination in the same manner as other IDIs that may be less conservatively managed or more risk-prone. As such, it would be inequitable and at odds with the FDIC's stated reasoning behind the proposed assessment methodology to include FirstBank in the group of IDIs that will be subject to the proposed special assessment.

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[21] For more information on FirstBank's liquidity risk management, *see* First BanCorp.'s Q1 2023 10-K, page 100-101, filed with the SEC on May 10, 2023.

[22] *Id.*

[23] FirstBank fully supports the reasoning contained within the PRBA Comment Letter. Because that letter contains a thorough and well-reasoned analysis of the characteristics that set preferred deposits apart from ordinary uninsured deposits, we give preferred deposits a more high-level treatment in this letter.

[24] 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.

[25] 7 LPR §§ 252a, 252b.

We appreciate your consideration of our recommendation regarding the proposed special assessment.

Sincerely

[redacted]

Aurelio Alemán
President and Chief Executive Officer