B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under § 1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under § 1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a § 1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under § 1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under § 1026.3(b) and the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with § 1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under § 1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of § 1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See § 1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under § 1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under § 1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under § 1026.2(a)(19), the exemption in § 1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under § 1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011, to an amount in excess of $50,000, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011, to an amount in excess of $50,000, the account ceases to be exempt under § 1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under § 1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under § 1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under § 1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Brian Shearer,

Senior Advisor, Consumer Financial Protection Bureau.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AF93

Special Assessment Pursuant to Systemic Risk Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule to implement a special assessment to recover the loss to the Deposit Insurance Fund (DIF or Fund) arising from the protection of uninsured depositors following the closures of Silicon Valley Bank, Santa Clara, CA, and Signature Bank, New York, NY. The FDIC will collect the $16.3 billion special assessment at a quarterly rate of 3.36 basis points, multiplied by an insured depository institution's (IDI) estimated uninsured deposits, reported for the quarter that ended December 31, 2022, adjusted to exclude the first $5 billion in estimated uninsured deposits from the IDI, or for IDIs that are part of a holding company with one or more subsidiary IDIs, at the banking organization level. The FDIC will collect the special assessment over eight quarterly assessment periods, although the collection period may change due to updates to the estimated loss pursuant to the systemic risk determination or if assessments collected change due to corrective amendments to the amount of uninsured deposits reported for the December 31, 2022, reporting period.

DATES: The final rule is effective on April 1, 2024, with the first collection for the special assessment reflected on the invoice for the first quarterly assessment period of 2024 (*i.e.,* January 1 through March 31, 2024), with a payment date of June 28, 2024.

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I. Background

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

On March 10, 2023, Silicon Valley Bank was closed by the California Department of Financial Protection and Innovation, followed by the closure of Signature Bank by the New York State Department of Financial Services. The FDIC was appointed as the receiver for both institutions.[1]

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

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

On March 12 and 13, 2023, the FDIC transferred deposits—both insured and uninsured—and substantially all assets of these banks to newly created, full-service FDIC-operated bridge banks, Silicon Valley Bridge Bank, N.A. (Silicon Valley Bridge Bank) and Signature Bridge Bank, N.A. (Signature Bridge Bank), in an action designed to protect depositors of these banks.[4] The transfer of deposits was completed under the systemic risk exception declared on March 12, 2023.

On March 19, 2023, the FDIC announced it entered into a purchase and assumption agreement for substantially all deposits and certain loan portfolios of Signature Bridge Bank.[5] On March 27, 2023, the FDIC entered into a purchase and assumption agreement with First-Citizens Bank & Trust Company (First Citizens), with loss-sharing provided on the commercial loans it purchased from Silicon Valley Bridge Bank.[6]

B. Legal Authority and Policy Objectives

Under section 13(c)(4)(G) of the FDI Act, the loss to the DIF arising from the use of a systemic risk exception must be recovered from one or more special assessments on IDIs, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the FDIC determines to be appropriate.[7] As required by the FDI Act, the special assessment, detailed below, is intended and designed to recover the losses to the DIF incurred as the result of the actions taken by the FDIC to protect the uninsured depositors of Silicon Valley Bank and Signature Bank following a determination of systemic risk.[8]

Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses to the DIF as a result of a systemic risk determination. As detailed in the

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

[2] 12 U.S.C. 1823(c)(4)(G). As used in 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 FDI Act, 12 U.S.C. 1813(c)(2).

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

[4] A bridge bank is a chartered national bank that operates under a board appointed by the FDIC. It assumes the deposits and certain other liabilities and purchases certain assets of a failed bank. The bridge bank structure is designed to ''bridge'' the gap between the failure of a bank and the time when the FDIC can stabilize the institution and implement an orderly resolution.

[5] FDIC PR–21–2023. ''Subsidiary of New York Community Bancorp, Inc. to Assume Deposits of Signature Bridge Bank, N.A., From the FDIC.'' March 19, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23021.html.* The purchase and assumption agreement did not include approximately $4 billion of deposits related to the former Signature Bank's digital-asset banking business. The FDIC announced that it would provide these deposits directly to customers whose accounts are associated with the digital-asset banking business.

[6] FDIC PR–23–2023. ''First-Citizens Bank & Trust Company, Raleigh, NC, to Assume All Deposits and Loans of Silicon Valley Bridge Bank, N.A., From the FDIC.'' March 26, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23023.html.*

[7] 12 U.S.C. 1823(c)(4)(G)(ii)(I).

[8] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

sections that follow, and as required by section 13(c)(4)(G) of the FDI Act, the FDIC considered the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, economic conditions, the effects on the industry, and such other factors as the FDIC deemed appropriate and relevant to the action taken or assistance provided.[9]

C. The Proposed Rule

On May 11, 2023, the Board approved a notice of proposed rulemaking (the proposed rule, or proposal) to implement a special assessment, as required by the FDI Act, to recover the loss to the DIF arising from the protection of uninsured depositors following the closures of Silicon Valley Bank and Signature Bank.[10] The FDIC proposed to collect a special assessment that would be approximately equal to the losses attributable to the protection of uninsured depositors at these two failed banks, which were estimated to total $15.8 billion.

The FDIC proposed an annual special assessment rate that would be derived by dividing the loss estimate attributable to the protection of uninsured depositors by the assessment base calculated for all IDIs subject to the special assessment. The proposed assessment base (special assessment base) was equal to an IDI's estimated uninsured deposits as reported in the Consolidated Reports of Condition and Income (Call Report) or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) as of December 31, 2022, adjusted to exclude the first $5 billion of uninsured deposits at the banking organization level.[11]

In response to the proposal, the FDIC received 312 comment letters from depository institutions, depository institution holding companies, trade associations, members of Congress, and other interested parties.[12] As further detailed below, the majority of commenters expressed support for the proposal and for the scope of application of the proposed rule, including the $5 billion deduction applied to the special assessment base. Other comment letters suggested the exclusion, or different treatment, of certain types of uninsured deposits included in the special assessment base, different reporting dates of estimated uninsured deposits used to calculate the assessment base, or adjustment of the $5 billion deduction from the special assessment base. Commenters additionally discussed a range of other matters that are addressed in the relevant sections below.

II. The Final Rule

A. Description of the Final Rule

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

The special assessment implemented through this final rule will recover the loss to the DIF arising from the protection of uninsured depositors following the closures of Silicon Valley Bank and Signature Bank. The total amount collected for the special assessment will be approximately equal to the estimated losses attributable to the protection of uninsured depositors at these two failed banks, which are currently estimated to total $16.3 billion.

The majority of commenters expressed support for the proposal and for the scope of application, including the $5 billion deduction applied to the assessment base for the special assessment. While some commenters broadly objected to the collection of a special assessment, the FDIC is required by the FDI Act to take this action in connection with the systemic risk determination announced on March 12, 2023.[13] In the FDIC's view, the final rule, consistent with the proposed rule, reflects an appropriate balancing of the goal of applying the special assessment to the types of entities that benefited the most from the protection of uninsured depositors provided under the determination of systemic risk while ensuring equitable, transparent, and consistent treatment. The final rule, consistent with the proposed rule, also allows for payments to be collected over an extended period of time in order to reduce the likelihood of overcollecting and to mitigate the liquidity effects of the special assessment by requiring smaller, consistent quarterly payments.

B. Estimated Special Assessment Amount

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

At Signature Bank, for which 67 percent of deposits were uninsured at the time of failure, the portion of the total estimated loss of $0.9 billion that is attributable to the protection of uninsured depositors is $0.6 billion. The cost estimate for the sale of the Signature Bridge Bank to New York Community Bancorp decreased following the issuance of the proposal from $2.4 billion to approximately $0.9 billion. The decline in the cost estimate was primarily attributable to recoveries from assets in receivership that were higher than previously estimated offset, in part, by higher costs of liabilities assumed by the receivership.

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

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

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

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

[10] *See* 88 FR 32694 (May 22, 2023).

[11] As used in this final rule, the term ''banking organization'' includes IDIs that are not subsidiaries of a holding company as well as holding companies with one or more subsidiary IDIs.

[12] *See* comments on the proposal, available at *https://www.fdic.gov/resources/regulations/federal-register-publications/2023/2023-special-assessments-systemic-risk-determination-3064-af93.html.*

[13] 12 U.S.C. 1823(c)(4)(G).

Comments Received on the Estimated Special Assessment Amount

One commenter suggested that the special assessment should recover the entire amount of estimated losses. As proposed, and as required by statute, the FDIC will recover through the special assessment the $16.3 billion estimated loss incurred as a result of the actions taken by the FDIC pursuant to the determination of systemic risk, which, in the case of the determination pursuant to the closures of Silicon Valley Bank and Signature Bank, was to protect uninsured depositors.

C. Rate for the Special Assessment

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

Under the final rule, the FDIC will impose a special assessment rate equal to approximately 13.4 basis points annually, an increase from the 12.5 basis point annual rate in the proposal.[14] Amendments to reported estimated uninsured deposits filed since the adoption of the proposed rule have resulted in a lower total assessment base. The decline in the total assessment base combined with the increase in the cost estimate have resulted in a higher annual rate relative to the proposal.[15] As of November 2, 2023, the total assessment base was $6.0 trillion. The special assessment rate will not change following the date of adoption of this final rule through the duration of the initial eight-quarter collection period.

The resulting quarterly rate is 3.36 basis points, or an annual rate of approximately 13.4 basis points. Over the initial eight-quarter collection period, the FDIC projects that it will collect an amount sufficient to recover estimated losses attributable to the protection of uninsured depositors of Silicon Valley Bank and Signature Bank, which are currently estimated to total $16.3 billion, totaling approximately $2.0 billion per quarter.

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

Under the proposal, each IDI's assessment base for the special assessment would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 for the quarter that ended December 31, 2022, after applying the $5 billion deduction.[16] As a result of this deduction, most small IDIs and IDIs that are part of a small banking organization would not pay anything towards the special assessment. The special assessment would not be applicable to any banking organizations with total assets under $5 billion.

1. Comments Received on the Calculation of the Special Assessment

The majority of commenters stated that community banks should be exempt from the special assessment. The FDIC received 63 comments related to the calculation of the special assessment base and the scope of application for the special assessment, or the calculation of the special assessment rate. Some of these commenters stated that certain groups of banks should be exempt from or pay less of the special assessment, while one commenter recommended that all banks be subject to the special assessment.[17] One commenter said that U.S. global systemically important banks (GSIBs) did not benefit from the actions taken under the determination of systemic risk and that although GSIBs served as a source of strength to the banking sector, they are responsible for a disproportionate share of the special assessment.

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

Several commenters recommended alternative measures for the special assessment base, including total assets, total deposits, uninsured deposits as a percentage of total deposits, an institution's regular risk-based deposit insurance assessment base, or to otherwise take a more risk-based approach to calculating the special assessment base. One commenter recommended a more detailed approach, stating that the special assessment base should be the entire deposit base, or alternatively the entire assessment base applied for regular quarterly deposit insurance assessments, for the largest institutions and uninsured deposits for all other banks, and that the rate for the special assessment should incorporate an adjusted tangible equity capital ratio and a scalar to factor in interest rate risk.

With the rapid collapse of Silicon Valley Bank and Signature Bank in the space of 48 hours, concerns arose that risk could spread more widely to other institutions and that the financial system as a whole could be placed at risk. Shortly after Silicon Valley Bank was closed on March 10, 2023, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds.

The extent to which IDIs rely on uninsured deposits for funding varies significantly. Uninsured deposits were used to fund nearly three-quarters of assets at Silicon Valley Bank and Signature Bank. On average, the largest banking organizations by asset size fund a larger share of assets with uninsured deposits, as depicted in Table 1 below, based on data as of December 31, 2022, the most recently available date reflecting the amount of uninsured deposits in each institution near or at the time the determination of systemic risk was made. Among banking organizations that report uninsured deposits, those with total assets between

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

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

[16] Estimated uninsured deposits are reported in Memoranda Item 2 on Schedule RC–O, Other Data for Deposit Insurance Assessments of both the Call Report and FFIEC 002. IDIs with less than $1 billion in total assets as of June 30, 2021, were not required to report the estimated amount of uninsured deposits on the Call Report for December 31, 2022. Therefore, for IDIs that had less than $1 billion in total assets as of June 30, 2021, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

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

$1 billion and $5 billion are generally the least reliant on uninsured deposits for funding, with uninsured deposits averaging 27.9 percent of assets, compared with the largest banking organizations with total assets greater than $250 billion, which had uninsured deposits that averaged 35.1 percent of assets.

TABLE 1—AVERAGE SHARE OF ASSETS FUNDED BY UNINSURED DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE, BASED ON DATA FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

[Percent]

Asset size of banking organization	Average share of assets funded by uninsured deposits [percent]
$1 to $5 Billion	27.9
$5 to $10 Billion	28.9
$10 to $50 Billion	32.4
$50 to $250 Billion	33.3
Greater than $250 Billion	35.1

[1] Table reflects data for the December 31, 2022, reporting period, and incorporates amendments, mergers, acquisitions and failures through November 2, 2023.

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

TABLE 2—UNINSURED DEPOSITS AS A PERCENTAGE OF TOTAL DOMESTIC DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE, BASED ON DATA FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

[Percent]

Asset Size of banking organization	Ratio of uninsured deposits to total domestic deposits [percent]
$1 to $5 Billion	33.0
$5 to $10 Billion	35.0
$10 to $50 Billion	40.3
$50 to $250 Billion	42.8
Greater than $250 Billion	50.4

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

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

As of March 31, 2023, banks in all asset size groups experienced quarterly declines in uninsured deposit balances, but these declines were particularly severe and widespread among banks between $50 billion and $250 billion in total assets. In addition, between December 31, 2022, and March 31, 2023, the eight U.S. GSIBs reported a weighted average decline in uninsured deposits of 2.1 percent, albeit slower than the industry average of approximately eight percent. However, changes in uninsured deposit balances over this time period varied widely for the GSIBs. Two of the eight GSIBs experienced growth in uninsured deposits of 2.6 percent and 2.0 percent over this period while the other six GSIBs experienced declines, some significant, ranging between less than two percent to nearly 17 percent.

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

In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs but for the determination of systemic risk. Indeed, shortly after Silicon Valley Bank was closed, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The failure of Silicon Valley Bank and the impending failure of Signature Bank raised concerns that, absent immediate assistance for uninsured depositors, there could be negative knock-on consequences for similarly situated institutions, depositors and the financial system more broadly. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. With the $5 billion deduction from the assessment base, the banks that benefited the most—banks of larger asset sizes and that hold greater amounts of uninsured deposits—will be responsible for paying the special assessment.

Second, the $5 billion deduction from the assessment base results in most small IDIs and IDIs that are part of a small banking organization not paying anything towards the special assessment. The special assessment is not applicable to any banking organizations with total assets under $5 billion.[18]

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

In implementing special assessments, the FDI Act requires the FDIC to consider the types of entities that benefit from any action taken or assistance provided pursuant to the determination of systemic risk.[19] The assessment base of estimated uninsured deposits with the $5 billion deduction ensures that the banks that benefited most from the assistance provided under the systemic risk determination will be charged a special assessment to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying a higher special assessment. For these reasons, the FDIC is adopting the proposed exclusion of the first $5 billion from estimated uninsured deposits from the assessment base for the special assessment, without change.

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

Under the proposal, each IDI's assessment base for the special assessment would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 for the December 31, 2022, reporting period, after applying the $5 billion deduction. The FDIC sought comment on whether the special assessment base should be equal to estimated uninsured deposits reported as of December 31, 2022, or reported as of some other date, and the reasons for using a different date.

Two commenters expressed support for the proposed December 31, 2022, reporting date for uninsured deposits to determine the special assessment base. Thirteen commenters, including two trade associations and three letters from members of Congress, requested that estimated uninsured deposits reported as of a more recent date than December 31, 2022, be used to calculate the assessment base for the special assessment. Most of these commenters suggested an alternative date, such as March 31, 2023, or June 30, 2023, while others suggested that the assessment base should reference the estimated uninsured deposits reported as of each quarter-end during the collection period or did not specify a date. Some commenters that supported a later reporting date said that institutions, particularly mid-sized and regional banks, that reported declines in uninsured deposit balances after December 31, 2022, should not be charged a special assessment on uninsured deposit balances that they no longer hold or that are now insured.

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

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

Under the proposed rule, the assessment base for the special assessment would be adjusted to exclude the first $5 billion from estimated uninsured deposits reported as of December 31, 2022, applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs. The FDIC sought comment on whether it should consider an exemption for specific types of deposits from the special assessment base, and on what basis.

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

a. Collateralized Deposits

The FDIC received 25 comments requesting that the FDIC either exclude, or provide a different treatment for, collateralized deposits in the calculation of the special assessment base. In particular, commenters requested such treatment for the uninsured portion of public deposits, or deposits of states and political subdivisions that are secured or collateralized as required under state law (also referred to as preferred deposits). These commenters reasoned that collateralized deposits are more stable than other uninsured deposits because they are secured, and therefore pose little risk to the DIF. Seven of these commenters requested the exclusion of additional types of collateralized deposits, including collateralized operational deposits or trust-related deposits that are required to be collateralized under federal or state law (*e.g.,* fiduciary funds awaiting investment or distribution), from the special assessment base.

Banks report preferred deposits annually for the December 31 Call Report date, but they do not report other

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

[19] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

types of collateralized deposits such as those mentioned by the commenters.[20] Given that preferred deposits represent only a subset of collateralized deposits, providing an exclusion or different treatment for this subset of deposits would result in preferential treatment for this subset of collateralized deposits on the sole basis that these are the only type of collateralized deposits for which data were collected.

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

b. Custody Bank Adjustments

The FDIC received one joint comment from three custody banks stating that the special assessment base should be adjusted to mitigate the disproportionate and unwarranted impact on the custody bank business model and on sound asset-liability and risk management practices. The commenters proposed various adjustments: that the FDIC should allow custody banks to exclude domestic deposit balances placed with the Federal Reserve from the measure of estimated uninsured deposits used to calculate the assessment base for the special assessment; that the FDIC should allow custody banks to deduct 75 percent of the domestic operational deposits[21] from the assessment base for the special assessment; or that the FDIC should retain the regular risk-based assessment methodology for the special assessment while maintaining the exclusion of the first $5 billion in estimated uninsured deposits.

The FDIC disagrees. The banks that benefited most from the assistance provided under the systemic risk determination were large banks and those that held greater amounts of uninsured deposits, regardless of the assets that those deposits were used to fund. Custody banks, especially those whose primary business is fiduciary and custodial and safekeeping, hold large amounts of uninsured deposits and many of those uninsured deposits are from depositors with large deposit balances. Further, while certain deposits held by custody banks, such as operational deposits, may be more stable than non-operational funding, in the event of idiosyncratic stress, counterparties likely would reduce the amount of their operational deposits.[22] The adjustments proposed in the joint comment letter would result in custody banks paying significantly lower amounts of the special assessment despite holding significant amounts of uninsured deposits.

c. Intercompany Deposits

The FDIC received 12 comments requesting the exclusion of, or different treatment for, intercompany deposits in the calculation of the special assessment base. Commenters argued that intercompany deposits, such as the deposits of subsidiaries that are not IDIs, deposits of other affiliates such as sister companies that are not IDIs, or deposits of a parent holding company of the IDI, are stable and present minimal run risk because entities within the banking organization's structure are unlikely to withdraw funds in a crisis. Further, some commenters argued that intercompany deposits would not result in a loss to the DIF because they would not be provided deposit insurance coverage or would not need deposit insurance coverage in the event of the bank's failure. Some commenters noted that the methodology for including intercompany deposits in the assessment base for the special assessment may lead to double-counting certain deposits at the banking organization level for banking organizations with multiple IDIs, to the extent an IDI's deposits with its affiliates are funded with uninsured deposits it has taken from a depositor.

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

Deposits are the most common funding source for many banks. Depositors and other creditors are often differentiated by their stability and customer profile characteristics. While some uninsured deposit relationships remain stable when a bank is in good condition, such relationships might become less stable due to their uninsured status if a bank experiences financial problems or if the banking industry experiences stress events.

Any revisions to the methodology for calculating the special assessment base, such as excluding or adjusting for certain types of uninsured deposits, would change the allocation of the special assessment, but the FDIC is required by statute to recover the full amount of the losses to the DIF incurred as the result of the systemic risk determination. As a result, any exclusion for a type of uninsured deposits from the special assessment base would reduce the amount of the special assessment for banking organizations that hold those excluded, uninsured deposits, and increase the assessment burden for all other banks holding other types of uninsured deposits. For this reason, and for the reasons described above, and consistent with the proposal, the FDIC is not excluding any particular type of uninsured deposits from the assessment base for the special assessment.

4. Final Assessment Base for the Special Assessment

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

[20] Call Report Schedule RC–E, Part I, Memorandum item 1.e. requires reporting of preferred deposits (uninsured deposits of states and political subdivisions in the U.S. which are secured or collateralized as required under state law).

[21] The commenter defined operational deposits as residual cash custody banks hold for their clients in deposit accounts to facilitate day-to-day transactional activities related to client investment assets.

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

deposits paying a higher special assessment.

Consistent with the proposal, each IDI's assessment base for the special assessment will be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 as of December 31, 2022, after applying the $5 billion deduction. The deduction of the first $5 billion from estimated uninsured deposits in the assessment base for the special assessment is applicable either to the IDI, if an IDI is not a subsidiary of a holding company, or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs.[23]

For a banking organization that has more than one subsidiary IDI, the assessment base for the special assessment is equal to the IDI's total estimated uninsured deposits reported for the quarter that ended December 31, 2022, less its share of the $5 billion deduction, which is based on its share of total estimated uninsured deposits held by all IDI affiliates in the banking organization.[24] Table 3 provides an example of the calculation of the special assessment for a banking organization with three subsidiary IDIs.

TABLE 3—CALCULATION OF THE SPECIAL ASSESSMENT WITHIN A BANKING ORGANIZATION WITH MORE THAN ONE INSURED DEPOSITORY INSTITUTION SUBSIDIARY

[Dollar amounts in millions]

	Column A	Column B	Column C	Column D	Column E
	Estimated uninsured deposits as reported as of December 31, 2022	IDI share of banking organization estimated uninsured deposits [percent]	IDI Share of $5 billion deduction (Column B * $5 billion)	Assessment base for special assessment (Column A − Column C)	IDI share of special assessment (Column D * 26.9 basis points)/ current loss estimate [percent]
IDI A	$50,000	50	$2,500	$47,500	0.79
IDI B	40,000	40	2,000	38,000	0.63
IDI C	10,000	10	500	9,500	0.16

Based on data reported for the quarter that ended December 31, 2022, and as illustrated in Table 4 below, the FDIC estimates that 114 banking organizations, which include IDIs that are not subsidiaries of a holding company and holding companies with one or more subsidiary IDIs and which comprise 81.3 percent of industry assets, will be subject to the special assessment, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion would pay the special assessment, based on data for the December 31, 2022, reporting period.[25]

TABLE 4—BANKING ORGANIZATIONS REQUIRED TO PAY SPECIAL ASSESSMENT, BASED ON DATA REPORTED FOR THE DECEMBER 31, 2022, REPORTING PERIOD [1]

Asset size of banking organization	Number of banking organizations required to pay special assessment	Percentage of all banking organizations in asset size category required to pay special assessment [percent]	Share of special assessment [percent]	Share of industry assets [percent]
Greater than $50 billion	48	1.1	95.3	74.5
Between $5 and $50 billion	66	1.5	4.7	6.8
Under $5 billion	0	0.0	0.0	0.0
Total	114	2.6	100.0	81.3

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

E. Prior Period Amendments

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

The FDIC is finalizing this aspect of the rule, as proposed, but in calculating the special assessment, will apply any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's

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

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

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

review of an institution's reporting methodology (as described below).

Following the issuance of the proposed rule, the FDIC observed that some IDIs were reporting or filing amendments to the reporting of estimated uninsured deposits for the December 31, 2022, reporting period in a manner that is inconsistent with the instructions to the Call Report. For example, some institutions incorrectly reduced the reported amount of uninsured deposits to the extent that they are collateralized by pledged assets; this is incorrect because in and of itself, the existence of collateral has no bearing on the portion of a deposit that is covered by federal deposit insurance. Additionally, some institutions incorrectly reduced the amount of uninsured deposits reported on Schedule RC–O by excluding certain intercompany deposit balances.

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

On July 24, 2023, the FDIC issued a Financial Institution Letter (FIL) on Estimated Uninsured Deposits Reporting Expectations, reiterating longstanding instructions and stating that each IDI is responsible for the accuracy of the data reported in its Call Report and for filing amendments as necessary to ensure Call Report accuracy.[26] The FIL stated that, consistent with the requirement to file accurate Call Reports, IDIs that incorrectly reported uninsured deposits should amend their Call Reports by making the appropriate changes to the data and submitting the revised data file.

As a general matter, the amount of estimated uninsured deposits reported on the Call Report is monitored as one of many indicators of safety and soundness, and its accuracy, as with all items collected on the Call Report, is of the utmost importance. The reported amount of estimated uninsured deposits is also used to determine the amount of estimated insured deposits in calculating the DIF reserve ratio, which is the ratio of the DIF balance to all insured deposits.[27]

The FDIC is conducting a review (Assessment Reporting Review) of the reporting methodology for estimated uninsured deposits and related items on the Call Report because of the importance of these items as indicators of safety and soundness.[28] The Assessment Reporting Review may result in amendments to uninsured deposits and related items reported on the Call Report if the FDIC determines that an institution is not reporting these items in accordance with the instructions. Given the planned Assessment Reporting Review, in calculating this special assessment this final rule applies any amendments made by IDIs to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

Under the final rule, the special assessment rate and each banking organization's special assessment base has been calculated using estimated uninsured deposits for the December 31, 2022, reporting period as reported on November 2, 2023.[29] Amendments made to an institution's December 31, 2022, Call Report through November 2, 2023, have been accounted for in the calculations, as proposed. In addition, under the final rule, certain amendments filed after November 2, 2023, will affect the calculation of an institution's special assessment base, as described below.

In particular, if, as part of the FDIC's Assessment Reporting Review of an institution's reporting methodology (described above), the FDIC finds that, as of November 2, 2023, an institution was not reporting uninsured deposits for the December 31, 2022, reporting period in accordance with the Call Report instructions, and the institution files a corrective amendment as a result of the FDIC's review after November 2, 2023, the FDIC will adjust the special assessment base based on such corrective amendment for such institution, and any affiliates, as applicable, for all collection periods. Additionally, if an institution files an amendment to the reporting of estimated uninsured deposits for the December 31, 2022, reporting period after November 2, 2023, and the FDIC finds that such amendment brings the reporting of uninsured deposits into compliance with the Call Report instructions, the FDIC will adjust the special assessment base based on such corrective amendment for such institution, and any affiliates, as applicable, for all collection periods. If such institution is part of a banking organization with multiple subsidiary IDIs, such corrective amendments will also affect the distribution of the $5 billion deduction from the banking organization's assessment base for all collection periods.

Prior period amendments filed after November 2, 2023, that are not the result of corrections to errors or misreporting will not affect an institution's special assessment base. Modifications to an institution's special assessment base will take effect beginning the collection quarter following the date of amendment, and the FDIC will apply such modifications retroactively to the first quarterly collection period, as applicable.

Any retroactive special assessment amount due will be included, in full, on the invoice for the quarter following the date of the amendment. If the amendment resulted in a downward revision of the assessment base for the special assessment, the banking organization will be credited the amount the institution overpaid, with interest, and such amount, including interest, will be applied to any remaining amount of the special assessment due from the banking organization beginning in the quarter following the date of the amendment. In the unlikely event a credit remains after the special assessment collection period has ended, the excess credit amount will be refunded to the banking organization, with interest. The FDIC will pay interest on credited amounts resulting from amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's Assessment Reporting Review of an institution's reporting methodology and will collect interest on any retroactive special assessment amounts due to the FDIC as a result of such amendments.[30]

[26] FDIC Financial Institution Letter (FIL 37–2023), Estimated Uninsured Deposits Reporting Expectations. *https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html.*

[27] *See* section 3(y)(3) of the FDI Act, 12 U.S.C. 1813(y)(3).

[28] Consistent with the FDIC's practice of conducting reviews under Section 7(b)(4) of the FDI Act to confirm the correctness of any assessment, the FDIC will review an institution's reporting methodology for estimated uninsured deposits and related items. *See* 12 U.S.C. 1817(b)(4).

[29] As proposed, the assessment base and rate would be calculated as of the date the final rule is adopted; however, under the final rule, this is calculated on November 2, 2023, shortly before the date of adoption, for operational and administrative reasons.

[30] Interest payments collected will be applied to any remaining amount of the special assessment

Continued

F. Initial Collection Period for the Special Assessment

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

1. Comments Received on the Initial Collection Period

The FDIC received three comments on the length of the initial collection period, with one commenter requesting a longer collection period to help with cash flow, one commenter requesting a shorter collection period given the ability of the banking industry to repay the DIF for the special assessment as quickly as possible, and one commenter suggesting that banks should have the option to fully fund obligations prior to the end of the proposed collection period.

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

2. Adjustments to the Loss Estimate, Amendments to the Reported Amount of Estimated Uninsured Deposits and the Initial Collection Period for the Special Assessment

The estimated loss attributable to the protection of uninsured depositors pursuant to the systemic risk determination is currently estimated to total $16.3 billion. However, loss estimates for failed banks are periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred. As proposed, under the final rule, the FDIC will review and consider any revisions to the loss estimate each quarter of the collection period. Given the planned review of the reporting methodology for estimated uninsured deposits, in calculating the special assessment, the final rule will additionally apply any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

If, prior to the end of the eight-quarter collection period, the FDIC expects the loss to be lower than the amount it expects to collect from the special assessment, due to revisions to the loss estimate or due to amendments applied to estimated uninsured deposits, the FDIC will cease collection of the special assessment before the end of the initial eight-quarter collection period, in the quarter after it has collected enough to recover actual or estimated losses.[32] The FDIC will provide notice of any cessation of collections at least 30 days before the next payment is due.

G. Extended Special Assessment Collection Period

Under the proposal, if, at the end of the eight-quarter collection period, the estimated or actual loss exceeds the amount collected, the FDIC would extend the collection period over one or more quarters as needed in order to collect the difference between the amount collected and the estimated or actual loss at the end of the eight-quarter collection period, (the shortfall amount), after providing notice of at least 30 days before the first payment of any extended special assessment is due.

The FDIC did not receive any comments on the extended special assessment collection period, and is finalizing as proposed, while, in calculating the special assessment, applying any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC's review of an institution's reporting methodology.

In the event that an extended collection period is needed, the FDIC will collect the shortfall amount on a quarterly basis. The assessment rate for any extended special assessment will equal the shortfall amount divided by the total amount of uninsured deposits less the $5 billion deduction for each banking organization subject to the special assessment, adjusted for failures or amendments to correct the reporting of estimated uninsured deposits resulting from the FDIC's Assessment Reporting Review of an institution's reporting methodology that occurred before or during the initial eight-quarter collection period. In the interest of consistency and predictability, the quarterly rate will not exceed the 3.36 basis point quarterly special assessment rate applied during the initial eight-quarter collection period, and such extended special assessment will be collected for the minimum number of quarters needed to recover the shortfall amount at such quarterly rate.

The assessment base for such extended special assessment will be as described above, based on estimated uninsured deposits reported as of November 2, 2023, for the December 31, 2022, reporting period, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology, with a $5 billion deduction for each banking organization.

H. One-Time Final Shortfall Special Assessment

The exact amount of losses will be determined when the FDIC terminates the receiverships. Receiverships are terminated once the FDIC has completed the disposition of the receivership's assets and has resolved all obligations, claims, and other impediments. The termination of the receiverships to which this special assessment applies may occur years after the initial eight-quarter collection period and any extended collection period.

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

Comments Received on the One-Time Final Shortfall Special Assessment

The FDIC received four comments on the one-time final shortfall special assessment. One supported the proposed calculation. One commenter recommended that if the amount collected exceeds the final loss estimate,

while the amount of interest paid by the FDIC will be added to the amount required to recover estimated losses.

[31] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[32] Amendments to the reporting of estimated uninsured deposits may result in a higher amount collected, but the increase may not be of a magnitude large enough to cease collection early.

that the excess collected should be credited against future assessments. One commenter requested that the assessment base methodology be adjusted to incorporate a risk-based component. One commenter said that the one-time final shortfall special assessment should be calculated at the end of a recommended one-year payment period.

The FDIC would only collect a one-time final shortfall special assessment if the final loss amount at the termination of the receiverships is not determined until after the initial collection period and any extended collection period, and if losses at the termination of the receiverships exceed the amount collected through such special assessment.

For the reasons described above, the FDIC is adopting the one-time final shortfall special assessment as proposed, while, in calculating the special assessment, applying any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, FDIC's review of an institution's reporting methodology.

The assessment base for such one-time final shortfall special assessment will be as described above, based on estimated uninsured deposits reported as of November 2, 2023, for the December 31, 2022, reporting period, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology, with a $5 billion deduction for each banking organization.

The FDIC will determine the assessment rate for the one-time final shortfall special assessment based on the amount needed to recover the final shortfall amount and the total amount of estimated uninsured deposits reported for the quarter that ended December 31, 2022, adjusted for amendments to correct reporting resulting from the FDIC's review of an institution's reporting methodology up to the determination of the shortfall amount, after applying the $5 billion deduction.

The entire one-time final shortfall special assessment will be collected in one quarter so that there are no missed amounts due to amendments or failures and to streamline the operational impact on banking organizations. The FDIC will provide banking organizations notice of at least 45 days before payment of any one-time final shortfall special assessment is due and will consider the statutory factors, including economic conditions and the effects on the industry, in deciding on the timing of such payment.

The FDIC will notify each IDI subject to a one-time final shortfall special assessment of the final shortfall special assessment rate and its share of the final shortfall assessment no later than 15 days before payment is due. The notice will be included in the IDI's invoice for its regular quarterly deposit insurance assessment.

I. Collection of Special Assessment and Any Shortfall Special Assessment

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

Comments Received on Communication of Loss Estimates

Two commenters requested that the FDIC communicate any revisions to the loss estimate and updates on the collection of the special assessment. To increase transparency and in response to comments on the proposal, the FDIC is clarifying that it plans to communicate any changes to the loss estimate, as applicable, and to provide updates on the collection of the special assessment to banking organizations subject to the special assessment. Such updates will be communicated primarily through quarterly assessment invoices issued to institutions subject to the special assessment. The FDIC also publishes estimated losses and other data on bank failures and assistance on its publicly available website.[33]

J. Payment Mechanism for the Special Assessment and Any Shortfall Special Assessment

Each IDI is required to take any actions necessary to allow the FDIC to debit its special assessment and any shortfall special assessment from the bank's designated deposit account used for payment of its regular assessment. Before the dates that payments are due, each IDI must ensure that sufficient U.S. dollar funds to pay its obligations are available in the designated account for direct debit by the FDIC. Failure to take any such action or to fund the account would constitute nonpayment of the special assessment. Penalties for nonpayment will be as provided for nonpayment of an IDI's regular assessment.[34]

K. Mergers, Consolidations, and Terminations of Deposit Insurance

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

Under the proposed rule, when the insured status of an IDI is terminated and the deposit liabilities of the IDI are not assumed by another IDI, the IDI whose insured status is terminating must, among other things, continue to pay assessments, including the special assessment, for the assessment periods that its deposits are insured, but not thereafter.[35]

When an IDI voluntarily terminates its deposit insurance under the FDI Act, under the proposal the IDI whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured.[36]

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

One commenter expressed concern that use of the December 31, 2022, reporting date ignores recent acquisition activity while another commenter requested clarification that the estimates in the proposed rule exclude the uninsured deposits that New York Community Bank assumed following its acquisition of Signature Bank in March 2023.[37] One commenter requested clarification of the point at which obligation to pay the special assessment would end if a bank were to voluntarily terminate its insured status during the collection period, noting that this is

[33] *See* FDIC BankFind Suite: Bank Failures & Assistance Data, available at: *https://banks.data.fdic.gov/explore/failures. See also* FDIC Failed Bank List, available at: *https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/.*

[34] *See* 12 CFR 327.3(c).

[35] *See* 12 CFR 327.6(c).

[36] *See* 12 CFR 327.6(c).

[37] FDIC PR–21–2023. ''Subsidiary of New York Community Bancorp, Inc. to Assume Deposits of Signature Bridge Bank, N.A., From the FDIC.'' March 19, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23021.html.*

relevant to when the special assessment is reflected under International Financial Reporting Standards (IFRS) accounting principles.

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

The FDIC is adopting as final the proposed provisions related to mergers, acquisitions, and terminations of deposit insurance, with two adjustments. First, in the event that the FDIC extends the collection period or imposes a one-time final shortfall assessment, each banking organization's assessment base will not be adjusted for mergers or failures that occurred after the adoption of this final rule or during the eight-quarter collection period. In the FDIC's view, each banking organization's assessment base reflects its relative benefit from the assistance provided under the systemic risk determination. This treatment would ensure that an acquiring bank's special assessment, and any special assessment assumed for an acquired bank, continues to reflect each banking organization's relative benefit from the assistance provided under the systemic risk determination, and would have the result that a banking organization subject to the special assessment that acquires another banking organization also subject to the special assessment would derive benefit from the $5 billion deduction for both special assessment payments. The FDIC is also clarifying that the special assessment base of the acquiring bank in a merger or consolidation that occurred prior to the March 12, 2023, determination of systemic risk would be adjusted to include the uninsured deposits of the acquired bank and would derive benefit of a single $5 billion deduction. Calculating the assessment base in this manner best reflects the structure of the banking organization at the time the determination of systemic risk was made, and reflects the organization's relative benefit from the assistance provided.

Second, in order to avoid incentivizing banks to voluntarily terminate their insured status to avoid paying the special assessment under the final rule, the FDIC will require any bank that voluntarily terminates its insured status after the adoption of this final rule or during any special assessment collection period to pay the entire remaining amount of its special assessment at the same time its obligation to pay regular deposit insurance assessments would end.[38]

L. Accounting Treatment

Each institution should account for the special assessment in accordance with U.S. generally accepted accounting principles (GAAP). In accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 450, *Contingencies* (FASB ASC Topic 450), an estimated loss from a loss contingency shall be accrued by a charge to income if information indicates that it is probable that a liability has been incurred and the amount of loss is reasonably estimable.[39] Therefore, an institution will recognize in the Call Report and other financial statements the accrual of a liability and estimated loss (*i.e.,* expense) from a loss contingency for the special assessment when the institution determines that the conditions for accrual under GAAP have been met. In addition, the General Instructions to the Call Report provide guidance on ASC Topic 855, Subsequent Events, which may be applicable.[40]

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

Comments Received on Accounting Treatment

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

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

For these reasons, the FDIC is declining to restructure the special assessment as a prepaid expense.

M. Request for Revisions

An IDI may submit a written request for revision of the computation of any special assessment or shortfall special assessment pursuant to existing regulation 12 CFR 327.3(f).[41]

III. Analysis and Expected Effects

A. Analysis of the Statutory Factors

Section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination. As detailed in the sections that follow, and as required by the FDI Act, the FDIC has considered the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, effects on the industry, economic conditions, and any such other factors as the FDIC deems appropriate and relevant to the action taken or the assistance provided.[42]

1. The Types of Entities That Benefit

In implementing special assessments under section 13(c)(4)(G) of the FDI Act, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided pursuant to determination of systemic risk.[43]

With the rapid collapse of Silicon Valley Bank and Signature Bank in the space of 48 hours, concerns arose that risk could spread more widely to other institutions and that the financial system as a whole could be placed at risk. Shortly after Silicon Valley Bank was closed on March 10, 2023, a number of institutions with large amounts of uninsured deposits reported that depositors had begun to withdraw their funds. The extent to which IDIs rely on uninsured deposits for funding varies significantly. Uninsured deposits were used to fund nearly three-quarters of the assets at Silicon Valley Bank and Signature Bank. On March 12, 2023, the Board and the Board of Governors voted unanimously to recommend, and the

[38] *See* 12 CFR 327.6(c).

[39] FASB ASC paragraph 450–20–25–2.

[40] *See* General Instructions to the Call Report, available at: *https://www.fdic.gov/resources/bankers/call-reports/crinst-031-041/2022/2022-12-generalinstructions.pdf.*

[41] Existing regulation 12 CFR 327.4(c) allows an IDI to submit a request for review of the IDI's risk assignment. Because the amount of an IDI's special assessment or shortfall special assessment is not determined based on the IDI's risk assignment, the request for review provision under 12 CFR 327.4(c) would not be applicable to an IDI's special assessment or shortfall special assessment.

[42] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[43] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

Treasury Secretary, in consultation with the President, determined that the FDIC could use emergency systemic risk authorities under the FDI Act to complete its resolution of both Silicon Valley Bank and Signature Bank in a manner that fully protects depositors.[44] The full protection of depositors, rather than imposing losses on uninsured depositors, was intended to strengthen public confidence in the nation's banking system.

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

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

Between December 31, 2022, and March 31, 2023, banks in all asset size groups experienced quarterly declines in uninsured deposit balances, but these declines were particularly severe and widespread among banks between $50 billion and $250 billion in total assets. Between December 31, 2022, and March 31, 2023, the eight U.S. GSIBs reported a weighted average decline in uninsured deposits of 2.1 percent, but changes in uninsured deposit balances over this time period varied widely. Two of the eight GSIBs experienced growth in uninsured deposits of 2.6 percent and 2.0 percent over this period while the other six GSIBs experienced declines, some significant, ranging between less than two percent to nearly 17 percent.

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

2. Effects on the Industry

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

Based on data reported for the quarter ended December 31, 2022, and as captured in Table 4 above, the FDIC estimates that 114 banking organizations will be subject to the special assessment, including 48 banking organizations with total assets over $50 billion and 66 banking organizations with total assets between $5 and $50 billion. No banking organizations with total assets under $5 billion will pay a special assessment, based on data reported as of December 31, 2022.[45] [46] It is anticipated that the same banking organizations subject to the special assessment would also be subject to any extended special assessment or one-time final shortfall special assessment, absent the effects of any amendments to estimated uninsured deposits, mergers, consolidations, failures, or other terminations of deposit insurance that occur through the determination of such extended special assessment or one-time final shortfall special assessment.

3. Capital and Earnings Analysis

The FDIC has analyzed the effect of the special assessment on the capital and earnings of banking organizations, including IDIs that are not subsidiaries of a holding company. This analysis incorporates data on estimated uninsured deposits reported by banking organizations for the December 31, 2022, reporting period, including amendments filed through November 2, 2023, and assumes that pre-tax income for the quarter in which a banking organization will recognize the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency for the special assessment, will equal the average of their pre-tax income from July 1, 2022, through June 30, 2023.[47]

To avoid the possibility of underestimating effects on bank earnings and capital, the analysis also assumes that the effects of the special assessment are not transferred to customers in the form of changes in borrowing rates, deposit rates, or service fees. The analysis considers the effective pre-tax cost of the special assessment in calculating the effect on capital.[48] [49]

A banking organization's earnings retention and dividend policies influence the extent to which the special assessment affects equity capital

[44] 12 U.S.C. 1823(c)(4)(G). *See also:* FDIC PR–17–2023. ''Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC.'' March 12, 2023. *https://www.fdic.gov/news/press-releases/2023/pr23017.html.*

[45] The number of banking organizations subject to the special assessment may change after the publication of the final rule depending on any mergers, consolidations, failures, or other terminations of deposit insurance, or amendments to reported estimates of uninsured deposits.

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

[47] All income statement items used in this analysis were adjusted for the effect of mergers. Institutions for which four quarters of non-zero earnings data were unavailable, including insured branches of foreign banks, were excluded from this analysis.

[48] The Tax Cuts and Jobs Act of 2017 placed a limitation on tax deductions for FDIC premiums for banks with total consolidated assets between $10 and $50 billion and disallowed the deduction entirely for banks with total assets of $50 billion or more. However, the definition of FDIC premiums under the Act is limited to any assessment imposed under section 7(b) of the FDI Act (12 U.S.C. 1817(b)), and therefore does not include special assessments required under section 13(c)(4)(G) of the FDI Act. *See* the Tax Cuts and Jobs Act, Public Law 115–97 (Dec. 22, 2017).

[49] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

levels. A banking organization may reduce the effect of recognizing the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency for the special assessment or shortfall special assessment, by adjusting downward the amount of dividends. This analysis instead assumes that a banking organization will maintain its dividend rate (that is, dividends as a percentage of net income) unchanged from the weighted average rate reported from July 1, 2022, through June 30, 2023. In the event that the ratio of Tier 1 capital to assets falls below four percent, however, this assumption is modified such that the banking organization retains the amount necessary to reach a four percent minimum and distributes any remaining funds according to the dividend payout rate.[50]

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

Given the current loss estimate and the assumptions in the analysis, the FDIC estimates that, on average, the special assessment will decrease the dollar amount of Tier 1 capital of banking organizations required to pay the special assessment by an estimated 62 basis points.[51] No banking organizations are estimated to fall below the minimum capital requirement (a four percent Tier 1 capital-to-assets ratio) as a result of the special assessment.

For the four quarters that ended June 30, 2023, the banking industry reported net income of $290.5 billion, nearly 13 percent higher than for the four quarters that ended June 30, 2022, and above the pre-pandemic average. The effect of the special assessment on a banking organization's income is measured by calculating the amount of the special assessment as a percent of pre-tax income (hereafter referred to as ''income'').

While the special assessment is allocated based on estimated uninsured deposits reported at the banking organization level, IDIs will be responsible for payment of the special assessment. The FDIC analyzed the effect of the special assessment on income reported at the IDI-level for IDIs subject to the special assessment that are not subsidiaries of a holding company or that are subsidiaries of a holding company with only one IDI subsidiary. For IDIs that are subsidiaries of a holding company with more than one IDI subsidiary, the FDIC analyzed the effect of the special assessment by aggregating the income reported by all IDIs subject to the special assessment within each banking organization since the IDIs will be responsible for payment. The FDIC analyzed the impact of the special assessment on banking organizations that were profitable based on their average quarterly income from July 1, 2022, to June 30, 2023.[52]

The effects on income of the entire amount of the special assessment to be collected over eight quarters are assumed to occur in one quarter only. Given the assumptions and the estimated loss amount, the FDIC estimates that the special assessment would result in an average one-quarter reduction in income of 20.4 percent for banking organizations subject to the special assessment.[53]

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

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

One commenter said that for purposes of calculating requirements and guidance related to levels of dividends and stock repurchases, and for examination findings related to earnings, the reduction in earnings resulting from the payment of the special assessment should be disregarded, or at least be amortized over the collection period. The same commenter also requested an adjustment to eliminate the impact of the special assessment on regular quarterly deposit insurance assessments for large banks and highly complex banks.[54]

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

[50] The analysis uses four percent as the threshold because IDIs generally need to maintain a Tier 1 leverage ratio of 4.0 percent or greater to be considered ''adequately capitalized'' under Prompt Corrective Action Standards, in addition to the following requirements: (i) total risk-based capital ratio of 8.0 percent or greater; (ii) Tier 1 risk-based capital ratio of 6.0 percent or greater; (iii) common equity tier 1 capital ratio of 4.5 percent or greater; and (iv) does not meet the definition of ''well capitalized.'' Beginning January 1, 2018, an advanced approaches or Category III FDIC-supervised institution will be deemed to be ''adequately capitalized'' if it satisfies the above criteria and has a supplementary leverage ratio of 3.0 percent or greater, as calculated in accordance with 12 CFR 324.10. *See* 12 CFR 324.403(b)(2). Additionally, Federal Reserve Board-regulated institutions must generally maintain a Tier 1 leverage ratio of 4.0 percent or greater to meet the minimum capital requirements, in addition to the following requirements: (i) total capital ratio of 8.0 percent; (ii) Tier 1 capital ratio of 6.0; (iii) common equity tier 1 capital ratio of 4.5; and (iv) for advanced approaches Federal Reserve Board-regulated institutions, or for Category III Federal Reserve Board-regulated institutions, a supplementary leverage ratio of 3 percent. *See* 12 CFR 217.10(a)(1). For purposes of this analysis, Tier 1 capital to assets is used as the measure of capital adequacy.

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

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

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

[54] For regular deposit insurance assessment purposes, a large bank is generally defined as an institution with $10 billion or more in total assets, and a highly complex bank is generally defined as an institution that has $50 billion or more in total assets and is controlled by a parent holding company that has $500 billion or more in total assets, or is a processing bank or trust company. *See* 12 CFR 327.8(f) and (g).

Table 5 shows that approximately 66 percent of profitable banking organizations subject to the proposal are projected to have a special assessment of less than 20 percent of one quarter's income, including 23 percent with a special assessment of less than 5 percent of income. Another 34 percent of profitable banking organizations subject to the proposal are projected to have a special assessment equal to or exceeding 20 percent of one quarter's income.

TABLE 5—ESTIMATED ONE-QUARTER EFFECT OF ENTIRE AMOUNT OF THE SPECIAL ASSESSMENT ON INCOME FOR PROFITABLE BANKING ORGANIZATIONS SUBJECT TO THE SPECIAL ASSESSMENT [1]

Special assessment as percent of income	Number of banking organizations	Percent of banking organizations	Assets of banking organizations [$ billions]	Percent of assets
Over 30	15	14	5,838	30
20 to 30	23	21	6,308	32
10 to 20	28	25	5,504	28
5 to 10	20	18	805	4
Less than 5	25	23	1,034	5
Total	111	100	19,489	100

[1] Income is defined as quarterly pre-tax income. Quarterly income is assumed to equal the average of income from July 1, 2022, through June 30, 2023. For purposes of this analysis, the effects on income of the entire amount of the special assessment to be collected over eight quarters are assumed to occur in one quarter only. The special assessment as a percent of income is an estimate of the one-time accrual of the full eight quarters of the special assessment as a percent of a single quarter's income. Profitable banking organizations are defined as those having positive average income for the 12 months ending June 30, 2023. Excludes two banking organizations that would be required to pay the special assessment that were unprofitable. Also excludes one foreign banking organization subject to the special assessment. Some columns do not add to total due to rounding. Special assessment estimates are based on uninsured deposits for the December 31, 2022, report date and incorporate amendments, mergers, acquisitions and failures through November 2, 2023.

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

4. Economic Conditions

On September 7, 2023, the FDIC released the results of the Quarterly Banking Profile, which provided a comprehensive summary of financial results for all FDIC-insured institutions for the second quarter of 2023. Overall, key banking industry metrics remained favorable in the quarter.[55]

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

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

Despite these challenges, the state of the U.S. banking system remains sound and institutions are well positioned to absorb a special assessment.[56]

B. Alternatives Considered

While the FDIC is required by statute to recover the loss to the DIF arising from the use of a systemic risk determination through one or more special assessments, section 13(c)(4)(G) of the FDI Act provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination.[57] The FDIC considered several alternatives while developing this final rule, but believes, on balance, that the proposed special assessment is the most appropriate and straightforward manner in which to collect the special assessment. Accordingly, and after consideration of the statutory factors as described above, the FDIC is adopting as final the proposed special assessment, with changes to promote transparency and to apply any corrective amendments to the reporting of estimated uninsured deposits to the calculation of the special assessment. Brief descriptions of the alternatives, along with explanations of why the final rule is preferable to the alternatives, are as follows:

Alternative 1: One-Time Special Assessment

The first alternative the FDIC considered would have imposed a one-time special assessment. Under this alternative, the FDIC would impose the one-time special assessment in the quarter ending March 31, 2024, and collect payment for such special assessment on June 28, 2024, at the same time and in the same manner as an IDI's regular quarterly deposit insurance assessment. The aggregate

[55] FDIC Quarterly Banking Profile, Second Quarter 2023. *https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023jun/.*

[56] Statement of Martin J. Gruenberg, Chairman of the FDIC on ''Recent Bank Failures and the Federal Regulatory Response,'' before the United States Senate Committee on Banking, Housing, and Urban Affairs. March 28, 2023. *https://www.banking.senate.gov/imo/media/doc/Gruenberg%20Testimony%203-28-23.pdf.*

[57] 12 U.S.C. 1823(c)(4)(G)(ii)(I). In implementing special assessments, the FDIC is required to consider the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk, effects on the industry, economic conditions, and any such other factors as the FDIC deems appropriate and relevant to the action taken or the assistance provided. *See* 12 U.S.C. 1823(c)(4)(G)(ii)(III).

amount of a one-time special assessment would equal the entire initial loss estimate. Calculation of the special assessment, including the special assessment rate, would be the same as proposed, but instead of collecting the amount over eight quarters, the FDIC would collect the entire amount in one quarter.

Once actual losses are determined as of the termination of the receiverships, and if the actual losses exceeded the amount collected under the one-time special assessment, the FDIC would impose a shortfall special assessment to collect the amount of losses in excess of the amount collected. Collection of the entire shortfall special assessment would also occur in one quarter.

Conversely, if the amount collected under the one-time special assessment exceeded actual losses, the FDIC is required by statute to place the excess funds collected in the DIF.[58]

Similar to this alternative, one commenter suggested that banks should have the option to fully fund obligations prior to the end of the proposed time period. While under both the final rule and this alternative, the estimated amount of the special assessment would be recognized with the accrual of a liability and an estimated loss (*i.e.,* expense) from a loss contingency when the institution determines that the conditions for accrual under GAAP have been met, which impacts capital and earnings, this alternative would additionally require payment of the entire amount in the second quarter of 2024, and would impact liquidity significantly in one quarter. The FDIC rejected this alternative in order to spread the liquidity impact over multiple quarters and to mitigate the risk of overcollecting.

Alternative 2: Asset Size Applicability Threshold

A second alternative the FDIC considered would be to base applicability on an asset size threshold as an alternative to deducting the first $5 billion in estimated uninsured deposits in calculating an IDI or banking organization's assessment base for the special assessment. One commenter supported this approach.

As described previously, in implementing special assessments, the FDI Act requires the FDIC to consider the types of entities that benefit from any action taken or assistance provided pursuant to the determination of systemic risk.[59] Large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs had those occurred as a result of the bank failures. Larger banks also benefited the most from the stability provided to the banking industry under the systemic risk determination.

While both the methodology adopted under the final rule, including the $5 billion deduction from estimated uninsured deposits, and an alternative asset-size-based applicability threshold would effectively remove the smallest institutions from eligibility, the deduction of $5 billion from each banking organization's estimated uninsured deposits in calculating the special assessment helps to mitigate a ''cliff effect'' relative to applying a different threshold for applicability, such as applying an asset size threshold, thereby ensuring more equitable treatment. With an asset size threshold, an IDI just above such threshold would pay a significant amount in special assessments, while an IDI just below such threshold would pay none. The FDIC rejected this alternative for these reasons.

Alternative 3: Assessment Base Equal to All Uninsured Deposits, Without $5 Billion Deduction

A third alternative the FDIC considered would be to eliminate the $5 billion deduction from the assessment base for the special assessment, and allocate the special assessment among IDIs based on each IDI or banking organization's total estimated uninsured deposits as of December 31, 2022. This alternative would result in a special assessment imposed on every IDI that reported a non-zero amount of estimated uninsured deposits as of December 31, 2022, or nearly 100 percent of all IDIs with total assets of $1 billion or more.[60] Relative to the methodology applied in final rule, more IDIs would pay the special assessment under this alternative, and IDIs with greater amounts of uninsured deposits would generally pay a lower special assessment relative to the methodology applied in the final rule since the special assessment would be allocated across a significantly larger number of institutions. As stated previously, the majority of commenters expressed support for the proposal and for the scope of application, including the $5 billion deduction applied to the assessment base for the special assessment.

Given the FDIC's statutory requirement to consider the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk in implementing special assessments, and given the general support for the deduction of $5 billion from the assessment base for the special assessment, the FDIC rejected this alternative in favor of allocating the special assessment to larger institutions with the largest amounts of uninsured deposits as of December 31, 2022, and that experienced significant and widespread declines in uninsured deposits between December 31, 2022, and March 31, 2023, with the result that smaller institutions would not have to contribute to the special assessment. In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination.

Alternative 4: Special Assessment Based on Each Institution's Percentage of Uninsured Deposits to Total Deposits

A fourth alternative the FDIC considered would be to allocate the special assessment among IDIs based on each IDI's estimated uninsured deposits as a percentage of their total domestic deposits reported as of December 31, 2022, as a proxy for reliance on uninsured deposits at the time the determination of systemic risk was made and uninsured depositors of the failed institutions were protected. Similar to the third alternative, this would result in a special assessment imposed on every IDI that reported a non-zero amount of estimated uninsured deposits as of December 31, 2022, or nearly 100 percent of IDIs with total assets of $1 billion or more.[61] Two commenters supported an assessment base for the special assessment equal to uninsured deposits as a percentage of total deposits or to otherwise apply a

[58] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[59] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

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

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

calculation that would result in a larger special assessment for institutions with a greater reliance on uninsured deposits for funding.

Under this alternative, IDIs with a greater reliance on uninsured deposits would generally pay the greatest amount of the special assessment; however, the special assessment would be allocated across a large number of institutions, unless a threshold is imposed. Even with a threshold based on assets or another measure, this alternative would result in institutions of vastly different asset sizes and with different dollar amounts of uninsured deposits paying a similar dollar amount of the special assessment. For example, an institution just above the asset threshold would pay the same special assessment as a much larger institution with the same reliance on uninsured deposits. It also would result in some smaller banking organizations paying potentially significant amounts of the special assessment, and the larger banks that have high amounts of uninsured deposits and benefited the most from the stability provided to the banking industry under the systemic risk determination, but that do not have high uninsured deposit concentrations, paying a smaller share of the special assessment.

In general, large banks and regional banks, and particularly those with large amounts of uninsured deposits, were the banks most exposed to and likely would have been the most affected by uninsured deposit runs. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. The FDIC rejected this alternative for these reasons and because the methodology in the final rule results in a larger special assessment for similarly sized banking organizations reporting greater concentrations of uninsured deposits.

Alternative 5: Charge IDIs for 50 Percent of Special Assessment in Year One Based on Uninsured Deposits as of December 31, 2022; Charge for the Remainder in Year Two Based on Uninsured Deposits Reported as of December 31, 2023

Under the final rule and all alternatives described above, the special assessment would initially be calculated based on an estimated amount of losses, as the exact amount of losses will not be known until the FDIC terminates the two receiverships. A fifth alternative the FDIC considered would be to collect 50 percent of the special assessment during the initial four-quarter collection period based on estimated uninsured deposits reported by all IDIs as of December 31, 2022, and collect the remaining special assessment for an additional four-quarter collection period based on an updated estimate of losses pursuant to the systemic risk determination and estimated uninsured deposits reported by all IDIs as of December 31, 2023.

Under this alternative, for the initial four-quarter collection period the special assessment would be allocated to all IDIs based on each IDI or banking organization's estimated uninsured deposits as a share of estimated uninsured deposits reported by all IDIs as of December 31, 2022, as a proxy for the amount of uninsured deposits in each institution at the time the determination of systemic risk was made and uninsured depositors of the failed institutions were protected. Such methodology would allocate the special assessment to the institutions that had the largest amounts of uninsured deposits at the time of the determination of systemic risk.

The remaining special assessment would be based on an updated estimate of losses as of December 31, 2023, and would be allocated to IDIs with total assets of $1 billion or more, based on each IDI or banking organization's estimated uninsured deposits as a share of estimated uninsured deposits reported by all IDIs as of December 31, 2023, in order to reflect amounts of uninsured deposits that did not run off following the determination of systemic risk. The FDIC rejected this alternative because in the FDIC's view, estimated uninsured deposits as of December 31, 2022, most closely approximate an institution's vulnerability to significant deposit withdrawals in the absence of the determination of systemic risk, and therefore reflect the institutions that most benefited from such determination. Additionally, three commenters supported the use of an alternative measure in the special assessment base specifically for the reason that they believe use of uninsured deposits in the assessment base discourages banks from holding uninsured deposits. This alternative may also change the timing of accrual of the contingent liability by banks. The final rule's allocation methodology based on amounts of uninsured deposits as of December 31, 2022, would result in transparent and consistent payments, and a more simplified framework for calculating the special assessment.

Alternative 6: Apply Special Assessment Rate to Regular Assessment Base, With or Without Application of a $5 Billion Deduction

A sixth alternative the FDIC considered is to apply a special assessment rate to an institution's regular quarterly deposit insurance assessment base (regular assessment base) for that quarter, with or without applying a $5 billion deduction. Generally, an IDI's assessment base equals its average consolidated total assets minus its average tangible equity.[62] Under this alternative, the FDIC estimates that it would need to charge an annual assessment rate of 3.97 basis points over two years to recover estimated losses without the $5 billion deduction, or 4.84 basis points with the $5 billion deduction; however, a significantly larger number of banking organizations would be subject to the special assessment relative to the proposal. Two commenters supported use of the regular assessment base to calculate the special assessment.

Under this alternative, the IDIs with the largest assessment base would pay the greatest amount of the special assessment. IDIs for which certain assets are excluded in the calculation of the regular assessment base would pay a lower special assessment due to their smaller assessment base.

This alternative would result in smaller banking organizations, regardless of reliance on uninsured deposits for funding, paying potentially significant amounts of the special assessment. Further, IDIs engaged in trust activities, or with fiduciary and custody and safekeeping assets, and for which certain assets are excluded from their regular assessment base, would pay lower amounts of the special assessment due to these exclusions, despite holding significant amounts of uninsured deposits. The FDIC rejected this alternative for these reasons.

In the FDIC's view, the final rule reflects an appropriate balancing of the statutory requirement to apply the special assessment to the types of entities that benefited the most from the protection of uninsured depositors provided under the determination of systemic risk while ensuring equitable, transparent, and consistent treatment based on amounts of uninsured deposits at the time of the determination of systemic risk. The final rule also allows for payments to be collected over an extended period of time in order to mitigate the liquidity effects of the special assessment by requiring smaller,

[62] *See* 12 CFR 327.5.

consistent quarterly payments. On balance, in the FDIC's view, the final rule best promotes maintenance of liquidity, which will allow institutions to absorb any potential unexpected setbacks while continuing to meet the credit needs of the U.S. economy.

C. Effective Date and Application Date of the Final Rule

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

IV. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 the final rule on small entities.[63] However, a final regulatory flexibility analysis is not required if the agency certifies that the final 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 $850 million.[64] Certain types of rules, such as rules of particular applicability relating to rates, 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.[65] Because the final rule relates directly to the rates imposed on FDIC-insured institutions, the final rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

The FDIC insures 4,654 institutions as of June 30, 2023, of which 3,373 are small entities.[66] As discussed previously, the final rule implements a special assessment on IDIs that are part of banking organizations that reported $5 billion or more in uninsured deposits for the reporting period that ended December 31, 2022. Given that no small entity has reported $5 billion or more in uninsured deposits, the FDIC does not believe the final rule will have a direct effect on any small entity.

The FDIC invited comments regarding the supporting information provided in the RFA section in the proposed rule, but did not receive comments on this topic.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [67] (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 Office of Management and Budget (OMB) control number. The FDIC's OMB control numbers for its assessment regulations are 3064–0057, 3064–0151, and 3064–0179. The final rule does not create any new, or revise any of these existing assessment information collections pursuant to the PRA; consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review.

C. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) [68] 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. Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[69]

The final rule does not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. The FDIC invited comments regarding the application of RCDRIA in the proposed rule, but did not receive comments on this topic. Nevertheless, the requirements of RCDRIA have been considered in setting the final effective date.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [70] requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC invited comments regarding the use of plain language in the proposed rule but did not receive any comments on this topic.

E. Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[71] 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.[72]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of

[63] 5 U.S.C. 601 *et seq.*

[64] The SBA defines a small banking organization as having $850 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 by 87 FR 69118, effective December 19, 2022). 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.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

[65] 5 U.S.C. 601(2).

[66] June 30, 2023, Call Report data, the most current Call Reports for which the FDIC can determine which insured depository institutions are ''small'' for purposes of RFA.

[67] 44 U.S.C. 3501–3521.

[68] 12 U.S.C. 4802(a).

[69] 12 U.S.C. 4802(b).

[70] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

[71] 5 U.S.C. 801 *et seq.*

[72] 5 U.S.C. 801(a)(3).

Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) 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.[73]

The OMB has determined that the final rule is a major rule for purposes of the Congressional Review Act and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, 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, 1823.

■ 2. Add § 327.13 to read as follows:

§ 327.13 Special Assessment Pursuant to March 12, 2023, Systemic Risk Determination.

(a) *Special Assessment.* A special assessment shall be imposed on each insured depository institution to recover losses to the Deposit Insurance Fund, as described in paragraph (b) of this section, resulting from the March 12, 2023, systemic risk determination pursuant to 12 U.S.C. 1823(c)(4)(G). The special assessment shall be collected from each insured depository institution on a quarterly basis as described in this section during the initial special assessment period as defined in paragraph (i) of this section and, if necessary, the extended special assessment period as defined in paragraph (j) of this section, and if further necessary, on a one-time basis as described in paragraph (m) of this section.

(b) *Losses to the Deposit Insurance Fund.* As used in this section, ''losses to the Deposit Insurance Fund'' refers to losses incurred by the Deposit Insurance Fund resulting from actions taken by the FDIC under the March 12, 2023, systemic risk determination, as may be revised from time to time.

(c) *Calculation of quarterly special assessment amount.* An insured depository institution's special assessment for each quarter during the initial special assessment period and extended special assessment period shall be calculated by multiplying the special assessment rate defined in paragraph (i)(2) or (j)(3) of this section, as appropriate, by the institution's special assessment base as defined in paragraph (i)(3) or (j)(4) of this section, as appropriate.

(d) *Invoicing of special assessment.* For each assessment period in which the special assessment is imposed, the FDIC shall advise each insured depository institution of the amount and calculation of any special assessment payment due in a form that notifies the institution of the special assessment base and special assessment rate exclusive of any other assessments imposed under this part. The FDIC shall also advise each insured depository institution subject to the special assessment of any revisions, if any, to losses to the Deposit Insurance Fund as defined in paragraph (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice under § 327.2 for the assessment period in which the special assessment was imposed.

(e) *Payment of quarterly special assessment amount.* Each insured depository institution shall pay to the Corporation any special assessment imposed under this section in compliance with and subject to the provisions of §§ 327.3, 327.6, and 327.7. The date for any special assessment payment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the special assessment was imposed.

(f) *Uninsured deposits.* For purposes of this section, the term ''uninsured deposits'' means an institution's estimated uninsured deposits as reported in Memoranda Item 2 on Schedule RC–O, Other Data For Deposit Insurance Assessments in the Consolidated Reports of Condition and Income (Call Report) or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) for the quarter ended December 31, 2022, reported as of the later of:

(1) November 2, 2023, adjusted for mergers prior to March 12, 2023; or

(2) The date of the institution's most recent amendment to its Call Report or FFIEC 002 for the quarter ended December 31, 2022, if such amendment arises from, or is confirmed through, the FDIC's Assessment Reporting Review. Institutions with less than $1 billion in total assets as of June 30, 2021, were not required to report such items; therefore, for purposes of calculating the special assessment or a shortfall special assessment under this section, the amount of uninsured deposits for such institutions as of December 31, 2022, is zero.

(g) *$5 billion deduction from the special assessment base—institution's portion.* For purposes of this section, an institution's portion of the $5 billion deduction shall equal the ratio of the institution's uninsured deposits to the sum of the institution's uninsured deposits and the uninsured deposits of all of the institution's affiliated insured depository institutions, multiplied by $5 billion.

(h) *Affiliates.* For the purposes of this section, an affiliated insured depository institution is an insured depository institution that meets the definition of ''affiliate'' in section 3 of the FDI Act, 12 U.S.C. 1813(w)(6).

(i) *Special assessment during initial special assessment period*—(1) *Initial special assessment period.* The initial special assessment period shall begin with the first quarterly assessment period of 2024 and end the earlier of the last quarterly assessment period of 2025 or the first quarterly assessment period that the aggregate amount of special assessments collected under this section meets or exceeds the losses to the Deposit Insurance Fund, where amounts collected and losses are compared on a quarterly basis.

(2) *Special assessment rate during initial special assessment period.* The special assessment rate during the initial special assessment period is 3.36 basis points on a quarterly basis.

(3) *Special assessment base during initial special assessment period*—(i) The special assessment base for an insured depository institution during the initial special assessment period that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's assessment base cannot be negative.

(ii) The special assessment base for an insured depository institution during the initial special assessment period that has one or more affiliated insured depository institutions shall equal:

[73] 5 U.S.C. 804(2).

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction; provided, however, that an institution's special assessment base cannot be negative.

(j) *Special assessment during extended special assessment period*—(1) *Shortfall amount.* The shortfall amount is the amount of losses to the Deposit Insurance Fund, as reviewed and revised as of the last quarterly assessment period of 2025, that exceed the aggregate amount of special assessments collected during the initial special assessment period.

(2) *Extended special assessment period.* If there is a shortfall amount after the last quarterly assessment period of 2025, the special assessment period will be extended, with at least 30 day notice to insured depository institutions, to collect the shortfall amount. The length of the extended special assessment period shall be the minimum number of quarters required to recover the shortfall amount at a rate under paragraph (j)(3) of this section that is at or below 3.36 basis points per quarter.

(3) *Assessment rate during extended special assessment period.* The quarterly assessment rate during the extended special assessment period will be the shortfall amount, divided by the total amount of uninsured deposits, adjusted for mergers, consolidation, and termination of insurance as of the last quarterly assessment period of 2025, minus the $5 billion deduction for each insured depository institution or each institution's portion of the $5 billion deduction, divided by the minimum number of quarters that results in the quarterly rate being no greater than 3.36 basis points.

(4) *Assessment base during the extended special assessment period.* (i) The special assessment base for an insured depository institution during the extended special assessment period that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's special assessment base cannot be negative.

(ii) The special assessment base for an insured depository institution during the extended special assessment period that has one or more affiliated insured depository institutions shall equal:

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction, adjusted for termination of insurance as of the last assessment period of 2025; provided, however, that an institution's special assessment base cannot be negative.

(k) *Effect of mergers, consolidations, and other terminations of insurance on the special assessment*—(1) *Final quarterly certified invoice for acquired institution.* The surviving or resulting insured depository institution in a merger or consolidation shall be liable for any unpaid special assessment or one-time final shortfall special assessment outstanding at the time of the merger or consolidation on the part of the institution that is not the resulting or surviving institution consistent with § 327.6.

(2) *Special assessment for quarter in which the merger or consolidation occurs and subsequent quarters.* If an insured depository institution is the surviving or resulting institution in a merger or consolidation or acquires all or substantially all of the assets, or assumes all or substantially all of the deposit liabilities, of an insured depository institution, then the surviving or resulting insured depository institution or the insured depository institution that acquires such assets or assumes such deposit liabilities, shall be liable for the acquired institutions' special assessment from the quarter of the acquisition through the remainder of the initial and extended special assessment period, including any one-time final shortfall special assessment.

(3) *Other termination.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution, the special assessment and any shortfall special assessment shall be paid consistent with § 327.6(c). When an insured depository institution voluntarily terminates its deposit insurance, the institution shall be liable for any unpaid special assessment or one-time final shortfall special assessment outstanding at the time of the termination and all future special assessments, if any, the institution would have been invoiced through the remainder of the initial or extended special assessment period, as applicable, including any one-time final shortfall special assessment for which the institution has been given notice before termination. Any special assessment or one-time final shortfall special assessment liabilities will be included, in full, on the final quarterly assessment invoice following voluntary termination.

(l) *Corrective reporting amendments*—(1) *Recalculation of quarterly special assessment amount.* Corrective amendments to an institution's uninsured deposits that arise from, or are confirmed through, the FDIC's Assessment Reporting Review will apply retroactively beginning the first quarterly collection period of the initial special assessment period. An institution's special assessment base and portion of the $5 billion deduction, along with the portion of the $5 billion deduction allocated to the institution's affiliated insured depository institutions, will be recalculated for prior collection quarters. Any overpayment or underpayment in prior collection quarters as a result of the recalculation will be invoiced as described in paragraph (l)(2) of this section.

(2) *Invoicing overpayment and underpayment.* Any underpayment of the special assessment by an institution as the result of corrective amendments to uninsured deposits will be included, in full and with interest, on the invoice for the quarter following the date a corrective amendment is filed. If a corrective amendment results in an overpayment of the special assessment, the institution will be credited the overpayment amount, with interest, and such amount will be applied to the institution's subsequent special assessment invoices beginning in the quarter following the date of the amendment. If any excess credit amount remains after the end of the initial and any extended special assessment period(s), the excess credit amount shall be refunded to the institution. Payment and collection of interest on amounts resulting from overpayment and underpayment of the special assessment shall be consistent with § 327.7.

(m) *One-time final shortfall special assessment.* If the aggregate amount of the special assessment collected during the initial and any extended special assessment period(s) do not meet or exceed the losses to the Deposit Insurance Fund, as calculated after the receiverships resulting from the March 12, 2023, systemic risk determination are terminated, insured depository institutions shall pay a one-time final shortfall special assessment in accordance with this paragraph.

(1) *Notification of one-time final shortfall special assessment.* The FDIC shall notify each insured depository institution of the amount of such institution's one-time final shortfall special assessment no later than 45 days before such shortfall assessment is due.

(2) *Aggregate one-time final shortfall special assessment amount.* The aggregate amount of the one-time final shortfall special assessment imposed across all insured depository institutions shall equal the losses to the

Deposit Insurance Fund, as of termination of the receiverships to which the March 12, 2023, systemic risk determination applied, minus the aggregate amount of the special assessment collected under this section through initial and extended special assessment periods, including the net amount of interest paid or received as a result of overpayments and underpayments.

(3) *One-time final shortfall special assessment rate.* The final shortfall special assessment rate shall be the aggregate final shortfall special assessment amount divided by the total amount of uninsured deposits, as described in paragraph (f) of this section, adjusted for mergers, consolidation, and termination of insurance as of the assessment period preceding the final shortfall special assessment period, minus the $5 billion deduction for each insured depository institution or each institution's portion of the $5 billion deduction.

(4) *One-time final shortfall special assessment base*—(i) The one-time final shortfall special assessment base for an insured depository institution that has no affiliated insured depository institution shall equal:

(A) The institution's uninsured deposits; minus

(B) $5 billion; provided, however, that an institution's one-time final shortfall special assessment base cannot be negative.

(ii) The one-time final shortfall special assessment base for an insured depository institution that has one or more affiliated insured depository institutions shall equal:

(A) The institution's uninsured deposits; minus

(B) The institution's portion of the $5 billion deduction, adjusted for termination of insurance as of the assessment period preceding the final shortfall assessment period; provided, however, that an institution's one-time final shortfall special assessment base cannot be negative.

(5) *Calculation of one-time final shortfall special assessment.* An insured depository institution's final shortfall special assessment shall be calculated by multiplying the final shortfall special assessment rate by the institution's one-time final shortfall special assessment base.

(6) *One-time final special assessment.* The one-time final shortfall special assessment shall be collected on a one-time quarterly basis after losses to the Deposit Insurance Fund are determined after termination of the receiverships to which the March 12, 2023, systemic risk determination applied.

(7) *Payment, invoicing, and mergers.* Paragraphs (d), (e), and (k) of this section are applicable to the one-time shortfall special assessment.

(n) *Request for revisions.* An insured depository institution may submit a written request for revision of the computation of any special assessment or shortfall special assessment pursuant to this part consistent with § 327.3(f).

(o) *Special assessment collection in excess of losses.* Any special assessment collected under this section that exceeds the losses to the Deposit Insurance Fund, as of termination of the receiverships to which the March 12, 2023, systemic risk determination applied, shall be placed in the Deposit Insurance Fund.

(p) *Rule of construction.* Nothing in this section shall prevent the FDIC from imposing additional special assessments as required to recover current or future losses to the Deposit Insurance Fund resulting from any systemic risk determination under 12 U.S.C. 1823(c)(4)(G).

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on November 16, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–25813 Filed 11–28–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2152; Project Identifier MCAI–2023–00798–T; Amendment 39–22607; AD 2023–23–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–100–1A10 airplanes. This AD was prompted by a design review of the avionic architecture of the pitch trim indication and alerting system that revealed software errors could generate misleading pitch trim indication to the crew, leading to incorrect horizontal stabilizer positioning at takeoff. This AD requires revising the Emergency Procedures and Normal Procedures of the existing airplane flight manual (AFM) to ensure the horizontal stabilizer is correctly configured prior to takeoff. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 14, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 14, 2023.

The FAA must receive comments on this AD by January 16, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2152; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–2152.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION: