

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

RIN 3064-AF53

#### Assessments, Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation is adopting a final rule that mitigates the deposit insurance assessment effects of participating in the Paycheck Protection Program (PPP) established by the Small Business Administration (SBA), and the Paycheck Protection Program Liquidity Facility (PPPLF) and Money Market Mutual Fund Liquidity Facility (MMLF) established by the Board of Governors of the Federal Reserve System. The final rule removes the effect of participation in the PPP and borrowings under the PPPLF on various risk measures used to calculate an insured depository institution's assessment rate, removes the effect of participation in the PPP and MMLF program on certain adjustments to an insured depository institution's assessment rate; provides an offset to an insured depository institution's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF; and removes the effect of participation in the PPP and MMLF when classifying insured depository institutions as small, large, or highly complex for assessment purposes.

**DATES:** The final rule is effective June 26, 2020, and will apply as of April 1, 2020.

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

###### A. Legal Authority

The FDIC, under its general rulemaking authority in Section 9 of the FDI Act, and its specific authority under Section 7 of the FDI Act to establish a risk-based assessment system and set

assessments, is finalizing modifications to mitigate the deposit insurance assessment effects of participation in the PPP, PPPLF, and MMLF. For the reasons explained below, an IDI that participates in the PPP, PPPLF, or MMLF programs could be subject to increased deposit insurance assessments absent a change to the assessment regulations.

###### B. Background

Recent events have significantly and adversely impacted the global economy and financial markets. The spread of the Coronavirus Disease (COVID-19) slowed economic activity in many countries, including the United States. Sudden disruptions in financial markets placed increasing liquidity pressure on money market mutual funds (MMFs) and raised the cost of credit for most borrowers. MMFs faced redemption requests from clients with immediate cash needs and may need to sell a significant number of assets to meet these redemption requests, which could further increase market pressures.

In order to prevent the disruption in the money markets from destabilizing the financial system, on March 18, 2020, the Board of Governors of the Federal Reserve System (Board of Governors), with approval of the Secretary of the Treasury, authorized the Federal Reserve Bank of Boston (FRBB) to establish the MMLF, pursuant to section 13(3) of the Federal Reserve Act.<sup>1</sup> Under the MMLF, the FRBB is extending non-recourse loans to eligible borrowers to purchase assets from MMFs. Assets purchased from MMFs are posted as collateral to the FRBB. Eligible borrowers under the MMLF include IDIs. Eligible collateral under the MMLF includes U.S. Treasuries and fully guaranteed agency securities, securities issued by government-sponsored enterprises, and certain types of commercial paper. The MMLF is scheduled to terminate on September 30, 2020, unless extended by the Board of Governors.

Small businesses also are facing severe liquidity constraints and a collapse in revenue streams, as millions of Americans were ordered to stay home, severely reducing their ability to engage in normal commerce. Many small businesses were forced to close temporarily or furlough employees. Continued access to financing will be crucial for small businesses to weather economic disruptions caused by COVID-19 and, ultimately, to help restore economic activity.

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES

Act) and in recognition of the exigent circumstances faced by small businesses, Congress created the PPP.<sup>2</sup> PPP loans are fully guaranteed as to principal and accrued interest by the Small Business Administration (SBA), the amount of each being determined at the time the guarantee is exercised. As a general matter, SBA guarantees are backed by the full faith and credit of the U.S. Government. PPP loans also afford borrowers forgiveness up to the principal amount of the PPP loan, if the proceeds of the PPP loan are used for certain expenses. The SBA reimburses PPP lenders for any amount of a PPP loan that is forgiven. PPP lenders are not held liable for any representations made by PPP borrowers in connection with a borrower's request for PPP loan forgiveness.<sup>3</sup> On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) was signed into law, amending key provisions of the CARES Act, including provisions related to loan maturity, deferral of loan payments, and loan forgiveness.<sup>4</sup> Among other changes, the amendments increase from two to five years the maturity of PPP loans that are approved by the SBA on or after June 5, 2020, and provide greater flexibility for borrowers to qualify for loan forgiveness.

In order to provide liquidity to small business lenders and the broader credit markets, and to help stabilize the financial system, on April 8, 2020, the Board of Governors, with approval of the Secretary of the Treasury, authorized each of the Federal Reserve Banks to extend credit under the PPPLF, pursuant to section 13(3) of the Federal Reserve Act.<sup>5</sup> Under the PPPLF, Federal

<sup>2</sup> Public Law 116-136 (Mar. 27, 2020).

<sup>3</sup> Under the PPP, eligible borrowers generally include businesses with fewer than 500 employees or that are otherwise considered by the SBA to be small, including individuals operating sole proprietorships or acting as independent contractors, certain franchisees, nonprofit corporations, veterans' organizations, and Tribal businesses. The loan amount under the PPP would be limited to the lesser of \$10 million and 250 percent of a borrower's average monthly payroll costs. For more information on the Paycheck Protection Program, see <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

<sup>4</sup> Public Law 116-142 (June 5, 2020). The SBA subsequently issued an interim final rule revising the SBA's interim final rule implementing sections 1102 and 1106 of the CARES Act temporarily adding the Paycheck Protection Program to the SBA's 7(a) Loan Program published on April 15, 2020. See 85 FR 20811 (Apr. 15, 2020) and 85 FR 36308 (June 16, 2020).

<sup>5</sup> 12 U.S.C. 343(3). On April 30, 2020, the facility was renamed the Paycheck Protection Program Liquidity Facility, from Paycheck Protection Program Lending Facility. See Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the

<sup>1</sup> 12 U.S.C. 343(3).

Reserve Banks are extending non-recourse loans to institutions that are eligible to make PPP loans, including insured depository institutions (IDIs). Under the PPPLF, only PPP loans that are guaranteed by the SBA with respect to both principal and interest and that are originated by an eligible institution may be pledged as collateral to the Federal Reserve Banks (loans pledged to the PPPLF). The maturity date of the extension of credit under the PPPLF<sup>6</sup> equals the maturity date of the PPP loans pledged to secure the extension of credit.<sup>7</sup> No new extensions of credit will be made under the PPPLF after September 30, 2020, unless extended by the Board of Governors and the Department of the Treasury.

To facilitate use of the MMLF and PPPLF, the FDIC, Board of Governors, and Comptroller of the Currency (together, the agencies) adopted interim final rules on March 23, 2020, and April 13, 2020, respectively, to allow banking organizations to neutralize the regulatory capital effects of purchasing assets under the MMLF program and loans pledged to the PPPLF.<sup>8</sup> Consistent with Section 1102 of the CARES Act, the April 2020 interim final rule also required banking organizations to apply a zero percent risk weight to PPP loans originated by the banking organization under the PPP for purposes of the banking organization's risk-based capital requirements.

### C. Deposit Insurance Assessments

Pursuant to Section 7 of the FDI Act, the FDIC has established a risk-based assessment system through which it charges all IDIs an assessment amount for deposit insurance.<sup>9</sup>

Under the FDIC's regulations, an IDI's assessment is equal to its assessment base multiplied by its risk-based

assessment rate.<sup>10</sup> An IDI's assessment base and assessment rate are determined each quarter based on supervisory ratings and information collected on the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as appropriate. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.<sup>11</sup> An IDI's assessment rate is calculated using different methods based on whether the IDI is a small, large, or highly complex institution.<sup>12</sup> For assessment purposes, a small bank is generally defined as an institution with less than \$10 billion in total assets, 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.<sup>13</sup>

Assessment rates for established small banks are calculated based on eight risk measures that are statistically significant in predicting the probability of an institution's failure over a three-year horizon.<sup>14</sup> Large banks are assessed using a scorecard approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large bank poses to the deposit insurance fund (DIF).<sup>15</sup> All institutions are subject to adjustments to their assessment rates for certain liabilities that can increase or reduce loss to the DIF in the event the bank fails.<sup>16</sup> In addition, the FDIC may adjust a large bank's total score, which is used in the calculation of its assessment rate, based upon significant risk factors not adequately captured in the appropriate scorecard.<sup>17</sup>

Absent a change to the assessment rules, an IDI that participates in the PPP, PPPLF, or MMLF programs could be subject to increased deposit insurance assessments. For example, an institution that holds PPP loans, including loans pledged to the PPPLF, would increase its total loan portfolio, all else equal, which may increase its assessment rate. An IDI that receives funding under the PPPLF would increase the total assets on its balance sheet (equal to the amount of PPP loans pledged to the Federal Reserve Banks), and increase its total liabilities by the same amount, which would increase the IDI's assessment base and also may increase its assessment rate. An IDI that obtains additional funding, such as additional deposits or secured borrowings, to make PPP loans would increase its total liabilities and total assets by that amount of funding, which would increase its assessment base and also may increase its assessment rate. An IDI that relies on existing funding, including deposits already at the institution, to make PPP loans would not increase its total liabilities or total assets, which would not increase its assessment base.

Similarly, an IDI that participates in the MMLF would increase its total assets by the amount of assets purchased from MMFs under the MMLF and increase its liabilities by the same amount, which in turn would increase its assessment base and may also increase its assessment rate.

### C. The Proposed Rule

On May 20, 2020, the FDIC published in the **Federal Register** a notice of proposed rulemaking (the proposed rule, or proposal)<sup>18</sup> that would mitigate the deposit insurance assessment effects of an IDI's participation in the PPP, PPPLF, and MMLF programs.<sup>19</sup> To remove the effect of these programs on the risk measures used to determine the deposit insurance assessment rate for each IDI, the FDIC proposed to exclude PPP loans, which include loans pledged to the PPPLF, from an institution's loan portfolio; exclude loans pledged to the PPPLF from an institution's total assets; and, for institutions subject to the large or highly complex bank scorecard, exclude amounts borrowed from the Federal Reserve Banks under the PPPLF from an institution's liabilities. In addition, because participation in the PPPLF and MMLF programs will have the effect of expanding an IDI's balance sheet (and, by extension, its assessment base), the FDIC proposed to exclude

Federal Reserve Act May 15, 2020, Board of Governors of the Federal Reserve System, available at: <https://www.federalreserve.gov/publications/files/mlf-msnlf-mself-and-ppplf-5-15-20.pdf>.

<sup>6</sup> The maturity date of the extension of credit under the PPPLF will be accelerated if the underlying PPP loan goes into default and the eligible borrower sells the PPP Loan to the SBA to realize the SBA guarantee. The maturity date of the extension of credit under the PPPLF also will be accelerated to the extent of any PPP loan forgiveness reimbursement received by the eligible borrower from the SBA.

<sup>7</sup> Under the SBA's interim final rule, a lender may request that the SBA purchase the expected forgiveness amount of a PPP loan or pool of PPP loans at the end of the covered period. See Interim Final Rule "Business Loan Program Temporary Changes; Paycheck Protection Program," 85 FR 20811, 20816 (Apr. 15, 2020) and 85 FR 36308 (June 16, 2020).

<sup>8</sup> See 85 FR 16232 (Mar. 23, 2020) and 85 FR 20387 (Apr. 13, 2020).

<sup>9</sup> See 12 U.S.C. 1817(b).

<sup>10</sup> See 12 CFR 327.3(b)(1).

<sup>11</sup> See 12 CFR 327.5.

<sup>12</sup> See 12 CFR 327.16(a) and (b).

<sup>13</sup> As used in this final rule, the term "bank" is synonymous with the term "insured depository institution" as it is used in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1813(c)(2). As used in this final rule, the term "small bank" is synonymous with the term "small institution" and the term "large bank" is synonymous with the term "large institution" or "highly complex institution," as the terms are defined in 12 CFR 327.8.

<sup>14</sup> See 12 CFR 327.16(a); see also 81 FR 32180 (May 20, 2016).

<sup>15</sup> See 12 CFR 327.16(b); see also 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

<sup>16</sup> See 12 CFR 327.16(e).

<sup>17</sup> See 12 CFR 327.16(b)(3); see also *Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions*, 76 FR 57992 (Sept. 19, 2011).

<sup>18</sup> 85 FR 30649 (May 20, 2020).

<sup>19</sup> See 12 U.S.C. 1817, 1819 (Tenth).

loans pledged to the PPPLF and assets purchased under the MMLF in the calculation of certain adjustments to an IDI's assessment rate, and to provide an offset to an IDI's total assessment amount for the increase to its assessment base attributable to participation in the PPPLF and MMLF. Finally, in classifying IDIs as small, large, or highly complex for assessment purposes, the FDIC proposed to exclude from an IDI's total assets the amount of loans pledged to the PPPLF and assets purchased under the MMLF.

In response to the proposal, the FDIC received 41 comment letters from depository institutions, depository institution holding companies, trade associations, and other interested parties.<sup>20</sup> As further detailed below, commenters generally supported the FDIC's efforts to mitigate the deposit insurance effects of an IDI's participation in the PPP, PPPLF, and MMLF programs, but expressed concerns with certain aspects of the proposal. The FDIC considered all comments received and is making some changes in the final rule, while clarifying other aspects of the rule that remain unchanged from the proposed rule.

## II. The Final Rule

### A. Summary

Under the final rule, the FDIC will remove the effect of participation in the PPP and borrowings under the PPPLF on various risk measures used to calculate an IDI's assessment rate, remove the effect of participation in the PPP and MMLF program on certain adjustments to an insured depository institution's assessment rate; provide an offset to an insured depository institution's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF; and remove the effect of participation in the PPP and MMLF when classifying insured depository institutions as small, large, or highly complex for assessment purposes.

In the final rule, the FDIC tried to balance its policy objective of mitigating, to the fullest extent possible, the deposit insurance assessment effect of participation in the PPP, PPPLF, and MMLF, while minimizing the extent to which the final rule would result in an IDI paying less than it would have paid if it did not participate in the PPP, PPPLF, or MMLF. In response to comments and based on updated assumptions, as described further

below, the final rule includes certain additional mitigation steps beyond those in the proposed rule that will more fully mitigate the assessment effect of participation in the aforementioned programs for more institutions, but may in certain cases result in over-mitigation for some institutions. At the same time, the FDIC declined to make certain adjustments requested by commenters, in part because such additional adjustments, when combined with the other provisions of the final rule, would likely have resulted, in the FDIC's estimation, in more over-mitigation than would be acceptable.

### 1. Exclusion of All PPP Loans

Most of the comments the FDIC received in response to the proposed rule stated that the proposed modifications would not completely offset the impact of PPP lending on assessments. Many of these commenters requested that the FDIC exclude all PPP loans, whether funded under the PPPLF or through other sources of liquidity, including deposits or Federal Home Loan Bank (FHLB) advances, from the calculation of an IDI's assessment rate, assessment base, or both, so that the bank's assessment would be mitigated accordingly, rather than excluding only loans pledged to the PPPLF.

A bank that funded its PPP loans with existing balance sheet liquidity would not have increased its total assets or total liabilities, and including these loans in the offset to its assessment would not be necessary because its assessment base would not have increased. Similarly, removing PPP loans from total assets in calculating an IDI's assessment rate would not be necessary if such loans did not increase the bank's total assets. For these reasons, the proposal would have removed only PPP loans pledged to the PPPLF from an IDI's total assets in calculating its deposit insurance assessment rate and certain other measures, and in calculating the offset due to the increase in its assessment base due to participation in the PPPLF. The FDIC understands that some banks have funded PPP loans through additional liabilities other than borrowings under the PPPLF, which would result in an increase to a bank's total assets and total liabilities. For banks that funded PPP loans by obtaining additional liabilities other than borrowings under the PPPLF, the proposal would not have fully mitigated the deposit insurance assessment effects of participation in the PPP.

After considering comments received, and in recognition of the important role IDIs play in providing liquidity to small

businesses and helping to stabilize the broader economy in the midst of the economic disruption caused by COVID-19, as well as in recognition that some banks have funded PPP loans through additional liabilities other than borrowings under the PPPLF, under the final rule the FDIC will exclude the quarter-end outstanding balance of all PPP loans from an IDI's total assets in calculating an IDI's assessment rate and the offset to an IDI's assessment amount due to the inclusion of PPP loans in its assessment base. The FDIC expects that this exclusion will result in a more complete mitigation of the assessment effects of participation in PPP lending.

As described below, the FDIC will exclude the quarter-end outstanding balance of all PPP loans from an IDI's total assets in the applicable risk measures used to determine an IDI's assessment rate. In addition, because participation in the MMLF program will have the effect of expanding an IDI's balance sheet and because PPP lending funded by additional liabilities could have the effect of expanding an IDI's balance sheet (and, by extension, its assessment base), the FDIC will provide an offset to an IDI's total assessment amount for the increase to its assessment base attributable to PPP lending and participation in the MMLF. Under the final rule, the FDIC will calculate the offset to an IDI's total assessment amount based on its quarter-end outstanding balance of PPP loans and the quarterly average amount of assets purchased under the MMLF. The FDIC also will exclude the outstanding balance of PPP loans and assets purchased under the MMLF in the calculation of certain adjustments to an IDI's assessment rate.

Moreover, in classifying IDIs as small, large, or highly complex for assessment purposes, the FDIC also will exclude from an IDI's total assets the outstanding balance of PPP loans and assets purchased under the MMLF.

Because it is not possible for the FDIC to quantify how much of an IDI's total assets may have increased due to PPP loans relative to other balance sheet changes, including increased cash or other loans made either in response to the economic disruption caused by COVID-19 or that would have otherwise been made in the normal course of business, the final rule excludes all PPP loans from an IDI's total assets in calculating its deposit insurance assessment, rather than providing incomplete assessment mitigation for banks that funded PPP loans through additional liabilities other than borrowings under the PPPLF. To the extent that an institution did not

<sup>20</sup> See comments on the proposal, available at <https://www.fdic.gov/regulations/laws/federal/2020/2020-assessments-ppp-3064-af53.html>.

increase its total assets as a result of PPP participation, the final rule could provide an assessment reduction that exceeds the actual increase in assessments that an institution would have experienced due to participation in the PPP.

Some commenters requested that the FDIC specifically exclude the quarter-end balance of outstanding PPP loans when calculating an IDI's assessment, as opposed to the quarterly average of such loans. Under the NPR, the FDIC proposed to exclude the quarter-end balance of outstanding loans pledged to the PPPLF from an IDI's total assets in those risk measures used to determine the deposit insurance assessment rate that are based on quarter-end outstanding amounts. For measures reported on an average basis, the FDIC proposed to exclude the quarterly average of loans pledged to the PPPLF. For example, an IDI's assessment base is determined by subtracting its average tangible equity from average consolidated total assets. In calculating the offset to an IDI's total assessment amount for the increase due to participation in the PPPLF and MMLF, the FDIC proposed to exclude quarterly average loans pledged to the PPPLF and quarterly average assets purchased under the MMLF. Commenters asserted that the assessment relief provided under the proposal would be limited because an IDI's average PPPLF participation over a quarter can be considerably less than its quarter-end PPP loan balance.

After considering comments received, and to minimize additional reporting burden, under the final rule the FDIC will exclude the quarter-end outstanding balance of PPP loans in mitigating the effect of PPP participation on an IDI's deposit insurance assessment, both for risk measures that are calculated using amounts reported as of quarter-end and for calculations that use amounts reported on an average basis.

Changes to reporting requirements applicable to the Consolidated Reports of Condition and Income (Call Report), the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and their respective instructions, have been implemented in order to make the adjustments to the assessment system under the final rule. These changes were effectuated in coordination with the other member entities of the Federal Financial Institutions Examination Council.<sup>21</sup>

<sup>21</sup> The agencies requested and received emergency approvals on May 27, 2020, from the Office of Management and Budget (OMB) to

## 2. Tier 1 Leverage Ratio

Some commenters also suggested that the leverage ratio, as applied in the calculation of an IDI's assessment rate, should be reduced by the quarter-end outstanding balances of all PPP loans. In accordance with the agencies' April 13, 2020, regulatory capital interim final rule, banking organizations are required to neutralize the regulatory capital effects of assets pledged to the PPPLF on leverage capital ratios.<sup>22</sup> This requirement is due to the non-recourse nature of the Federal Reserve's extension of credit to the banking organization, a protection that does not exist if the banking organization funds PPP loans using other sources of liquidity.

To remain consistent with the regulatory capital interim final rule, and consistent with the proposed rule for mitigating assessment effects of participation in the PPP, the FDIC will not modify its deposit insurance assessment pricing system with respect to the Tier 1 leverage ratio, which is one of the measures used to determine the assessment rate for small, large, and highly complex IDIs. Therefore, the neutralization of effects of participation in the PPPLF will be automatically reflected in an IDI's assessment because the FDIC's risk-based assessment system incorporates an IDI's regulatory capital reporting of its Tier 1 leverage ratio.

## 3. Assessment Calculators

Three commenters asked that the FDIC post revised assessment calculators as soon as possible. The FDIC will post on its public website assessment calculators that reflect the revisions under the final rule once data

implement revisions to the Call Report and FFIEC 002 that will take effect for the June 30, 2020, reporting period. Starting with the June 30, 2020, report date, the agencies will collect seven additional items on the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) that the FDIC will use to make the adjustments described in the final rule. The additional items are: (1) The quarter-end outstanding balance of PPP loans; (2) the outstanding balance of loans pledged to the PPPLF as of quarter-end; (3) the quarterly average amount of loans pledged to the PPPLF; (4) the outstanding balance of borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of one year or less, as of quarter-end; (5) the outstanding balance of borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of greater than one year, as of quarter-end; (6) the outstanding amount of assets purchased from MMFs under the MMLF as of quarter-end; and (7) the quarterly average amount of assets purchased under the MMLF. In addition, the agencies will collect two additional items on the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002): the quarterly average amount of loans pledged to the PPPLF and the quarterly average amount of assets purchased from MMFs under the MMLF.

<sup>22</sup> See 85 FR 20387 (April 13, 2020).

for the reporting period ending on June 30, 2020 becomes available.<sup>23</sup>

## B. Mitigating the Effects of PPP Loans on an IDI's Assessment Rate

Under the final rule, to mitigate the assessment effect of PPP loans, the FDIC will exclude the outstanding amount of PPP loans held by an IDI and borrowings under the PPPLF, from various risk measures used in the calculation of an IDI's deposit insurance assessment rate, as described in more detail below.

### 1. Established Small Institutions

#### a. Exclusion of PPP Loans From Total Assets in Various Risk Measures

The final rule excludes the outstanding balance of all PPP loans from total assets in risk measures used to determine an established small institution's assessment rate: the net income before taxes to total assets ratio,<sup>24</sup> the nonperforming loans and leases to gross assets ratio, the other real estate owned to gross assets ratio, the brokered deposit ratio, the one-year asset growth measure, and the loan mix index (LMI).

Under the proposal, for established small banks, the FDIC would have excluded the outstanding balance of loans pledged to the PPPLF from total assets in the calculation of these risk measures. As discussed above, some commenters recommended that the FDIC exclude all PPP loans from specific measures utilized throughout the assessment rate calculation for established small banks, including from the net income before taxes to total assets ratio, the nonperforming loans and leases to gross assets ratio, the other real estate owned to gross assets ratio, the brokered deposit ratio, and the one-year asset growth measure. For the reasons described above, under the final rule, the FDIC will exclude the quarter-end outstanding amount of PPP loans, whether or not they have been pledged to the PPPLF, from total assets in risk measures used to determine an established small institution's assessment rate.

<sup>23</sup> <https://www.fdic.gov/deposit/insurance/calculator.html>.

<sup>24</sup> The FDIC expects that IDIs that participate in the PPP, PPPLF, and MMLF will earn additional income from participation in these programs. To minimize additional reporting burden, and as proposed in the NPR, the FDIC is not excluding income related to participation in these programs from the net income before taxes to total assets ratio in the calculation of an IDI's deposit insurance assessment rate.

#### b. Exclusion of PPP Loans From the Loan Portfolio in the LMI

The LMI is a measure of the extent to which an IDI's total assets include higher-risk categories of loans. Consistent with the proposed rule, under the final rule, the FDIC will exclude PPP loans, which include loans pledged to the PPPLF, from an institution's loan portfolio in calculating the LMI, based on a waterfall approach.<sup>25</sup> Under the final rule, the FDIC will first exclude the outstanding balance of PPP loans from the balance of C&I Loans in the calculation of the LMI. In the unlikely event that the outstanding balance of PPP loans exceeds the balance of C&I Loans, the FDIC will exclude any remaining balance of these loans from the balance of Agricultural Loans, up to the total amount of Agricultural Loans, in the calculation of the LMI.<sup>26</sup>

While some commenters supported the assumptions applied under the waterfall approach described in the NPR, others viewed the approach as unnecessarily complex. Several commenters confirmed that PPP loans will be reported as C&I Loans, Agricultural Loans, or in All Other Loans. Two commenters suggested reporting PPP loans as a separate loan category on Schedule RC-C rather than in the form of additional memoranda items, while another two commenters supported the reporting revisions recently implemented to make the adjustments to the assessment system, noting that many institutions have already established processes to report these loans in existing categories on Schedule RC-C and would therefore view reporting PPP loans in a separate

<sup>25</sup> Based on data from the SBA and on the terms of the PPP, the FDIC expects that most PPP loans will be categorized as Commercial and Industrial (C&I) Loans. Collateral is not required to secure the loans. Therefore, the FDIC expects that PPP loans will not be included in other loan categories, such as those that are secured by real estate or consumer loans, in measures used to determine an IDI's deposit insurance assessment rate. See Public Law 116-136 (Mar. 27, 2020), Public Law 116-142 (June 5, 2020), 85 FR 20811 (Apr. 15, 2020), 85 FR 36308 (June 16, 2020), and Slide 8, Industry by NAICS Subsector, Paycheck Protection Program (PPP) Report: Approvals through 06/06/2020, Small Business Administration, available at: [https://www.sba.gov/sites/default/files/2020-06/PPP\\_Report\\_Public\\_200606%20FINAL\\_-508.pdf](https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf).

<sup>26</sup> All Other Loans are not included in the LMI; therefore, the FDIC will exclude the outstanding balance of PPP loans, which include loans pledged to the PPPLF, first from the balance of C&I Loans, followed by Agricultural Loans. The loan categories used in the Loan Mix Index are: Construction and Development, Commercial and Industrial, Leases, Other Consumer, Real Estate Loans Residual, Multifamily Residential, Nonfarm Nonresidential, 1-4 Family Residential, Loans to Depository Banks, Agricultural Real Estate, Agricultural Loans. 12 CFR 327.16(a)(1)(ii)(B).

loan category rather than as a memoranda item as operationally burdensome. Two commenters supported reducing unnecessary data collection and categorization and reporting of PPP loans as C&I Loans.

The FDIC has considered these comments and is adopting the waterfall approach as proposed. The FDIC views the waterfall approach as the approach that most effectively balances the goal of minimizing reporting burden while providing reasonably accurate mitigation for most institutions of the assessment effect of PPP loans. Accordingly, the FDIC is adopting the proposed waterfall approach as final and will apply it, as appropriate, in the calculation of the LMI for small banks (and in the calculation of the growth-adjusted portfolio concentration measure and loss severity measure for large or highly complex banks, as discussed below).

Two commenters requested that all PPP loans be excluded from total assets in the calculation of the LMI while others expressed support for the proposed modifications to the LMI. Under the final rule and as described above, the FDIC will exclude the quarter-end outstanding balance of PPP loans from an IDI's loan portfolio (the numerator) and its total assets (the denominator) in the calculation of the LMI.

#### 2. Large or Highly Complex Institutions

Under the final rule, the FDIC will remove the outstanding balance of PPP loans from a large or highly complex bank's loan portfolio and its total assets in calculating its assessment rate. As proposed, under the final rule the FDIC will also exclude amounts borrowed from the Federal Reserve Banks under the PPPLF from a large or highly complex bank's liabilities in calculating its assessment rate.

#### a. Exclusion of PPP Loans From Total Assets in the Core Earnings Ratio and the Short-Term Funding Measure

As described above, the FDIC received numerous comments stating that the proposed modifications would not completely offset the impact of PPP lending on assessment rates, and many of these commenters recommended that the FDIC exclude the outstanding balance of PPP loans when calculating a large or highly complex bank's assessment, rather than excluding only the loans pledged to the PPPLF. Specifically, several commenters recommended that the FDIC exclude all PPP loans from total assets in the calculation of the core earnings ratio and the average short-term funding

measure for purposes of determining a large or highly complex bank's assessment rate. Some commenters specified that, in making these modifications, the FDIC should exclude the quarter-end balance of outstanding PPP loans, as opposed to the quarterly average.

For the reasons described above, under the final rule the FDIC will exclude the quarter-end outstanding amount of PPP loans, whether or not they have been pledged to the PPPLF, from total assets in the core earnings ratio<sup>27</sup> and the short-term funding measure<sup>28</sup> used to determine a large or highly complex institution's assessment rate.

#### b. Exclusion of PPP Loans From the Loan Portfolio in Various Risk Measures

As proposed, the FDIC will exclude PPP loans from an IDI's loan portfolio in risk measures used to determine a large or highly complex IDI's assessment rate. In calculating the growth-adjusted portfolio concentration measure,<sup>29</sup> which is applicable to large IDIs, the FDIC will exclude the quarter-end outstanding balance of PPP loans from C&I Loans.<sup>30</sup> In calculating the trading asset ratio,<sup>31</sup> which is applicable to highly complex IDIs, the FDIC will reduce the balance of loans by the quarter-end outstanding balance of PPP loans.<sup>32</sup> The FDIC also will exclude the

<sup>27</sup> For the core earnings ratio, the FDIC divides the four-quarter sum of merger-adjusted core earnings by the average of five quarter-end total assets (most recent and four prior quarters). See Appendix A to subpart A of 12 CFR part 327.

<sup>28</sup> For highly complex IDIs, the short-term funding ratio is calculated by dividing average short-term funding by average total assets. See Appendix A to subpart A of 12 CFR part 327.

<sup>29</sup> For large banks, the concentration measure is the higher of the ratio of higher-risk assets to Tier 1 capital and reserves, and the growth-adjusted portfolio measure. For highly complex institutions, the concentration measure is the highest of three measures: the ratio of higher risk assets to Tier 1 capital and reserves, the ratio of top 20 counterparty exposure to Tier 1 capital and reserves, and the ratio of the largest counterparty exposure to Tier 1 capital and reserves. See Appendix A to subpart A of part 327.

<sup>30</sup> All Other Loans and Agricultural Loans are not included in the growth-adjusted portfolio concentration measure; therefore, consistent with the proposal, the FDIC will exclude the outstanding balance of PPP loans from the balance of C&I Loans under the final rule. The loan concentration categories used in the growth-adjusted portfolio concentration measure are: construction and development, other commercial real estate, first lien residential mortgages (including non-agency residential mortgage-backed securities), closed-end junior liens and home equity lines of credit, commercial and industrial loans, credit card loans, and other consumer loans. Appendix C to subpart A of 12 CFR part 327.

<sup>31</sup> See 12 CFR 327.16(b)(2)(ii)(A)(2)(vii).

<sup>32</sup> To minimize reporting burden, the FDIC will reduce average loans in the trading asset ratio by the outstanding balance of PPP loans, as of quarter-

quarter-end balance of outstanding PPP loans from a large or highly complex IDI's loan portfolio in calculating the loss severity measure, as described below.

A few commenters suggested that PPP loans should not be classified as "higher risk assets" in calculating the concentration measures for large or highly complex institutions. In response to these comments the FDIC is clarifying that government guaranteed loans are not considered "higher-risk assets" for assessment purposes. Because PPP loans are guaranteed by the SBA, they are already excluded from "higher-risk assets" in calculating the concentration measures for large or highly complex institutions and no additional modification is necessary.<sup>33</sup>

#### c. Exclusion of Borrowings Under the PPPLF From Total Liabilities in Various Risk Measures

As proposed, under the final rule the FDIC will exclude borrowings from the Federal Reserve Banks under the PPPLF from an institution's liabilities in the calculation of the core deposit ratio, the balance sheet liquidity ratio, and the loss severity measure used to determine a large or highly complex IDI's assessment rate. The final rule clarifies that the exclusion of amounts borrowed from the Federal Reserve Banks under the PPPLF from an institution's total liabilities will only affect risk measures used to determine the assessment rate for a large or highly complex IDI because secured liabilities are not factored into the risk measures for determining the rate for an established small IDI.

Under the final rule, in calculating the core deposit ratio<sup>34</sup> for large or highly complex IDI, the FDIC will exclude from total liabilities borrowings from Federal Reserve Banks under the PPPLF.

Also as proposed, under the final rule the FDIC will exclude an IDI's reported borrowings from the Federal Reserve Banks under the PPPLF with a remaining maturity of one year or less from liabilities included in the denominator of the balance sheet liquidity ratio.<sup>35</sup> Additionally, in

end, rather than requiring institutions to additionally report the average balance of PPP loans.

<sup>33</sup> Appendix C to subpart A of part 327 describes the concentration measures, including the ratio of higher-risk assets to tier 1 capital and reserves.

<sup>34</sup> The core deposit ratio is defined as total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities. See Appendix A to subpart A of 12 CFR part 327.

<sup>35</sup> The balance sheet liquidity ratio is defined as the sum of cash and balances due from depository institutions, federal funds sold and securities

calculating the balance sheet liquidity ratio, the FDIC will treat the quarter-end outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF as highly liquid assets, as proposed. Because PPP loans are riskless and banks with PPP loans in excess of PPPLF borrowings can access additional liquidity by pledging such loans to PPPLF, the FDIC will treat these PPP loans as highly liquid assets. To the extent that a PPP loan represents collateral for borrowings other than under the PPPLF—such as an FHLB advance—treating the loan as highly liquid will provide an assessment benefit for IDIs that may not be able to readily access additional liquidity. PPP loans can no longer be pledged as collateral to the PPPLF after September 30, 2020, the date after which no new extensions of credit will be made under the PPPLF, unless extended by the Board of Governors and the Department of Treasury. Therefore, under the final rule, the quarter-end outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF will be treated as highly liquid assets until September 30, 2020, unless the Board of Governors and the Department of Treasury extend the deadline to apply for new extensions of credit under the PPPLF.

#### d. Treatment of PPP Loans and Borrowings Under the PPPLF in Calculating the Loss Severity Measure

The loss severity measure estimates the relative magnitude of potential losses to the DIF in the event of a large or highly complex IDI's failure.<sup>36</sup> Under the final rule, the FDIC will remove the effect of participation in the PPP and PPPLF, as proposed. In calculating the loss severity score under the final rule, the FDIC will remove the effect of PPP loans in an IDI's loan portfolio using a waterfall approach, as proposed. Under this approach, the FDIC will exclude PPP loans from an IDI's balance of C&I Loans. In the unlikely event that the outstanding balance of PPP loans exceeds the balance of C&I Loans, the

purchased under agreements to resell, and the market value of available-for-sale and held-to-maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits. Appendix A to subpart A of 12 CFR part 327.

<sup>36</sup> Appendix D to subpart A of 12 CFR 327 describes the calculation of the loss severity measure.

FDIC will exclude any remaining balance from All Other Loans, up to the total amount of All Other Loans, followed by Agricultural Loans, up to the total amount of Agricultural Loans.

To the extent that an IDI's outstanding PPP loans are not pledged to the PPPLF, such loans may be funded by a variety of liabilities, such as deposits and secured borrowings. While IDIs will report borrowings under the PPPLF that are secured by PPP loans, the FDIC will not have sufficient data to determine other sources of funding for an IDI's PPP loans. Obtaining such data would require additional reporting burden on IDIs. Because the FDIC will not have sufficient data to remove each type of non-PPPLF funding used to make PPP loans, under the final rule the FDIC will remove PPP loans in excess of its PPPLF borrowings from a large or highly complex IDI's loan portfolio based on the waterfall approach described above and reallocate the same amount to cash. Such treatment of PPP loans is consistent with the proposal to treat PPP loans in excess of PPPLF borrowings as riskless for purposes of calculating a large or highly complex IDI's loss severity score.

To match the removal of PPP loans funded through borrowings under the PPPLF from an IDI's loan portfolio, the FDIC will remove the total amount of outstanding borrowings from the Federal Reserve Banks under the PPPLF from short- and long-term secured borrowings, as appropriate.

#### C. Mitigating the Effects of PPP Loans and Assets Purchased Under the MMLF on Certain Adjustments to an IDI's Assessment Rate

The FDIC proposed to exclude the quarterly average amount of loans pledged to the PPPLF and the quarterly average amount of assets purchased under the MMLF from the calculation of the unsecured debt adjustment, depository institution debt adjustment, and the brokered deposit adjustment. These adjustments would continue to be applied to an IDI's initial base assessment rate, as applicable, for purposes of calculating the IDI's total base assessment rate.<sup>37</sup>

<sup>37</sup> For certain IDIs, adjustments include the unsecured debt adjustment and the depository institution debt adjustment (DIDA). The unsecured debt adjustment decreases an IDI's total assessment rate based on the ratio of its long-term unsecured debt to its assessment base. The DIDA increases an IDI's total assessment rate if it holds long-term, unsecured debt issued by another IDI. In addition, large IDIs that meet certain criteria and new small IDIs are subject to the brokered deposit adjustment. The brokered deposit adjustment increases the total assessment rate of large IDIs that hold significant

As previously described, many commenters requested that the FDIC provide relief throughout the assessment calculations for all PPP lending, whether funded under the PPPLF or through other sources of liquidity, including deposits. A few commenters expressed support for the proposed modifications to these adjustments.

After considering comments received, and in recognition of the important role IDIs play in providing liquidity to small businesses and helping to stabilize the broader economy in the midst of the economic disruption caused by COVID-19, as well as in recognition that some banks have funded PPP loans through liabilities other than borrowings under the PPPLF, under the final rule, the FDIC will exclude the quarter-end outstanding amount of PPP loans and the quarterly average amount of assets purchased under the MMLF from the calculation of the unsecured debt adjustment, depository institution debt adjustment, and the brokered deposit adjustment.

While the deposit insurance assessment calculations typically adjust quarter-end amounts by quarter-end amounts and average amounts by average amounts, in the interest of minimizing reporting burden, the agencies are collecting only the quarter-end outstanding balance of PPP loans and not the average amount. Accordingly, there are a few modifications under this final rule for which an average amount is adjusted by the quarter-end outstanding balance of PPP loans, as is the case with these three adjustments to an IDI's assessment rate.

#### *D. Offset to Deposit Insurance Assessment Due To Increase in the Assessment Base Attributable to PPP Loans and Assets Purchased Under the MMLF*

Under the final rule, the FDIC will provide an offset to an IDI's total assessment amount due for the increase to its assessment base attributable to the quarter-end outstanding balance of PPP loans and participation in the MMLF.<sup>38</sup>

Under the proposed rule, the FDIC would have provided an offset to an IDI's total assessment amount due for

the increase to its assessment base attributable to participation in the PPPLF and MMLF.<sup>39</sup> To determine this offset amount, the FDIC proposed to calculate the total of the quarterly average amount of assets pledged to the PPPLF and the quarterly average amount of assets purchased under the MMLF, multiply that amount by an IDI's total base assessment rate (after excluding the effect of participation in the MMLF and PPPLF, as proposed), and subtract the resulting amount from an IDI's total assessment amount.<sup>40</sup>

The FDIC received numerous comments stating that the proposed modifications would not completely offset the impact of PPP lending on the assessment base. Some commenters requested that the FDIC exclude the quarter-end balance of outstanding PPP loans from the assessment base.

After considering the comments received, and recognizing that some banks have funded PPP loans by obtaining additional funding, such as deposits or borrowings other than under the PPPLF, and therefore increased their total assets and total liabilities, under the final rule the FDIC will use the quarter-end outstanding amount of PPP loans rather than the quarterly average amount of assets pledged to the PPPLF in calculating the offset to an IDI's total assessment amount. To determine this offset amount, the FDIC will sum the total of the quarter-end outstanding balance of PPP loans and the quarterly average amount of assets purchased under the MMLF, multiply that amount by an IDI's total base assessment rate (after excluding the effects of participation in the PPP, MMLF, and PPPLF, consistent with the final rule), and subtract the resulting amount from an IDI's total assessment amount.

While IDIs will report loans pledged to the PPPLF and borrowings under the PPPLF starting with the June 30, 2020, Call Report, it will not be possible for the FDIC to differentiate between an IDI that increased its total assets solely due to PPP funded by additional liabilities, and an IDI that used existing balance sheet liquidity to fund PPP loans and therefore did not increase its total assets

or its assessment base. To the extent an IDI relies on existing balance sheet liquidity, including cash and securities to fund PPP loans, the IDI would not increase its total assets and would therefore not experience an increase to the assessment base as a result of its participation in the PPP. An IDI that obtains additional funding to make PPP loans, however, would increase its total liabilities by the amount of additional funding and increase its total assets by the amount of PPP loans made with such funding, resulting in an increase in its assessment base.

In recognition of the extraordinary steps taken by IDIs to provide liquidity to small businesses and help stabilize the broader economy in the midst of the economic disruption caused by COVID-19, and to more fully mitigate the deposit insurance assessment effect of participation in the PPP, the final rule will provide an offset to an IDI's assessment amount that is calculated using the total outstanding balance of PPP loans at quarter end and the quarterly average balance of assets purchased under the MMLF. Including total PPP loans in the calculation of the offset ensures that the final rule will more fully mitigate the assessment effects of participation in PPP lending. To the extent that an institution did not increase its total assets as a result of PPP participation, the final rule may, for some institutions, result in an assessment reduction that exceeds the actual increase in assessments that an institution would have experienced due to participation in the PPP.

As discussed above, in the interest of minimizing reporting burden, there are a few modifications under this final rule for which an average amount is adjusted by the quarter-end outstanding balance of PPP loans, as is the case with the calculation of the offset to the assessment base.

Because the FDIC proposed to calculate the offset as the sum of the quarterly average amount of loans pledged to the PPPLF and the quarterly average of assets purchased under the MMLF, the Board of Governors is requiring that insured branches of foreign banks report only these two additional items on the FFIEC 002 starting with the report filed as of June 30, 2020. Adjustments to the calculation of the assessment rate of an insured branch of foreign banks to mitigate the effect of participation in the PPP, PPPLF, and MMLF are not necessary.<sup>41</sup> Under the final rule, the FDIC will provide an offset to the assessment of an

concentrations of brokered deposits and that are less than well capitalized, not CAMELS composite 1- or 2-rated, as well as new, small IDIs that are not assigned to Risk Category I. See 12 CFR 327.16(e).

<sup>38</sup> Under the final rule, the offset to the total assessment amount due for the increase to the assessment base attributable to the quarter-end outstanding balance of PPP loans and participation in the MMLF will apply to all IDIs, including new small institutions as defined in 12 CFR 327.8(w), and insured U.S. branches and agencies of foreign banks.

<sup>39</sup> Under the proposed rule, the offset to the total assessment amount due for the increase to the assessment base attributable to participation in the PPPLF and MMLF would have applied to all IDIs, including new small institutions as defined in 12 CFR 327.8(w), and insured U.S. branches and agencies of foreign banks.

<sup>40</sup> Currently, an IDI's total assessment amount on its quarterly certified statement invoice is equal to the product of the institution's assessment base (calculated in accordance with 12 CFR 327.5) multiplied by the institution's assessment rate (calculated in accordance with 12 CFR 327.4 and 12 CFR 327.16). See 12 CFR 327.3(b)(1).

<sup>41</sup> Insured branches are assessed for deposit insurance in accordance with 12 CFR 327.16(c).

insured branch of a foreign bank that is calculated by summing the quarterly average amount of assets purchased under the MMLF with either the quarterly average amount of loans pledged to the PPPLF or the amount of outstanding PPP loans at the end of the quarter, based on available data.<sup>42</sup>

#### *E. Classification of IDIs as Small, Large, or Highly Complex for Assessment Purposes*

In defining IDIs for assessment purposes under the proposed rule, the FDIC would have excluded from an IDI's total assets the amount of loans pledged to the PPPLF and assets purchased under the MMLF. Several commenters specifically requested that the FDIC provide full credit for the outstanding balance of PPP loans throughout the assessment calculations, including in the classification of an IDI as small, large, or highly complex for deposit insurance assessment purposes.

After considering these comments and for the reasons described above, the FDIC will exclude the quarter-end outstanding balance of all PPP loans, rather than only those PPP loans pledged to the PPPLF, in the classification of an IDI as small, large, or highly complex for assessment purposes. As a result, the FDIC will not reclassify a small institution as large or a large institution as a highly complex institution solely due to participation in the PPPLF and MMLF programs, which would otherwise have the effect of expanding an IDI's balance sheet. In addition, an institution with total assets between \$5 billion and \$10 billion, excluding the amount of PPP loans and assets purchased under the MMLF, may request that the FDIC determine its assessment rate as a large institution.<sup>43</sup>

#### *F. Other Conforming Amendments to the Assessment Regulations*

Under the final rule, the FDIC will make conforming amendments to the FDIC's assessment regulations to effectuate the modifications described above and consistent with the proposed rule. These conforming amendments will ensure that the modifications to an IDI's assessment rate and the offset to an

IDI's assessment amount under the final rule are properly incorporated into the assessment regulation provisions governing the calculation of an IDI's quarterly deposit insurance assessment.

### **III. Expected Effects**

To facilitate participation in the PPP and use of the PPPLF and MMLF, under the final rule the FDIC will mitigate the deposit insurance assessment effects of PPP loans, amounts borrowed under the PPPLF, and assets purchased under the MMLF. Estimating the dollar amount of assessment mitigation resulting from the rule is difficult. Because IDIs are not yet reporting the necessary data, the FDIC does not have sufficient data on the distribution of loans among IDIs and other non-bank financial institutions made under the PPP, the loan categories of PPP loans held, the types of liabilities used to fund PPP lending, the extent to which PPP participation resulted in an increase to an IDI's total assets and total liabilities, nor on the dollar volume of assets purchased under the MMLF by IDIs. Therefore, the FDIC has estimated the potential effects of these programs on deposit insurance assessments based on certain assumptions. Although this estimate is subject to considerable uncertainty, the FDIC estimates that application of the final rule could provide quarterly assessment relief to IDIs participating in these programs totaling approximately \$150 million, based on the assumptions described below which improve upon the assumptions applied in the proposal given information provided by commenters and FDIC analysis of updated data published by the SBA on the PPP and Federal Reserve Board on the PPPLF and MMLF. Because PPP loans must be issued by June 30, 2020, and because the FDIC expects that eligible IDIs will begin receiving PPP loan forgiveness reimbursement from the SBA, the FDIC expects that the amount of assessment relief provided under this final rule will decline in subsequent quarters.

The FDIC anticipates that PPP loans will be held by both IDIs and non-IDIs, and that IDIs will fund PPP loans through growth in liabilities, including through additional deposits, borrowings from Federal Reserve Banks under the PPPLF, and other secured borrowings, although the rate of IDI participation in the PPP and PPPLF is uncertain.

Based on Call Report data as of March 31, 2020, and assuming that (1) \$600 billion of PPP loans are held by IDIs,<sup>44</sup>

(2) the PPP loans that are held by IDIs are evenly distributed across all IDIs that have C&I loans, which results in a 33 percent increase in those loans, except where IDI-specific data are available, (3) 5.9 percent of PPP loans held by IDIs are pledged to the PPPLF, except where IDI-specific data are available from the Federal Reserve Board, (4) 100 percent of loans pledged to the PPPLF are matched by borrowings from the Federal Reserve Banks with maturities greater than one year, (5) IDIs fund the remaining 94.1 percent of PPP loans with additional funding, including deposits or secured borrowings, and (6) large and highly complex IDIs hold approximately \$30 billion in assets pledged under the MMLF,<sup>45</sup> the FDIC estimates that (1) quarterly deposit insurance assessments would increase for some institutions absent the final rule and (2) the final rule could provide quarterly assessment relief of approximately \$150 million.

The actual effect of these programs on deposit insurance assessments will vary depending on participation in the programs by IDIs and non-IDIs, the maturity of borrowings from the Federal Reserve Banks under these programs, the extent of reliance on existing sources of funding for PPP lending, and the types of loans held under the PPP, as described above. While items on the Call Report will enable the FDIC to quantify funding from the PPPLF, it is not possible for the FDIC to quantify how much an IDI's total assets grew due to PPP loans relative to other balance sheet changes, including increased cash or other loans made either in response to the economic disruption caused by COVID-19 or that would have otherwise

Paycheck Protection Program. The FDIC assumes all the authorized funds will be distributed and roughly 90 percent will be held by IDIs.

<sup>45</sup> These assumptions reflect current participation in the PPP and PPPLF and that all authorized funds under the PPP will be distributed, based on data published by the SBA and Federal Reserve Board. These assumptions use transaction-level data published by the Federal Reserve Board, SBA data to estimate the participation in the PPP program of nonbank lenders including CDFI funds, CDCs, Microlenders, Farm Credit Lenders, and FinTechs. See Paycheck Protection Program (PPP) Report: Approvals through 06/06/2020, Small Business Administration, available at: [https://www.sba.gov/sites/default/files/2020-06/PPP\\_Report\\_Public\\_200606%20FINAL\\_-508.pdf](https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf); Factors Affecting Reserve Balances, Federal Reserve statistical release H.4.1, as of June 11, 2020, available at: <https://www.federalreserve.gov/releases/h41/current/>; Board of Governors of the Federal Reserve System, Money Market Mutual Fund Liquidity Facility, as of June 10, 2020, available at: <https://fred.stlouisfed.org/series/H41RESPPALDBNWW>; and Board of Governors of the Federal Reserve System, PPPLF Transaction-specific Disclosures as of May 15, 2020, available at: <https://www.federalreserve.gov/publications/files/PPPLF-transaction-specific-disclosures-5-15-20.xlsx>.

<sup>42</sup> Through the Board of Governors, the FDIC anticipates revising the reporting of the quarterly average amount of loans pledged to the PPPLF and instead requiring insured branches of foreign banks to report the outstanding balance of PPP loans at quarter-end, beginning as of September 30, 2020. For purposes of determining the deposit insurance assessment amount for an insured branch of a foreign bank as of June 30, 2020, an insured branch additionally may provide to the FDIC certified information on the amount of outstanding PPP loans at the end of the quarter.

<sup>43</sup> See 12 CFR 327.16(f).

<sup>44</sup> Section 101(a)(1) of the Paycheck Protection Program and Health Care Enhancement Act, Public Law 116-139, authorizes \$659 billion for the

been made in the normal course of business. For example, to the extent an IDI relies on existing balance sheet liquidity including cash and securities to fund PPP lending, the IDI would not experience an increase in liabilities and would therefore not experience an increase to the assessment base as a result of its participation in PPP lending. Accordingly, the assumption that IDIs will rely entirely on additional funding for PPP lending could reduce quarterly assessments by more than they will increase due to participation in PPP lending, as some IDIs may rely on existing balance sheet liquidity to fund PPP lending.

#### IV. Effective Date of the Final Rule

As stated above, in response to recent events which have significantly and adversely impacted global financial markets along with the spread of COVID-19, which has slowed economic activity in many countries, including the United States, the agencies moved quickly due to exigent circumstances and issued two interim final rules to allow banking organizations to neutralize the regulatory capital effects of purchasing assets under the MMLF and loans pledged to the PPPLF. Since the implementation of the PPP, PPPLF, and MMLF, the FDIC has observed uncertainty from the public and the banking industry and wants to provide clarity on how, if at all, these programs would affect the assessments of IDIs which participate in these programs. Because PPP loans must be issued by June 30, 2020, the full assessment impact of these programs will first occur in the second quarterly assessment period. Congress has also given indications that implementation of these programs is an urgent policy matter, instructing the SBA to issue regulations for the PPP within 15 days of the CARES Act's enactment.<sup>46</sup>

The final rule will take effect immediately upon publication in the **Federal Register** with an application date of April 1, 2020, and changes made as a result of this rule will be reflected in the invoices for deposit insurance assessments due September 30, 2020.<sup>47</sup>

<sup>46</sup> See CARES Act, § 1114. Public Law 116-142 (June 05, 2020). The SBA subsequently issued an interim final rule implementing sections 1102 and 1106 of the CARES Act. See 85 FR 20811 (April 15, 2020). On June 5, 2020, the PPP Flexibility Act was signed into law, amending key provisions of the CARES Act. The SBA issued an interim final rule implementing these provisions. See 85 FR 36308 (June 16, 2020).

<sup>47</sup> The application date of April 1, 2020, is permissible because the effects of the final rule will occur after its publication. The assessment amount owed on an IDI's quarterly certified statement invoice for the second quarterly assessment period

An immediate effective date and an application date of April 1, 2020, will enable the FDIC to provide the relief contemplated in this rulemaking as soon as practicable, starting with the second quarter of 2020, and provide certainty to IDIs regarding the assessment effects of participating in the PPP, PPPLF, or MMLF for the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected.

#### V. Administrative Law Matters

##### A. Administrative Procedure Act

Under the Administrative Procedure Act (APA),<sup>48</sup> “[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.”<sup>49</sup> Under this rulemaking, the amendments to the FDIC's deposit insurance assessment regulations would be effective upon publication of the final rule in the **Federal Register**. The FDIC finds good cause that the publication of this final rule can be effective immediately in order to fully effectuate the intent of ensuring that IDIs benefit from the mitigation effects to their deposit insurance assessments as soon as practicable, and to provide IDIs with certainty regarding the assessment effects of participating in the PPP, PPPLF, or MMLF for the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected.

As explained in the Supplementary Information section and in the proposed rule, the FDIC expects that an IDI that participates in either the PPP, the PPPLF, or the MMLF program could be subject to increased deposit insurance assessments, beginning with the second quarter of 2020. The FDIC invoices for quarterly deposit insurance assessments in arrears. As a result, invoices for the second quarterly assessment period of 2020 (*i.e.*, April 1—June 30) would be made available to IDIs in September

of 2020 (*i.e.*, April 1—June 30) will be calculated on the basis of Call Report data as of June 30, 2020, with a payment due date of September 30, 2020. Furthermore, even if the effects of the final rule were retroactive, a rule is impermissibly retroactive only when it “takes away or impairs vested rights acquired under existing law, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past.” See *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 859 (D.C. Cir. 2002) (quoting *Nat'l Mining Ass'n v. Dep't of Interior*, 177 F.3d 1, 8 (D.C. Cir. 1999)) (internal quotations omitted). This final rule does none of those things.

<sup>48</sup> 5 U.S.C. 553.

<sup>49</sup> 5 U.S.C. 553(d).

2020, with a payment due date of September 30, 2020.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.<sup>50</sup> However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$600 million.<sup>51</sup> Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of “rule” for purposes of the RFA.<sup>52</sup> The final rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of March 31, 2020, the FDIC insures 5,125 depository institutions,<sup>53</sup> of which 3,771 are defined as small entities by the terms of the RFA.<sup>54</sup> The final rule applies to all FDIC-insured

<sup>50</sup> 5 U.S.C. 601 *et seq.*

<sup>51</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where an organization's “assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See 13 CFR 121.201 (as amended, effective August 19, 2019). In its determination, the SBA “counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.” 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is “small” for the purposes of RFA.

<sup>52</sup> 5 U.S.C. 601.

<sup>53</sup> FDIC Call Report data, as of March 31, 2020.

<sup>54</sup> The FDIC does not have data to identify small entities as of March 2020. This count includes small entities as of December 31, 2019, as well as small entities that opened between December 2019 and March 2020.

institutions, but is expected to affect only those institutions that participate in the PPP, PPPLF, and MMLF. The FDIC does not presently have access to information that would enable it to identify which institutions are participating in these programs and lending facilities.

As previously discussed, to facilitate participation in the PPP and use of the PPPLF and MMLF, the final rule mitigates the deposit insurance assessment effects of PPP loans, borrowings under the PPPLF, and assets purchased under the MMLF. Therefore, the FDIC estimated the potential effects of these programs on deposit insurance assessments based on certain assumptions. Based on Call Report data as of March 31, 2020, assuming that (1) \$600 billion of PPP loans are held by IDIs,<sup>55</sup> (2) the PPP loans that are held by IDIs are evenly distributed across all IDIs that have C&I loans, which results in a 33 percent increase in those loans, except where IDI-specific data are available, (3) 5.9 percent of PPP loans held by IDIs are pledged to the PPPLF, except where IDI-specific data are available, (4) 100 percent of loans pledged to the PPPLF are matched by borrowings from the Federal Reserve Banks with maturities greater than one year,<sup>56</sup> and (5) IDIs fund the remaining 94.1 percent of PPP loans with additional funding, including deposits or secured borrowings, the FDIC estimates that the final rule will save small IDIs approximately \$10 million in quarterly deposit insurance assessments.

The actual effect of these programs on deposit insurance assessments will vary

<sup>55</sup> Section 101(a)(1) of the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. 116-139, authorizes \$659 billion for the Paycheck Protection Program. The FDIC assumes that all the authorized funds will be distributed and roughly 30 percent will be held by IDIs.

<sup>56</sup> These assumptions reflect current participation in the PPP and PPPLF and that all the authorized funds under the PPP will be distributed, based on data published by the SBA and Federal Reserve Board. These assumptions use SBA data to estimate the participation in the PPP program of nonbank lenders including CDFI funds, CDCs, Microlenders, Farm Credit Lenders, and FinTechs. See Paycheck Protection Program (PPP) Report: Approvals from through 06/06/2020, Small Business Administration, available at: [https://www.sba.gov/sites/default/files/2020-06/PPP\\_Report\\_Public\\_200606%20FINAL\\_-508.pdf](https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf); Factors Affecting Reserve Balances, Federal Reserve statistical release H.4.1, as of June 11, 2020, available at: <https://www.federalreserve.gov/releases/h41/current/>, and Board of Governors of the Federal Reserve System, Money Market Mutual Fund Liquidity Facility, as of June 10, 2020, available at: <https://fred.stlouisfed.org/series/H41RESPPALDBNWW>; Board of Governors of the Federal Reserve System, PPPLF Transaction-specific Disclosures as of May 15, 2020, available at: <https://www.federalreserve.gov/publications/files/PPPLF-transaction-specific-disclosures-5-15-20.xlsx>.

depending on IDIs' participation in the PPP and Federal Reserve Facilities, the maturity of borrowings from the Federal Reserve Banks under these programs, the extent of reliance on existing sources of funding for PPP lending, and the types of loans held under the PPP.

#### C. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.<sup>57</sup>

The amendments to the FDIC's deposit insurance assessment regulations under this final rule do not impose additional reporting, disclosures, or other new requirements. Nonetheless, the FDIC considered the requirements of RCDRIA when finalizing this rule with an immediate effective date. The FDIC invited comments regarding the application of RCDRIA to the final rule, but did not receive comments on this topic.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number.<sup>58</sup> The final rule affects the agencies' current information collections for the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051). The agencies' OMB control numbers for the Call Reports are: Comptroller of the

Currency OMB No. 1557-0081; Board of Governors OMB No. 7100-0036; and FDIC OMB No. 3064-0052. The final rule also affects the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), which the Federal Reserve System collects and processes on behalf of the three agencies (Board of Governors OMB No. 7100-0032). Submissions were made by the agencies to OMB for their respective information collections. The changes to the Call Report, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and their respective instructions, have been addressed in a separate **Federal Register** notice or notices.

#### E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act<sup>59</sup> requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comment regarding the use of plain language, but did not receive any comments on this topic.

#### F. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.<sup>60</sup> The OMB has determined that the final rule is a major rule for purposes of the Congressional Review Act. If a rule is deemed a "major rule" by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.<sup>61</sup> The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>62</sup> As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the

<sup>57</sup> 5 U.S.C. 553(b)(B), 5 U.S.C. 553(d), 5 U.S.C. 601 *et seq.*, 5 U.S.C. 801 *et seq.*, 5 U.S.C. 801(a)(3), 5 U.S.C. 804(2), 5 U.S.C. 808(2), 12 U.S.C. 4802(a), 12 U.S.C. 4802(b).

<sup>58</sup> 4 U.S.C. 3501-3521.

<sup>59</sup> 12 U.S.C. 4809.

<sup>60</sup> 5 U.S.C. 801 *et seq.*

<sup>61</sup> 5 U.S.C. 801(a)(3).

<sup>62</sup> 5 U.S.C. 804(2).

Government Accountability Office for review.

Section 808 of the Congressional Review Act provides that any rule as to which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.<sup>63</sup> Although OMB has determined that this is a major rule for purposes of the Congressional review Act, and hence would ordinarily be subject to a 60-day delayed effective date, the FDIC believes there is good cause for an immediate effective date. In this case, the FDIC provided notice and accepted comment, as required by section 7 of the FDI Act, but further public procedure and the attendant delay would be contrary to the public interest.<sup>64</sup>

The FDIC believes that, under section 808 of the Congressional Review Act, good cause exists for the final rule to become effective without further public procedure and immediately upon its filing for publication, as delaying the effective date would be contrary to the public interest. In particular, by providing for an immediate effective date for the final rule, the intent of ensuring that IDIs benefit from the mitigation effects to their deposit insurance assessments starting with the second quarter of 2020, which is the first assessment quarter in which the assessments will be affected, and will thereby provide IDIs with certainty regarding the assessment effects of participating in the PPP, PPPLF, or MMLF.

**List of Subjects in 12 CFR Part 327**

Bank deposit insurance, Banks, banking, Savings associations.

**Authority and Issuance**

For the reasons stated above, the Federal Deposit Insurance Corporation amends 12 CFR part 327 as follows:

**PART 327—ASSESSMENTS**

■ 1. The authority citation for part 327 is revised to read as follows:

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

■ 2. Amend § 327.3 by revising paragraph (b)(1) to read as follows:

**§ 327.3 Payment of assessments.**

\* \* \* \* \*

(b) \* \* \*

(1) *Quarterly certified statement invoice.* Starting with the first assessment period of 2007, no later than 15 days prior to the payment date specified in paragraph (b)(2) of this section, the Corporation will provide to each insured depository institution a quarterly certified statement invoice showing the amount of the assessment payment due from the institution for the prior quarter (net of credits or dividends, if any), and the computation of that amount. Subject to paragraph (e) of this section and § 327.17, the invoiced amount on the quarterly certified statement invoice shall be the product of the following: The assessment base of the institution for the prior quarter computed in accordance with § 327.5 multiplied by the institution's rate for that prior quarter as assigned to the institution pursuant to §§ 327.4(a) and 327.16.

\* \* \* \* \*

■ 3. Amend § 327.8 by revising paragraphs (e), (f), and (g)(1) to read as follows:

**§ 327.8 Definitions.**

\* \* \* \* \*

(e) *Small institution.* (1) An insured depository institution with assets of less than \$10 billion, excluding assets as described in § 327.17(e), as of December 31, 2006, and an insured branch of a foreign institution shall be classified as a small institution.

(2) Except as provided in paragraph (e)(3) of this section and § 327.17(e), if, after December 31, 2006, an institution classified as large under paragraph (f) of this section (other than an institution classified as large for purposes of §§ 327.9(e) and 327.16(f)) reports assets of less than \$10 billion in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as small beginning the following quarter.

(3) An insured depository institution that elects to use the community bank leverage ratio framework under 12 CFR 3.12(a)(3), 12 CFR 217.12(a)(3), or 12 CFR 324.12(a)(3), shall be classified as a small institution, even if that institution otherwise would be classified as a large institution under paragraph (f) of this section.

(f) *Large institution.* An institution classified as large for purposes of §§ 327.9(e) and 327.16(f) or an insured depository institution with assets of \$10 billion or more, excluding assets as described in § 327.17(e), as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) shall be classified as a large

institution. If, after December 31, 2006, an institution classified as small under paragraph (e) of this section reports assets of \$10 billion or more in its quarterly reports of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the FDIC will reclassify the institution as large beginning the following quarter.

(g) \* \* \*

(1) A highly complex institution is:

(i) An insured depository institution (excluding a credit card bank) that has had \$50 billion or more in total assets for at least four consecutive quarters, excluding assets as described in § 327.17(e), that is controlled by a U.S. parent holding company that has had \$500 billion or more in total assets for four consecutive quarters, or controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had \$500 billion or more in assets for four consecutive quarters; or

(ii) A processing bank or trust company.

\* \* \* \* \*

■ 4. Amend § 327.16 by adding introductory text and revising paragraph (f)(1) to read as follows:

**§ 327.16 Assessment pricing methods—beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent.**

Subject to the modifications described in § 327.17, the following pricing methods shall apply beginning in the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent, and for all subsequent assessment periods.

\* \* \* \* \*

(f) \* \* \*

(1) *Procedure.* Any small institution with assets of between \$5 billion and \$10 billion, excluding assets as described in § 327.17(e), may request that the FDIC determine its assessment rate as a large institution. The FDIC will consider such a request provided that it has sufficient information to do so. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than \$5 billion in its report of condition for four consecutive quarters, excluding assets as described in § 327.17(e), the institution shall be deemed a small institution for assessment purposes.

<sup>63</sup> 5 U.S.C. 808(2).

<sup>64</sup> See 12 U.S.C. 1817(b)(1)(F).

■ 5. Add § 327.17 to read as follows:

**§ 327.17 Mitigating the Deposit Insurance Assessment Effect of Participation in the Money Market Mutual Fund Liquidity Facility, the Paycheck Protection Program Liquidity Facility, and the Paycheck Protection Program.**

(a) *Mitigating the assessment effects of loans provided under the Paycheck Protection Program for established small institutions.* Applicable beginning April 1, 2020, the FDIC will take the following actions when calculating the assessment rate for established small institutions under § 327.16:

(1) *Exclusion of loans provided under the Paycheck Protection Program from net income before taxes ratio, nonperforming loans and leases ratio, other real estate owned ratio, brokered deposit ratio, and one-year asset growth measure.* As described in appendix E to this subpart, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the total assets in the calculation of the following risk measures: Net income before taxes ratio, the nonperforming loans and leases ratio, the other real estate owned ratio, the brokered deposit ratio, and the one-year asset growth measure, which are described in § 327.16(a)(1)(ii)(A).

(2) *Exclusion of loans provided under the Paycheck Protection Program from Loan Mix Index.* As described in appendix E to this subpart A, when calculating the loan mix index described in § 327.16(a)(1)(ii)(B), the FDIC will exclude:

(i) The outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the total assets; and

(ii) The outstanding balance loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from an established small institution's balance of commercial and industrial loans. To the extent that the outstanding balance of loans provided under the Paycheck Protection Program exceeds an established small institution's balance of commercial and industrial loans, as reported on the Consolidated Report of Condition and Income, the FDIC will exclude any remaining balance of these loans from the balance of agricultural loans, up to the amount of agricultural loans, in the calculation of the loan mix index.

(b) *Mitigating the assessment effects of loans provided under the Paycheck Protection Program for large or highly complex institutions.* Applicable

beginning April 1, 2020, the FDIC will take the following actions when calculating the assessment rate for large institutions and highly complex institutions under § 327.16:

(1) *Exclusion of Paycheck Protection Program loans from average short-term funding ratio, core earnings ratio, growth-adjusted portfolio concentration measure, and trading asset ratio.* As described in appendix E of this subpart, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from the calculation of the average short-term funding ratio, the core earnings ratio, the growth-adjusted portfolio concentration measure, and the trading asset ratio.

(2) *Exclusion of Paycheck Protection Program Liquidity Facility borrowings from core deposit ratio.* As described in appendix E of this subpart, the FDIC will exclude the total outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, from the calculation of the core deposit ratio.

(3) *Exclusion of Paycheck Protection Program Liquidity Facility borrowings from balance sheet liquidity ratio.* As described in appendix E to this subpart, when calculating the balance sheet liquidity measure described under appendix A to this subpart, the FDIC will:

(i) Include the outstanding balance of loans provided under the Paycheck Protection Program that exceed total borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, in the amount of highly liquid assets until September 30, 2020, or, if the Board of Governors of the Federal Reserve System and the Secretary of the Treasury determine to extend the Paycheck Protection Program Liquidity Facility, until such date of extension; and

(ii) Exclude the outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a remaining maturity of one year or less from other borrowings with a remaining maturity of one year or less, both as reported on the Consolidated Report of Condition and Income. (4) *Exclusion of loans provided under the Paycheck Protection Program and Paycheck Protection Program Liquidity Facility borrowings from loss severity measure.* As described in appendix E to this

subpart, when calculating the loss severity measure described under appendix A to this subpart, the FDIC will exclude:

(i) The total outstanding balance of borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, as reported on the Consolidated Report of Condition and Income, from short- and long-term secured borrowings, as appropriate; and

(ii) The outstanding balance of loans provided under the Paycheck Protection Program, as reported on the Consolidated Report of Condition and Income, from an institution's balance of commercial and industrial loans. To the extent that the outstanding balance of loans provided under the Paycheck Protection Program exceeds an institution's balance of commercial and industrial loans, the FDIC will exclude any remaining balance from all other loans, up to the total amount of all other loans, followed by agricultural loans, up to the total amount of agricultural loans, as reported on the Consolidated Report of Condition and Income. To the extent that an institution's outstanding balance of loans provided under the Paycheck Protection Program exceeds its borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, the FDIC will add the amount of outstanding loans provided under the Paycheck Protection Program in excess of borrowings under the Paycheck Protection Program Liquidity Facility to cash.

(c) *Mitigating the effects of loans provided under the Paycheck Protection Program and assets purchased under the Money Market Mutual Fund Liquidity Facility on the unsecured adjustment, depository institution debt adjustment, and the brokered deposit adjustment to an insured depository institution's assessment rate.* As described in appendix E to this subpart, when calculating an insured depository institution's unsecured debt adjustment, depository institution debt adjustment, or the brokered deposit adjustment described in § 327.16(e), as applicable, the FDIC will exclude the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, both as reported on the Consolidated Report of Condition and Income.

(d) *Mitigating the effects on the assessment base attributable to loans provided under the Paycheck Protection Program and participation in the Money Market Mutual Fund Liquidity Facility.* As described in appendix E to this

subpart, when calculating an insured depository institution's quarterly deposit insurance assessment payment due under this part, the FDIC will provide an offset to an institution's assessment for the increase to its assessment base attributable to participation in the Money Market Mutual Fund Liquidity Facility and loans provided under the Paycheck Protection Program.

(1) *Calculation of offset amount.* (i) To determine the offset amount, the FDIC will take the sum of the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, both as reported on the Consolidated Report of Condition and Income, and multiply the sum by an institution's total base assessment rate, as calculated under § 327.16, including any adjustments under § 327.16(e).

(ii) To the extent that an institution does not report the outstanding balance of loans provided under the Paycheck Protection Program, such as in an insured branch's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, the FDIC will take the sum of either the quarterly average amount of loans pledged to the Paycheck Protection Program Liquidity Facility as reported in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or the outstanding balance of loans provided under the Paycheck Protection Program, as such certified data is provided to the

FDIC, and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility, as reported in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, and multiply the sum by an institution's total base assessment rate, as calculated under § 327.16.

(2) *Calculation of assessment amount due.* The FDIC will subtract the offset amount described in § 327.17(d)(1) from an insured depository institution's total assessment amount, consistent with § 327.3(b)(1).

(e) *Mitigating the effects of loans provided under the Paycheck Protection Program and assets purchased under the Money Market Mutual Fund Liquidity Facility on the classification of insured depository institutions as small, large, or highly complex for deposit insurance purposes.* When classifying an insured depository institution as small, large, or complex for assessment purposes under § 327.8, the FDIC will exclude from an institution's total assets the outstanding balance of loans provided under the Paycheck Protection Program and the balance of assets purchased under the Money Market Mutual Fund Liquidity Facility outstanding, both as reported on the Consolidated Report of Condition and Income. Any institution with assets of between \$5 billion and \$10 billion, excluding the outstanding balance of loans provided under the Paycheck Protection Program and the balance of assets purchased under the MMLF, both as reported on the Consolidated Report

of Condition and Income, may request that the FDIC determine its assessment rate as a large institution under § 327.16(f).

(f) *Definitions.* For the purposes of this section:

(1) *Paycheck Protection Program.* The term "Paycheck Protection Program" means the program of that name that was created in section 1102 of the Coronavirus Aid, Relief, and Economic Security Act.

(2) *Paycheck Protection Program Liquidity Facility.* The term "Paycheck Protection Program Liquidity Facility" means the program of that name that was announced by the Board of Governors of the Federal Reserve System on April 9, 2020, and renamed as such on April 30, 2020.

(3) *Money Market Mutual Fund Liquidity Facility.* The term "Money Market Mutual Fund Liquidity Facility" means the program of that name announced by the Board of Governors of the Federal Reserve System on March 18, 2020.

■ 6. Add appendix E to subpart A of part 327 to read as follows:

**Appendix E to Subpart A of Part 327—  
Mitigating the Deposit Insurance  
Assessment Effect of Participation in  
the Money Market Mutual Fund  
Liquidity Facility, the Paycheck  
Protection Program Liquidity Facility,  
and the Paycheck Protection Program**

**I. Mitigating the Assessment Effects of  
Paycheck Protection Program Loans for  
Established Small Institutions**

TABLE E.1—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR ESTABLISHED SMALL INSTITUTIONS

Variables	Description	Exclusions
Leverage Ratio (%)	Tier 1 capital divided by adjusted average assets. (Numerator and denominator are both based on the definition for prompt corrective action.)	No Exclusion.
Net Income before Taxes/Total Assets (%)	Income (before applicable income taxes and discontinued operations) for the most recent twelve months divided by total assets <sup>1</sup> .	Exclude from total assets the outstanding balance of loans provided under the Paycheck Protection Program.
Nonperforming Loans and Leases/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest and total nonaccrual loans and lease financing receivables (excluding, in both cases, the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored enterprises, under guarantee or insurance provisions) divided by gross assets <sup>2</sup> .	Exclude from gross assets the outstanding balance of loans provided under the Paycheck Protection Program.
Other Real Estate Owned/Gross Assets (%)	Other real estate owned divided by gross assets <sup>2</sup>	Exclude from gross assets the outstanding balance of loans provided under the Paycheck Protection Program.
Brokered Deposit Ratio	The ratio of the difference between brokered deposits and 10 percent of total assets to total assets. For institutions that are well capitalized and have a CAMELS composite rating of 1 or 2, brokered reciprocal deposits as defined in § 327.8(q) are deducted from brokered deposits. If the ratio is less than zero, the value is set to zero.	Exclude from total assets (in both numerator and denominator) the outstanding balance of loans provided under the Paycheck Protection Program.
Weighted Average of C, A, M, E, L, and S Component Ratings.	The weighted sum of the "C," "A," "M," "E," "L," and "S" CAMELS components, with weights of 25 percent each for the "C" and "M" components, 20 percent for the "A" component, and 10 percent each for the "E," "L" and "S" components.	No Exclusion.
Loan Mix Index	A measure of credit risk described paragraph (A) of this section	Exclusions are described in paragraph (A) of this section.

TABLE E.1—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR ESTABLISHED SMALL INSTITUTIONS—Continued

Variables	Description	Exclusions
One-Year Asset Growth (%) .....	Growth in assets (adjusted for mergers <sup>3</sup> ) over the previous year in excess of 10 percent. <sup>4</sup> If growth is less than 10 percent, the value is set to zero.	Exclude from total assets (in both numerator and denominator) the outstanding balance of loans provided under the Paycheck Protection Program.

<sup>1</sup> The ratio of Net Income before Taxes to Total Assets is bounded below by (and cannot be less than) -25 percent and is bounded above by (and cannot exceed) 3 percent.

<sup>2</sup> Gross assets are total assets plus the allowance for loan and lease financing receivable losses (ALLL) or allowance for credit losses, as applicable.

<sup>3</sup> Growth in assets is also adjusted for acquisitions of failed banks.

<sup>4</sup> The maximum value of the Asset Growth measure is 230 percent; that is, asset growth (merger adjusted) over the previous year in excess of 240 percent (230 percentage points in excess of the 10 percent threshold) will not further increase a bank's assessment rate.

(a) *Definition of Loan Mix Index.* The Loan Mix Index assigns loans in an institution's loan portfolio to the categories of loans described in the following table. Exclude from the balance of commercial and industrial loans the outstanding balance of loans provided under the Paycheck Protection Program. In the event that the outstanding balance of loans provided under the Paycheck Protection Program exceeds the balance of commercial and industrial loans, exclude the remaining balance from the balance of agricultural loans, up to the total amount of agricultural loans. The Loan Mix Index is calculated by multiplying the ratio of an institution's amount of loans in a particular loan category to its total assets, excluding the outstanding balance of loans provided under the Paycheck Protection Program by the associated weighted average charge-off rate for that loan category, and summing the products for all loan categories. The table gives the weighted average charge-off rate for each category of loan. The Loan Mix Index excludes credit card loans.

(b) [Reserved]

LOAN MIX INDEX CATEGORIES AND WEIGHTED CHARGE-OFF RATE PERCENTAGES

	Weighted charge-off rate percent
Construction & Development .....	4.4965840
Commercial & Industrial .....	1.5984506
Leases .....	1.4974551
Other Consumer .....	1.4559717
Real Estate Loans Residual .....	1.0169338
Multifamily Residential .....	0.8847597
Nonfarm Nonresidential .....	0.7289274
I—4 Family Residential .....	0.6973778
Loans to Depository banks .....	0.5760532
Agricultural Real Estate .....	0.2376712
Agriculture .....	0.2432737

II. Mitigating the Assessment Effects of Paycheck Protection Program Loans for Large or Highly Complex Institutions

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS

Scorecard Measures <sup>1</sup>	Description	Exclusions
Leverage Ratio .....	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.	No Exclusion.
Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions). (1) Higher-Risk Assets/Tier 1 Capital and Reserves.  (2) Growth-Adjusted Portfolio Concentrations.	The concentration score for large institutions is the higher of the following two scores:  Sum of construction and land development (C&D) loans (funded and unfunded), higher-risk commercial and industrial (C&I) loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.  The measure is calculated in the following steps: (1) Concentration levels (as a ratio to Tier 1 capital and reserves) are calculated for each broad portfolio category: <ul style="list-style-type: none"> <li>• Constructions and land development (C&amp;D), .....</li> <li>• Other commercial real estate loans, .....</li> <li>• First lien residential mortgages (including non-agency residential mortgage-backed securities),.</li> <li>• Closed-end junior liens and home equity lines of credit (HELOCs),.</li> <li>• Commercial and industrial loans (C&amp;I), .....</li> <li>• Credit card loans, and .....</li> <li>• Other consumer loans. ....</li> </ul> (2) Risk weights are assigned to each loan category based on historical loss rates.	No Exclusion.

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS—Continued

Scorecard Measures <sup>1</sup>	Description	Exclusions
Concentration Measure for Highly Complex Institutions.	<p>(3) Concentration levels are multiplied by risk weights and squared to produce a risk-adjusted concentration ratio for each portfolio.</p> <p>(4) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 to 1.2 where a 3-year cumulative growth rate of 20 percent or less equals a factor of 1 and a growth rate of 80 percent or greater equals a factor of 1.2. If three years of data are not available, a growth factor of 1 will be assigned.</p> <p>(5) The risk-adjusted concentration ratio for each portfolio is multiplied by the growth factor and resulting values are summed.</p> <p>See Appendix C for the detailed description of the measure ..... Concentration score for highly complex institutions is the highest of the following three scores:</p>	Exclude from C&I loan growth rate the outstanding amount of loans provided under the Paycheck Protection Program.
(1) Higher-Risk Assets/Tier 1 Capital and Reserves.	Sum of C&D loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.	No Exclusion.
(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves.	Sum of the 20 largest total exposure amounts to counterparties divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, securities financing transactions (SFTs), and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.	No Exclusion.
(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves.	The largest total exposure amount to one counterparty divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, SFTs, and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. Government and departments or agencies of the U.S. Government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(b), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)(ii) and (iii) and 324.10(c)(4)(ii)(C)(3) through (7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.	No Exclusion.

TABLE E.2—EXCLUSIONS FROM CERTAIN RISK MEASURES USED TO CALCULATE THE ASSESSMENT RATE FOR LARGE OR HIGHLY COMPLEX INSTITUTIONS—Continued

Scorecard Measures <sup>1</sup>	Description	Exclusions
Core Earnings/Average Quarter-End Total Assets.	Core earnings are defined as net income less extraordinary items and tax-adjusted realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by an average of five quarter-end total assets (most recent and four prior quarters). If four quarters of data on core earnings are not available, data for quarters that are available will be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available will be averaged.	Prior to averaging, exclude from total assets for the applicable quarter-end periods the outstanding balance of loans provided under the Paycheck Protection Program.
Credit Quality Measure <sup>1</sup> .....	The credit quality score is the higher of the following two scores: Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments. Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions.	No Exclusion.
(1) Criticized and Classified Items/Tier 1 Capital and Reserves.		
(2) Underperforming Assets/Tier 1 Capital and Reserves.	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.	No Exclusion.
Core Deposits/Total Liabilities .....	Total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities.	Exclude from total liabilities outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a maturity of one year or less and outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a maturity of greater than one year.
Balance Sheet Liquidity Ratio .....	Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits.	Include in highly liquid assets the outstanding balance of PPP loans that exceed borrowings from the Federal Reserve Banks under the PPPLF, until September 30, 2020, or if extended by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, until such date of extension. Exclude from other borrowings with a remaining maturity of one year or less the balance of outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility with a remaining maturity of one year or less.
Potential Losses/Total Domestic Deposits (Loss Severity Measure).	Potential losses to the DIF in the event of failure divided by total domestic deposits. Paragraph [A] of this section describes the calculation of the loss severity measure in detail.	Exclusions are described in paragraph (A) of this section.
Market Risk Measure for Highly Complex Institutions.	The market risk score is a weighted average of the following three scores:	
(1) Trading Revenue Volatility/Tier 1 Capital	Trailing 4-quarter standard deviation of quarterly trading revenue (merger-adjusted) divided by Tier 1 capital.	No Exclusion.
(2) Market Risk Capital/Tier 1 Capital .....	Market risk capital divided by Tier 1 capital .....	No Exclusion.
(3) Level 3 Trading Assets/Tier 1 Capital ....	Level 3 trading assets divided by Tier 1 capital .....	No Exclusion.
Average Short-term Funding/Average Total Assets.	Quarterly average of federal funds purchased and repurchase agreements divided by the quarterly average of total assets as reported on Schedule RC–K of the Call Reports.	Exclude from the quarterly average of total assets the outstanding balance of loans provided under the Paycheck Protection Program.

<sup>1</sup> The credit quality score is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score. The market risk score is the weighted average of three scores—the trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score. All of these ratios are described in appendix A of this subpart and the method of calculating the scores is described in appendix B of this subpart. Each score is multiplied by its respective weight, and the resulting weighted score is summed to compute the score for the market risk measure. An overall weight of 35 percent is allocated between the scores for the credit quality measure and market risk measure. The allocation depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio) as follows: (1) Weight for credit quality score = 35 percent \* (1—trading asset ratio); and, (2) Weight for market risk score = 35 percent \* trading asset ratio. In calculating the trading asset ratio, exclude from the balance of loans the outstanding balance of loans provided under the Paycheck Protection Program.

(a) *Description of the loss severity measure.* The loss severity measure applies a standardized set of assumptions to an institution's balance sheet to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the FDIC first applies assumptions about uninsured deposit and other liability runoff, and growth in insured deposits, to adjust the size and composition of the institution's liabilities. Exclude total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility from short-and long-term secured borrowings, as

appropriate. Assets are then reduced to match any reduction in liabilities. Exclude from an institution's balance of commercial and industrial loans the outstanding balance of loans provided under the Paycheck Protection Program. In the event that the outstanding balance of loans provided under the Paycheck Protection Program exceeds the balance of commercial and industrial loans, exclude any remaining balance of loans provided under the Paycheck Protection Program first from the balance of all other loans, up to the total amount of all other loans, followed by the balance of agricultural

loans, up to the total amount of agricultural loans. Increase cash balances by outstanding loans provided under the Paycheck Protection Program that exceed total outstanding borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility, if any. The institution's asset values are then further reduced so that the Leverage Ratio reaches 2 percent. In both cases, assets are adjusted pro rata to preserve the institution's asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then

applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available.

*Runoff and Capital Adjustment Assumptions*

Table E.3 contains run-off assumptions.

TABLE E.3—RUNOFF RATE ASSUMPTIONS

Liability type	Runoff rate* (percent)
Insured Deposits .....	(10)
Uninsured Deposits .....	58
Foreign Deposits .....	80
Federal Funds Purchased .....	100
Repurchase Agreements .....	75
Trading Liabilities .....	50
Unsecured Borrowings < = 1 Year .....	75
Secured Borrowings < = 1 Year, excluding outstanding borrowings from the Federal Reserve Banks under the PPPLF < = 1 Year .....	25
Subordinated Debt and Limited Liability Preferred Stock .....	15

\* A negative rate implies growth.

Given the resulting total liabilities after runoff, assets are then reduced pro rata to preserve the relative amount of assets in each of the following asset categories and to achieve a Leverage Ratio of 2 percent:

- Cash and Interest Bearing Balances, including outstanding loans provided under the Paycheck Protection Program in excess of borrowings from Federal Reserve Banks

under the Paycheck Protection Program Liquidity Facility;

- Trading Account Assets;
- Federal Funds Sold and Repurchase Agreements;
- Treasury and Agency Securities;
- Municipal Securities;
- Other Securities;
- Construction and Development Loans
- Nonresidential Real Estate Loans;

- Multifamily Real Estate Loans;
- 1—4 Family Closed-End First Liens;
- 1—4 Family Closed-End Junior Liens;
- Revolving Home Equity Loans; and
- Agricultural Real Estate Loans

*Recovery Value of Assets at Failure*

Table E.4—shows loss rates applied to each of the asset categories as adjusted above.

TABLE E.4—ASSET LOSS RATE ASSUMPTIONS

Asset category	Loss rate (percent)
Cash and Interest Bearing Balances, including outstanding loans provided under the Paycheck Protection Program in excess of borrowings from Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility .....	0.0
Trading Account Assets .....	0.0
Federal Funds Sold and Repurchase Agreements .....	0.0
Treasury and Agency Securities .....	0.0
Municipal Securities .....	10.0
Other Securities .....	15.0
Construction and Development Loans .....	38.2
Nonresidential Real Estate Loans .....	17.6
Multifamily Real Estate Loans .....	10.8
1—4 Family Closed-End First Liens .....	19.4
1—4 Family Closed-End Junior Liens .....	41.0
Revolving Home Equity Loans .....	41.0
Agricultural Real Estate Loans .....	19.7
Agricultural Loans, excluding outstanding loans under the Paycheck Protection Program, as described in §327.17 and this appendix .....	11.8
Commercial and Industrial Loans, excluding outstanding loans under the Paycheck Protection Program, described in §327.17 and this appendix .....	21.5
Credit Card Loans .....	18.3
Other Consumer Loans .....	18.3
All Other Loans, excluding outstanding loans under the Paycheck Protection Program, described in §327.17 and this appendix .....	51.0
Other Assets .....	75.0

**Secured Liabilities at Failure**

Federal Home Loan Bank advances, secured federal funds purchased and repurchase agreements are assumed to be fully secured. Foreign deposits are treated as

fully secured because of the potential for ring fencing.  
Exclude total outstanding borrowings from the Federal Reserve Banks under the Paycheck Protection Program Liquidity Facility.

**Loss Severity Ratio Calculation**

The FDIC's loss given failure (LGD) is calculated as:

$$LGD = \frac{InsuredDeposits_{Failure}}{DomesticDeposits_{Failure}} \times (DomesticDeposits_{Failure} - RecoveryValueofAssets_{Failure} + SecuredLiabilities_{Failure})$$

An end-of-quarter loss severity ratio is LGD divided by total domestic deposits at quarter-end and the loss severity measure for the scorecard is an average of end-of-period loss severity ratios for three most recent quarters.

(b) [Reserved]

**III. Mitigating the Effects of Loans Provided Under the Paycheck Protection Program and Assets Purchased Under the Money Market Mutual Fund Liquidity Facility on the Unsecured Adjustment, Depository Institution Debt Adjustment, and the Brokered Deposit Adjustment to an IDI's Assessment Rate**

**TABLE E.5—EXCLUSIONS FROM ADJUSTMENTS TO THE INITIAL BASE ASSESSMENT RATE**

Adjustment	Calculation	Exclusion
Unsecured debt adjustment .....	The unsecured debt adjustment shall be determined as the sum of the initial base assessment rate plus 40 basis points; that sum shall be multiplied by the ratio of an insured depository institution's long-term unsecured debt to its assessment base. The amount of the reduction in the assessment rate due to the adjustment is equal to the dollar amount of the adjustment divided by the amount of the assessment base.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.
Depository institution debt adjustment.	An insured depository institution shall pay a 50 basis point adjustment on the amount of unsecured debt it holds that was issued by another insured depository institution to the extent that such debt exceeds 3 percent of the institution's Tier 1 capital. This amount is divided by the institution's assessment base. The amount of long-term unsecured debt issued by another insured depository institution shall be calculated using the same valuation methodology used to calculate the amount of such debt for reporting on the asset side of the balance sheets.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.
Brokered deposit adjustment .....	The brokered deposit adjustment shall be determined by multiplying 25 basis points by the ratio of the difference between an insured depository institution's brokered deposits and 10 percent of its domestic deposits to its assessment base.	Exclude from the assessment base the outstanding balance of loans provided under the Paycheck Protection Program and the quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility.

**IV. Mitigating the Effects on the Assessment Base Attributable to Loans Provided Under the Paycheck Protection Program and Participation in the Money Market Mutual Fund Liquidity Facility**

Total Assessment Amount Due = Total Assessment Amount LESS: (SUM (Outstanding balance of loans provided under the Paycheck Protection Program and quarterly average amount of assets purchased under the Money Market Mutual Fund Liquidity Facility) \* Total Base Assessment Rate)

Federal Deposit Insurance Corporation.  
By order of the Board of Directors.  
Dated at Washington, DC, on June 22, 2020.

**James P. Sheesley,**  
*Acting Assistant Executive Secretary.*

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**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**Truth in Lending (Regulation Z); Determining "Underserved" Areas Using Home Mortgage Disclosure Act Data**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interpretive rule.

**SUMMARY:** This interpretive rule construes the Bureau of Consumer Financial Protection's (Bureau's) Regulation Z, which implements the Truth in Lending Act (TILA). The Bureau produces annually a list of rural and underserved counties and areas that is used in applying various Regulation Z provisions, such as the exemption from the requirement to establish an escrow account for a higher-priced mortgage loan and the ability to originate balloon-payment qualified

mortgages. Regulation Z states that an area is "underserved" during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in Regulation Z, secured by first liens on properties in the county five or more times. The official commentary provides an interpretation relating to this standard that refers to certain data elements from the previous version of the Bureau's Regulation C, which implements HMDA, that were modified or eliminated in the 2015 amendments to Regulation C. The Bureau is issuing this interpretive rule to supersede that now outdated interpretation, specifically by describing below the HMDA data that will instead be used in determining that an area is "underserved."

**DATES:** This interpretive rule is effective on June 26, 2020.