

endorses, with exceptions, additions, and clarifications the methods described in IEEE Std. 382–2019, as an acceptable process for demonstrating compliance with the applicable NRC regulations for the environmental qualification of safety-related power operated valve actuators in production and utilization facilities.

The staff is also issuing for public comment a draft regulatory analysis available in ADAMS under Accession No. ML23055B028. The staff developed a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the “Proposed Rules” section of the **Federal Register** to comply with publication requirements under chapter I of title 1 of the *Code Federal Regulations* (CFR).

### III. Backfitting, Forward Fitting, and Issue Finality

Issuance of DG–1386, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests”; affect issue finality of any approval issued under 10 CFR part 52, “Licenses, Certificates, and Approvals for Nuclear Power Plants”; or constitute forward fitting as defined in MD 8.4, because, as explained in this DG, licensees would not be required to comply with the positions set forth in this DG.

### IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: May 17, 2023.

For the Nuclear Regulatory Commission.

**Meraj Rahimi,**

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 327

**RIN 3064–AF93**

### Special Assessments Pursuant to Systemic Risk Determination

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is seeking comment on a proposed rule that would impose special assessments to recover the loss to the Deposit Insurance Fund (DIF or Fund) arising from the protection of uninsured depositors in connection with the systemic risk determination announced on March 12, 2023, following the closures of Silicon Valley Bank, Santa Clara, CA, and Signature Bank, New York, NY, as required by the Federal Deposit Insurance Act (FDI Act). The assessment base for the special assessments would be equal to an insured depository institution’s (IDI) estimated uninsured deposits, reported as of December 31, 2022, adjusted to exclude the first \$5 billion in estimated uninsured deposits 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 is proposing to collect special assessments at an annual rate of approximately 12.5 basis points, over eight quarterly assessment periods, which it estimates will result in total revenue of \$15.8 billion. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, the FDIC would retain the ability to cease collection early, extend the special assessment collection period one or more quarters beyond the initial eight-quarter collection period to collect the difference between actual or estimated losses and the amounts collected, and impose a final shortfall special assessment on a one-time basis after the receiverships for Silicon Valley Bank and Signature Bank terminate. The FDIC is proposing an effective date of January 1, 2024, with special assessments 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).

**DATES:** Comments must be received on or before July 21, 2023.

**ADDRESSES:** Interested parties are invited to submit written comments, identified by RIN 3064–AF93, by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/>

[federal-register-publications/](https://www.fdic.gov/resources/regulations/federal-register-publications/). Follow the instructions for submitting comments on the agency website.

- **Email:** [comments@fdic.gov](mailto:comments@fdic.gov). Include RIN 3064–AF93 in the subject line of the message.

- **Mail:** James P. Sheesley, Assistant Executive Secretary, Attention: Comments–RIN 3064–AF93, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- **Public Inspection:** Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Division of Insurance and Research: Michael Spencer, Associate Director, Financial Risk Management Branch, 202–898–7041, [michspencer@fdic.gov](mailto:michspencer@fdic.gov); Kayla Shoemaker, Acting Chief, Banking and Regulatory Policy, 202–898–6962, [kashoemaker@fdic.gov](mailto:kashoemaker@fdic.gov); Legal Division: Sheikha Kapoor, Senior Counsel, 202–898–3960, [skapoor@fdic.gov](mailto:skapoor@fdic.gov); Ryan McCarthy, Counsel, 202–898–7301, [rymccarthy@fdic.gov](mailto:rymccarthy@fdic.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

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.<sup>1 2</sup>

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).<sup>3</sup>

On March 12, 2023, the Secretary of the Treasury, acting on the recommendation of the FDIC 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 all depositors.<sup>4</sup> The full protection of all 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 all 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 all depositors of these banks.<sup>5</sup>

<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 12 U.S.C. 1823(c)(4)(G). As used in this proposed 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).

<sup>4</sup> 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>.

<sup>5</sup> 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

The transfer of all 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.<sup>6</sup> On March 27, 2023, the FDIC entered into a purchase and assumption agreement for all deposits and loans of Silicon Valley Bridge Bank. This announcement also disclosed that the FDIC and First-Citizens Bank & Trust Company (First Citizens) entered into a loss-share transaction on the commercial loans it purchased from Silicon Valley Bridge Bank.<sup>7</sup>

## II. 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.<sup>8</sup> As required by the FDI Act, the proposed 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.<sup>9</sup>

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

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.

<sup>6</sup> 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.

<sup>7</sup> 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>.

<sup>8</sup> 12 U.S.C. 1823(c)(4)(G)(ii)(I).

<sup>9</sup> 12 U.S.C. 1823(c)(4)(G)(ii)(III).

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.<sup>10</sup>

## III. Description of the Proposed Rule

### A. Summary

The FDIC is seeking comment on a proposed rule that would impose special assessments to recover the loss to the DIF arising from the protection of uninsured depositors in connection with the systemic risk determination announced on March 12, 2023, following the closures of Silicon Valley Bank and Signature Bank, as required by the FDI Act. The total amount collected for the special assessments would be approximately equal to the losses attributable to the protection of uninsured depositors at these two failed banks, which are currently estimated to total \$15.8 billion.

The FDIC proposes an annual special assessment rate of approximately 12.5 basis points. The assessment base for the special assessments would be 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, with certain adjustments. The special assessments would be collected over an eight-quarter collection period, at a quarterly special assessment rate of 3.13 basis points. Over such collection period, the FDIC estimates that it would 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 \$15.8 billion, totaling approximately \$2.0 billion per quarter.

The assessment base for the special assessments 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.<sup>11</sup>

<sup>10</sup> 12 U.S.C. 1823(c)(4)(G)(ii)(III).

<sup>11</sup> As used in this proposal, 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.

If an IDI is part of a holding company with one or more subsidiary IDIs, the \$5 billion deduction would be apportioned based on its estimated uninsured deposits as a percentage of total estimated uninsured deposits held by all IDI affiliates in the banking organization.<sup>12 13</sup>

The estimated loss attributable to the protection of uninsured depositors pursuant to the systemic risk determination is currently estimated to total \$15.8 billion. However, as with all failed bank receiverships, this estimate 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.

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 assessments, the FDIC would cease collection in the quarter after it has collected enough to recover actual or estimated losses. Alternatively, 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, to recover the difference between the amount collected and the estimated or actual loss, at a rate that would not exceed the 3.13 basis point quarterly special assessment rate applied during the initial eight-quarter collection period.

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 the March 12, 2023, systemic risk determination applied may occur years after the initial eight-quarter collection period and any extended collection period. In the likely event that the final loss amount at the termination of the receiverships is not determined until after the special assessments have been collected, and if the actual losses calculated as of the

termination of the receiverships exceed the amount collected through such special assessments, the FDIC would impose a one-time final shortfall special assessment to collect the amount of actual losses in excess of the amount of special assessments collected, if any.

#### *B. Estimated Special Assessment Amount*

By statute, the FDIC is required to recover through special assessments any losses to the DIF incurred as a result of the actions of 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.<sup>14</sup> To determine the amount of the cost of the failures attributable to the cost of covering uninsured deposits, 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 point of failure, the portion of the total estimated loss of \$2.4 billion that is attributable to the protection of uninsured depositors is \$1.6 billion.

At Silicon Valley Bank, for which 88 percent of deposits were uninsured at the point of failure, the portion of the total estimated loss of \$16.1 billion that is attributable to the protection of uninsured depositors is \$14.2 billion. The cost estimate for the sale of the Silicon Valley Bridge Bank to First Citizens has been revised from the original estimate of \$20.0 billion to approximately \$16.1 billion due to a decrease in the amount of liabilities assumed by First Citizens relative to the initial estimate, higher anticipated recoveries from certain other assets in receivership, and an increase in the market value of receivership securities. This revised cost estimate forms the basis for the Silicon Valley Bank portion of the current special assessment calculation, and, as with all failed bank receiverships, will be periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred. As noted below, the amount of the special assessment will be adjusted as the loss estimate changes.

In total, of the \$18.5 billion in estimated losses at the two banks and incurred by the DIF in the first quarter of 2023, the estimated loss attributable to the protection of uninsured depositors was \$15.8 billion.

#### *C. Rate for the Special Assessments*

Under the proposal, the FDIC would impose a special assessment equal to approximately 12.5 basis points annually. The special assessment rate was derived by dividing the current loss estimate attributable to the protection of uninsured depositors of \$15.8 billion by the proposed assessment base calculated for all IDIs subject to special assessments as of December 31, 2022, totaling \$6.3 trillion. As described in detail below, the proposed assessment base is equal to estimated uninsured deposits reported as of December 31, 2022, after applying the \$5 billion deduction. The resulting rate is then divided by two to reflect the two year (eight-quarter) collection period, as described below, resulting in an annual rate of approximately 12.5 basis points, or a quarterly rate of 3.13 basis points. The special assessment rate is 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.<sup>15</sup> Over the eight-quarter collection period, the FDIC estimates that it would 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 \$15.8 billion, totaling approximately \$2.0 billion per quarter.

#### *D. Assessment Base for the Special Assessments*

Under the proposal, each IDI's assessment base for the special assessments would be equal to estimated uninsured deposits as reported in the Call Report or FFIEC 002 as of December 31, 2022, with certain adjustments.<sup>16</sup> The assessment base for the special assessments 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,

<sup>12</sup> As used in this proposal, the term "affiliate" has the same meaning as defined in section 3 of the FDIC 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).

<sup>13</sup> 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.

<sup>14</sup> 12 U.S.C. 1823(c)(4)(G)(iii).

<sup>15</sup> Estimates of the special assessment rate and expected effects in this proposed rule generally reflect any amendments to data reported through February 21, 2023, for the reporting period ending December 31, 2022. Given the closure of First Republic Bank, San Francisco, CA announced on May 1, 2023, estimates in this proposed 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>.

<sup>16</sup> 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.

or at the banking organization level, to the extent that an IDI is part of a holding company with one or more subsidiary IDIs. Estimated uninsured deposits as of December 31, 2022, are the most recently available data reflecting the amount of uninsured deposits in each institution near or at the time the determination of systemic risk was made and the uninsured depositors of the failed institutions were protected. Using estimated uninsured deposits as of December 31, 2022, in calculating special assessments would result in institutions that had the largest amounts of uninsured deposits at the time of the determination of systemic risk paying a larger share of the special assessments.

Defining the assessment base for the special assessment as estimated uninsured deposits reported as of December 31, 2022, and deducting \$5 billion from an IDI or banking organization's assessment base, would have the result that any banking organization that reported less than \$5 billion in uninsured deposits would not be subject 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. 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 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. Among banking organizations that report uninsured deposits, those with total assets between \$1 billion and \$5 billion are generally the least reliant on uninsured deposits for funding, with uninsured deposits averaging 28.1 percent of assets, compared with the largest banking organizations with total assets greater than \$250 billion, which had uninsured deposits that averaged 35.8 percent of assets.

TABLE 1—AVERAGE SHARE OF ASSETS FUNDED BY UNINSURED DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE  
[Percent]

Asset size of banking organization	Average share of assets funded by uninsured deposits (percent)
\$1 to \$5 Billion .....	28.1
\$5 to \$10 Billion .....	28.9
\$10 to \$50 Billion .....	32.1
\$50 to \$250 Billion .....	34.2
Greater than \$250 Billion .....	35.8

Deposits are the most common funding source for many institutions; however, other liability sources such as borrowings can also provide funding. Deposits and other liability sources 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.

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 33.2 percent, compared with the largest banking organizations with total assets greater than \$250 billion, which averaged 39.9 percent.

TABLE 2—UNINSURED DEPOSITS AS A PERCENTAGE OF TOTAL DOMESTIC DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE  
[Percent]

Asset size of banking organization	Ratio of uninsured deposits to total domestic deposits (percent)
\$1 to \$5 Billion .....	33.2
\$5 to \$10 Billion .....	35.0
\$10 to \$50 Billion .....	39.9

TABLE 2—UNINSURED DEPOSITS AS A PERCENTAGE OF TOTAL DOMESTIC DEPOSITS, BY BANKING ORGANIZATION ASSET SIZE—Continued  
[Percent]

Asset size of banking organization	Ratio of uninsured deposits to total domestic deposits (percent)
\$50 to \$250 Billion .....	44.2
Greater than \$250 Billion .....	51.8

Based on Federal Reserve data reported by a sample of domestically chartered banks, domestic deposits declined by over 2 percent during the first two months of 2023, predominately among the top 25 commercial banks by asset size. This followed similar declines in domestic deposits over the prior three quarters, likely driven by the shift of certain types of deposits into higher-yielding alternatives. Following the March 2023 bank failures and the determination of systemic risk, deposits of the top 25 commercial banks grew slightly while deposit outflows rapidly accelerated, with banks outside of the top 25 experiencing a four percent decline in two weeks. Since late March, Federal Reserve data indicates that deposit flows have stabilized, with some

reversal of prior outflows.<sup>17</sup> First quarter earnings releases of select regional banks confirmed sizeable outflows of deposits, while other large and regional banks reported more modest declines or inflows.

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.

Under the proposal, the banks that benefited most from the assistance provided under the systemic risk determination would be charged special assessments to recover losses to the DIF

resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying higher special assessments.

For banking organizations that have more than one subsidiary IDI, the assessment base for the special assessments would be equal to its total estimated uninsured deposits reported as of December 31, 2022, less its share of the \$5 billion deduction, which would be based on its share of total estimated uninsured deposits held by all IDI affiliates in the banking organization.<sup>18 19</sup> Table 3 provides an example of the calculation of special assessments for a banking organization with three subsidiary IDIs.

TABLE 3—CALCULATION OF SPECIAL ASSESSMENTS 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 assessments (Column D * 25 basis points)/current loss estimate (percent)
IDI A .....	\$50,000	50	\$2,500	\$47,500	0.75
IDI B .....	40,000	40	2,000	38,000	0.60
IDI C .....	10,000	10	500	9,500	0.15

The adjustments to the assessment base for the special assessments would serve several purposes. First, IDIs without affiliates and banking organizations, that reported \$5 billion or less in estimated uninsured deposits as of December 31, 2022, would not contribute to the special assessments. IDIs and 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 an asset size threshold, were used to determine applicability, and thereby ensuring more equitable treatment. Otherwise, a banking organization just over a particular size

threshold would pay special assessments, 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. Indeed, shortly after

<sup>17</sup> Board of Governors of the Federal Reserve System. Assets and Liabilities of Commercial Banks in the United States—H.8. Available at: <https://www.federalreserve.gov/releases/h8/default.htm>.

<sup>18</sup> As used in this NPR, the term “affiliate” has the same meaning as defined in section 3 of the FDIC 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).

<sup>19</sup> 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, and that are part of a banking organization with more than one IDI subsidiary, the amount and share of estimated uninsured deposits as of December 31, 2022, would be zero.

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 adjustments to the assessment base, the banks that benefited the most—banks of larger

asset sizes and that hold greater amounts of uninsured deposits—would be responsible for paying special assessments.

Second, the proposed methodology also would result in most small IDIs and IDIs that are part of a small banking organization not paying anything towards the special assessments. As proposed, the FDIC estimates that the special assessments would not be applicable to any banking organizations with total assets under \$5 billion.

Based on data reported as of December 31, 2022, and as illustrated in Table 4 below, the FDIC estimates that 113 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 83.0 percent of industry assets, would be subject to special assessments, including 48 banking organizations with total assets over \$50 billion and 65 banking organizations with total assets between \$5 and \$50 billion. No banking organizations with total assets under \$5 billion would pay special assessments, based on data as of December 31, 2022. The number of banking organizations subject to special assessments may 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.

TABLE 4—BANKING ORGANIZATIONS REQUIRED TO PAY SPECIAL ASSESSMENTS, BASED ON DATA REPORTED AS OF DECEMBER 31, 2022

Asset size of banking organization	Number of banking organizations required to pay special assessments	Percentage of banking organizations required to pay special assessments (percent)	Share of special assessments (percent)	Share of industry assets (percent)
Greater than \$50 billion .....	48	1.1	95.2	76.0
Between \$5 and \$50 billion .....	65	1.5	4.8	7.0
Under \$5 billion .....	0	0.0	0.0	0.0
Total .....	113	2.6	100.0	83.0

Finally, deducting \$5 billion from the assessment base of estimated uninsured deposits at the banking organization level for those with more than one IDI would ensure that banking organizations with similar amounts of estimated uninsured deposits pay a similar special assessment. For example, a banking organization with multiple IDIs with large amounts of estimated uninsured deposits would not have an advantage over other similarly-positioned IDIs that are not subsidiaries of a holding company because instead of excluding \$5 billion of estimated uninsured deposits for each IDI in one banking organization, the \$5 billion deduction would be distributed across multiple affiliated IDIs.

The proposed methodology ensures that the banks that benefited most from the assistance provided under the systemic risk determination would be charged special assessments to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying higher special assessments.

#### *E. Collection Period for Special Assessments*

Under the proposal, the special assessments 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 preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessments would be collected over eight quarters.

The estimated loss attributable to the protection of uninsured depositors pursuant to the systemic risk determination is currently estimated to total \$15.8 billion. However, loss estimates for failed banks are periodically adjusted as assets are sold, liabilities are satisfied, and receivership expenses are incurred.

The FDIC would review and consider any revisions to loss estimates each quarter of the collection period. 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 assessments, the FDIC would cease collection of special assessments before the end of the initial eight-quarter collection period, in the

quarter after it has collected enough to recover actual or estimated losses. The FDIC would provide notice of the cessation of collections at least 30 days before the next payment is due.

The FDIC is required by statute to place the excess funds collected through special assessments in the DIF.<sup>20</sup> By spreading out the collection period over eight quarters, a length of time that would enable the FDIC to develop a more precise 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 over collecting.

#### *F. Extended Special Assessment Period*

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

<sup>20</sup> 12 U.S.C. 1823(c)(4)(G)(ii)(III).

before the first payment of any extended special assessment is due.

In the event that extended special assessments are needed, the FDIC would collect the shortfall amount on a quarterly basis. In the interest of consistency and predictability, the quarterly rate would not exceed the 3.13 basis point quarterly special assessment rate applied during the initial eight-quarter collection period, and such extended special assessments would be collected for the minimum number of quarters needed to recover the shortfall amount at such quarterly rates.

The assessment base for such extended special assessment would be as described above, based on estimated uninsured deposits reported as of December 31, 2022, with a \$5 billion deduction for each banking organization. However, each banking organization's assessment base for such extended special assessments may differ from its assessment base for special assessments over the initial eight-quarter collection period, due to mergers or failures that occurred during the eight-quarter collection period.

#### *G. One-Time Final Shortfall Special Assessment*

The FDIC is required by statute to recover the loss to the DIF attributable to protecting uninsured depositors of Silicon Valley Bank and Signature Bank.<sup>21</sup> 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 the March 12, 2023, systemic risk determination applied 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 special assessments and any extended special assessments have been collected, and if losses at the termination of the receiverships exceed the amount collected through such special assessments (the final shortfall amount), the FDIC would impose a one-time final shortfall special assessment.

The assessment base for such one-time final shortfall special assessment would be as described above, based on estimated uninsured deposits reported as of December 31, 2022, with a \$5 billion deduction for each banking organization. However, each banking

organization's assessment base for the one-time final shortfall special assessment may differ from its assessment base for previous special assessments collections, due to mergers or failures that occurred up to the determination of the shortfall amount. The FDIC would 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 as of December 31, 2022, after applying the \$5 billion deduction to banking organizations as of the date that the final shortfall is calculated.

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

The FDIC would notify each IDI subject to a one-time 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 would be included in the IDI's invoice for its regular quarterly deposit insurance assessment.

#### *H. No Prior Period Amendments*

Each IDI's assessment base for the special assessments would be based on its estimated uninsured deposits reported on its Call Report for December 31, 2022. 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 affect an institution's rate or base for the special assessments. While the rule would not change existing reporting policies and procedures around prior period amendments, the FDIC would use data on estimated uninsured deposits for the quarter ending December 31, 2022, reported as of the date of adoption of any final rule to calculate special assessments for the duration of the collection period.

#### *I. Collection of Special Assessments and Any Shortfall Special Assessment*

The special assessments and any shortfall special assessment would 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 would disclose the amount of any special assessments or shortfall special assessments due.

#### *J. Payment Mechanism for the Special Assessments and Shortfall Special Assessment*

Each IDI would be required to take any actions necessary to allow the FDIC to debit its special assessment and 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 would have to ensure that sufficient 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 would be as provided for nonpayment of an IDI's regular assessment.<sup>22</sup>

#### *K. Mergers, Consolidations and Terminations of Deposit Insurance*

First, under existing regulations, an IDI that is not the resulting or surviving IDI in a merger or consolidation must file a quarterly Call Report for every assessment period prior to the assessment period in which the merger or consolidation occurs. The surviving or resulting IDI is responsible for ensuring that these Call Reports are filed. The surviving or resulting IDI is also responsible and liable for any unpaid assessments on the part of the IDI that is not the resulting or surviving IDI.<sup>23</sup> The FDIC proposes that unpaid assessments would also include any unpaid special assessments and any shortfall special assessments.

Second, if an IDI acquires—through merger or consolidation—another IDI during the collection period of the special assessments, the acquiring IDI would be required to pay the acquired IDI's special assessments, if any, in addition to its own special assessments from the quarter of the acquisition through the remainder of the collection period. The FDIC would not adjust the acquiring institution's special assessments. The FDIC also would not adjust the calculation of the acquired institution's special assessments. Any shortfall special assessments following the eight-quarter collection period would be calculated as described above, based on estimated uninsured deposits reported as of December 31, 2022. However, to ensure full recovery of the

<sup>22</sup> See 12 CFR 327.3(c).

<sup>23</sup> 12 CFR 327.6(a).

<sup>21</sup> 12 U.S.C. 1823(c)(4)(G)(ii).

difference between amounts collected and losses related to the systemic risk determination, each organization's extended special assessments or final shortfall special assessments would reflect mergers, consolidations, failures, or other terminations of deposit insurance that occurred between December 31, 2022, and the date in which such extended special assessments or final shortfall special assessments are determined.

Third, existing regulations provide that, 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 for the assessment periods that its deposits are insured, but not thereafter.<sup>24</sup> The FDIC proposes that these provisions would also apply to the special assessments and any shortfall special assessments.

Finally, in the case of one or more transactions in which one IDI voluntarily terminates its deposit insurance under the FDI Act and sells certain assets and liabilities to one or more other IDIs, each IDI must report the increase or decrease in assets and liabilities on the Call Report due after the transaction date and be assessed accordingly under existing FDIC assessment regulations. The IDI whose insured status is terminating must, among other things, continue to pay assessments for the assessment periods that its deposits are insured.<sup>25</sup> The FDIC proposes that the same process would also apply to the special assessments and any shortfall special assessments.

#### *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.<sup>26</sup> Therefore, an institution would 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.

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.

#### *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 U.S.C. 327.3(f).<sup>27</sup>

### **IV. 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 Corporation deems appropriate and relevant to the action taken or the assistance provided.<sup>28</sup>

#### *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.<sup>29</sup>

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 FDIC Board and the Board of Governors voted unanimously to recommend, and the 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 all depositors.<sup>30</sup> The full protection of all 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. Generally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. Under the proposal, the banks that benefited most from the assistance provided under the systemic risk determination would be charged special assessments to recover losses to the DIF resulting from the protection of uninsured depositors, with banks of larger asset sizes and that hold greater amounts of uninsured deposits paying higher special assessments.

<sup>27</sup> Consistent with Section M above, amendments filed by an IDI to its Call Report or FFIEC 002 after the date of adoption of the final rule by the Board, would not be eligible as a basis for a request for revision under 12 U.S.C. 327.3(f). Existing regulation 12 U.S.C. 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 as proposed, the request for review provision under 12 U.S.C. 327.4(c) would not be applicable to an IDI's special assessment or shortfall special assessment.

<sup>28</sup> 12 U.S.C. 1823(c)(4)(G)(iii)(III).

<sup>29</sup> 12 U.S.C. 1823(c)(4)(G)(iii)(III).

<sup>30</sup> 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>.

<sup>24</sup> 12 CFR 327.6(c).

<sup>25</sup> 12 CFR 327.6(c).

<sup>26</sup> FASB ASC paragraph 450–20–25–2.

### Effects on the Industry

In calculating the assessment base for the special assessments, the FDIC would deduct \$5 billion from each IDI or banking organization's aggregate estimated uninsured deposits reported as of December 31, 2022. As a result, any institution that did not report any uninsured deposits as of December 31, 2022, would not be subject to the special assessment. Additionally, most small IDIs and IDIs that are part of a small banking organization would not pay anything towards the special assessment. Some small and mid-size IDIs would be subject to the special assessment if they were subsidiaries of a banking organization with more than \$5 billion in uninsured deposits and such IDIs reported positive amounts of uninsured deposits after application of the deduction, or if they directly held 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 as of December 31, 2022, and as captured in Table 4 above, the FDIC estimates that 113 banking organizations would be subject to special assessments, including 48 banking organizations with total assets over \$50 billion and 65 banking organizations with total assets between \$5 and \$50 billion. No banking organizations with total assets under \$5 billion would pay special assessments, based on data reported as of December 31, 2022.<sup>31</sup> It is anticipated that the same banking organizations subject to special assessments would also be subject to any extended special assessments or final shortfall special assessment, absent the effects of any mergers, consolidations, failures, or other terminations of deposit insurance that occur through the determination of such extended special assessments or final shortfall special assessment.

### Capital and Earnings Analysis

The FDIC has analyzed the effect of the special assessments 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 as of December 31, 2022, and assumes that pre-tax income for the quarter in which a banking organization

would recognize the accrual of a liability and an estimated loss (*i.e.*, expense) from a loss contingency for the special assessments, will equal the average of their pre-tax income from January 1, 2022, through December 31, 2022.<sup>32</sup>

To avoid the possibility of underestimating effects on bank earnings or capital, the analysis also assumes that the effects of the special assessments are not transferred to customers in the form of changes in borrowing rates, deposit rates, or service fees. Because special assessments are a tax-deductible operating expense for all institutions, increases in the assessment expense can lower taxable income.<sup>33</sup> The analysis considers the effective pre-tax cost of special assessments in calculating the effect on capital.<sup>34</sup>

A banking organization's earnings retention and dividend policies influence the extent to which special assessments affect equity levels. If a banking organization maintains the same dollar amount of dividends when it recognizes the accrual of a liability and an estimated loss (*i.e.*, expense) from a loss contingency for the special assessments or shortfall special assessment as proposed, equity (retained earnings) will be reduced by the full amount of the pre-tax cost of the special assessments or shortfall special assessment. 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 over the four quarters ending December 31, 2022. In the event that the ratio of Tier 1 capital to assets falls below four percent, however, this assumption is modified such that a banking organization retains the amount necessary to reach a four percent minimum and distributes any

remaining funds according to the dividend payout rate.<sup>35</sup>

As proposed, the FDIC estimates that it would collect the estimated loss from protecting uninsured depositors at Silicon Valley Bank and Signature Bank of approximately \$15.8 billion, over the eight-quarter collection period. Banking organizations would 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 income of the entire amount of the special assessments to be collected over eight quarters would occur in one quarter only.

Given this estimate and the assumptions in the analysis, the FDIC estimates that, on average, the proposed special assessments would decrease the dollar amount of Tier 1 capital of banking organizations that would be required to pay special assessments by an estimated 61 basis points.<sup>36</sup> 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 proposed special assessments.

The banking industry reported full-year 2022 net income lower than full-

<sup>35</sup> 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.

<sup>36</sup> Estimated effects on capital are calculated based on data reported as of December 31, 2022, 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 special assessments.

<sup>31</sup> The number of banking organizations subject to special assessments may change prior to any final rule depending on any adjustments to the loss estimate, mergers or failures, or similar activities, or amendments to reported estimates of uninsured deposits.

<sup>32</sup> 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.

<sup>33</sup> 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).

<sup>34</sup> The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

year 2021 net income, but still above the pre-pandemic average. The effect of the proposed special assessments on a banking organization's income is measured by calculating the amount of the special assessments as a percent of pre-tax income (hereafter referred to as "income"). This income measure is used in order to eliminate the potentially transitory effects of taxes on profitability.

While special assessments are allocated based on estimated uninsured deposits reported at the banking organization level, IDIs will be responsible for payment of the special assessments. The FDIC analyzed the effect of the special assessments on income reported at the IDI-level for IDIs subject to special assessments 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 assessments by aggregating the income reported by all IDIs subject to special assessments within each banking organization since the IDIs will be responsible for payment. The FDIC analyzed the impact of the special assessments on banking organizations that were profitable based on their average quarterly income from January 1, 2022, to December 31, 2022.<sup>37</sup>

The effects on income of the entire amount of special assessments 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 proposed special assessments would result in an average one-quarter reduction in income of 17.5 percent for banking organizations subject to special assessments.<sup>38</sup>

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

TABLE 5—ESTIMATED ONE-QUARTER EFFECT OF ENTIRE AMOUNT OF SPECIAL ASSESSMENTS ON INCOME FOR PROFITABLE BANKING ORGANIZATIONS SUBJECT TO SPECIAL ASSESSMENTS<sup>1</sup>

Special assessments as percent of income	Number of banking organizations	Percent of banking organizations	Assets of banking organizations (\$ billions)	Percent of assets
Over 30% .....	13	12	4,455	23
20% to 30% .....	25	22	10,713	56
10% to 20% .....	34	30	2,577	13
5% to 10% .....	14	13	307	2
Less than 5% .....	26	23	1,117	6
Total .....	112	100	19,170	100

<sup>1</sup> Income is defined as quarterly pre-tax income. Quarterly income is assumed to equal the average of income from January 1, 2022, through December 31, 2022. For purposes of this analysis, the effects on income of the entire amount of special assessments to be collected over eight quarters are assumed to occur in one quarter only. Special assessments as a percent of income is an estimate of the one-time accrual of a full eight quarters of special assessments 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 December 31, 2022. Excludes two insured U.S. branches of one foreign banking organization subject to special assessments. Some columns do not add to total due to rounding.

In order to preserve liquidity at IDIs, and in the interest of consistent and predictable assessments, the special assessments would be collected over eight quarters. The proposed special assessments would be applicable no earlier than the first quarterly assessment period of 2024, providing time for institutions to prepare and plan for the special assessments.

#### Economic Conditions

On February 28, 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 fourth quarter of 2022. Overall, key banking industry metrics remained favorable in the quarter.<sup>39</sup>

Loan growth continued, net interest income grew, and asset quality

measures remained favorable. Further, the industry remained well capitalized and highly liquid, but the report also highlighted a key weakness in elevated levels of unrealized losses on investment securities due to rapid increases in market interest rates. Unrealized losses on available-for-sale and held-to-maturity securities totaled \$620 billion as of December 31, 2022, and unrealized losses on available-for-sale securities have meaningfully reduced the reported equity capital of the banking industry. The combination of a high level of longer-term asset maturities and a moderate decline in total deposits underscored the risk that unrealized losses could become actual losses should banks need to sell securities to meet liquidity needs.

The financial system continues to face significant downside risks from the

effects of inflation, rising market interest rates, and a weak economic outlook. Credit quality and profitability may weaken due to these risks, potentially resulting in tighter loan underwriting, slower loan growth, higher provision expenses, and liquidity constraints. Additional short-term interest rate increases, combined with longer asset maturities may continue to increase unrealized losses on securities and affect bank balance sheets in coming quarters.

Despite these downside risks, in the weeks that followed the failure of Silicon Valley Bank and Signature Bank, the state of the U.S. financial system remained sound and institutions are

<sup>37</sup> There were no banking organizations that would be required to pay special assessments that were unprofitable based on average quarterly income from January 1, 2022, to December 31, 2022.

<sup>38</sup> Earnings or income are quarterly income before assessments and taxes. Quarterly income is assumed to equal average income from January 1, 2022, through December 31, 2022.

<sup>39</sup> FDIC Quarterly Banking Profile, Fourth Quarter 2022. <https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2022dec/>.

well positioned to absorb a special assessment.<sup>40</sup>

### 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, the FDI Act in Section 13(c)(4)(G) provides the FDIC with discretion in the design and timeframe for any special assessments to recover the losses from the systemic risk determination.<sup>41</sup> The FDIC has considered alternatives to this proposal to collect special assessments to recover the loss to the DIF arising from the protection of all uninsured depositors in connection with the systemic risk determination announced on March 12, 2023, as required by the FDI Act. The FDIC identified six potentially effective and reasonably feasible alternatives to the proposed rule. These alternatives are discussed in detail below.

#### Alternative 1: One-Time Special Assessment

As an alternative to the proposal, the FDIC considered imposing a one-time special assessment at the end of the quarter following the effective date. 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 amount of a one-time special assessment would equal the entire initial loss estimate. Calculation of the special assessments, 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.<sup>42</sup>

While under both the proposal 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 the interest of liquidity preservation in a period of uncertainty and to mitigate the risk of over collecting.

#### Alternative 2: Asset Size Applicability 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, the FDIC considered basing applicability on an asset size threshold.

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 determination of systemic risk.<sup>43</sup> 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 proposal, including the \$5 billion deduction from estimated uninsured deposits, and an asset-size-based applicability threshold would effectively remove the smallest institutions from eligibility, the proposed deduction of \$5 billion from each banking organization's estimated uninsured deposits in calculating the special assessment would help 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 would be to eliminate the proposed \$5 billion deduction from the assessment base for the special assessment, and therefore allocate the special assessments among IDIs based on each IDI or banking organization's estimated uninsured deposits as of December 31, 2022. This alternative would result in special assessments 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.<sup>44</sup> Relative to the proposal, more IDIs would pay special assessments under this alternative, and IDIs with greater amounts of uninsured deposits would generally pay lower special assessments relative to the proposal since the special assessments would be allocated across a significantly larger number of institutions.

However, 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, the FDIC rejected this alternative in favor of allocating the special assessments to larger institutions with the largest amounts of uninsured deposits, with the result that smaller institutions would not have to contribute to the special assessments. 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.

<sup>40</sup> 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>.

<sup>41</sup> 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)(iii)(III).

<sup>42</sup> 12 U.S.C. 1823(c)(4)(G)(ii)(III).

<sup>43</sup> 12 U.S.C. 1823(c)(4)(G)(iii)(III).

<sup>44</sup> 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.

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

A fourth alternative would be to allocate the special assessments 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.<sup>45</sup>

Under this alternative, IDIs with a greater reliance on uninsured deposits would generally pay the greatest amount of special assessments; however, the special assessments would be allocated across a large number of institutions. This alternative would result in institutions of vastly different asset sizes paying a similar dollar amount of special assessments. It also would result in some smaller IDIs and banking organizations, paying potentially significant amounts of special assessments, 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 special assessments.

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 proposed methodology results in larger special assessments for similarly sized banking organizations reporting greater concentrations of uninsured deposits.

<sup>45</sup> 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.

#### 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 proposal and all alternatives described, the special assessments 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 final alternative would be to collect 50 percent of the special assessments 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 assessments 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 assessments to the institutions that had the largest amounts of uninsured deposits at the time of the determination of systemic risk.

The remaining special assessments 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 given the potential incentives for IDIs to reduce their amount of uninsured deposits ahead of the December 31, 2023, reporting date, which may result in unintended market dislocations and reduced liquidity in the banking sector. This alternative may also change the timing of accrual of the contingent liability by banks. The proposal'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 special assessments.

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

A sixth alternative would be 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.<sup>46</sup> Under this alternative, the FDIC estimates that it would need to charge an annual assessment rate of 3.76 basis points over two years to recover estimated losses without the \$5 billion deduction, or 4.57 basis points with the \$5 billion deduction; however, a significantly larger number of banking organizations would be subject to the special assessments relative to the proposal.

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

This alternative would result in smaller IDIs and banking organizations, regardless of reliance on uninsured deposits for funding, paying potentially significant amounts of special assessments. 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 special assessments due to these exclusions, despite holding significant amounts of uninsured deposits. The FDIC rejected this alternative for these reasons.

The FDIC requests comments on the proposal and the alternative approaches considered. The FDIC has carefully weighed the available options in fulfilling the statutory requirement to recover the loss to the DIF arising from the use of a systemic risk determination through one or more special assessments.

In the FDIC's view, the proposal reflects an appropriate balancing of the goal of applying special assessments to the types of entities that benefited the

<sup>46</sup> See 12 CFR 327.5.

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 proposal also allows for payments to be collected over an extended period of time in order to mitigate the liquidity effects of the special assessments by requiring smaller, consistent quarterly payments. On balance, in the FDIC's view, the proposal 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. Comment Period, Effective Date, and Application Date

The FDIC is issuing this proposal with an opportunity for public comment through July 21, 2023. Following the comment period, the FDIC expects to issue a final rule with an effective date of January 1, 2024. 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), and would continue to be collected for an anticipated total of eight quarterly assessment periods. Because the estimated loss pursuant to the systemic risk determination will be periodically adjusted, the FDIC would retain the ability to cease collection early, impose an extended special assessment collection period after the eight-quarter collection period to collect the difference between losses and the amounts collected, and impose a final shortfall special assessment after both receiverships terminate.

### V. Request for Comment

The FDIC is requesting comment on all aspects of the notice of proposed rulemaking, in addition to the specific requests below.

*Question 1: Should the special assessments be calculated as proposed?*

*Question 2: Are there alternative methodologies for calculating the special assessments the FDIC should consider that would result in financial reporting in accordance with U.S. GAAP and could result in different timing for the impact to earnings and capital? Please describe.*

*Question 3: Should the assessment base for the special assessments be equal to estimated uninsured deposits reported as of December 31, 2022, or reported as of some other date, and why?*

*Question 4: Should the assessment base for the special assessments be equal to estimated uninsured deposits or some other measure?*

*Question 5: Is the deduction of \$5 billion of aggregate estimated uninsured deposits from the assessment base for the special assessments for each IDI or banking organization appropriate? Why?*

*Question 6: Should the FDIC collect special assessments over an eight-quarter collection period, as proposed? Should the collection period be longer to spread out the effects of the payment of special assessments, or shorter?*

*Question 7: Should the FDIC consider an exemption for specific types of deposits from the base for special assessments? On what basis?*

*Question 8: Should any shortfall special assessments be calculated as proposed?*

### VI. Administrative Law Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.<sup>47</sup> However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, 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.<sup>48</sup> 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.<sup>49</sup> Because the proposed rule relates directly to the rates imposed on FDIC-insured institutions, the proposed rule is not subject to the RFA.

<sup>47</sup> 5 U.S.C. 601 *et seq.*

<sup>48</sup> 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.

<sup>49</sup> 5 U.S.C. 601(2).

Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

The FDIC insures 4,715 institutions as of December 31, 2022, of which 3,433 are small entities.<sup>50</sup> As discussed previously, the proposed rule would impose a special assessment on IDIs that are part of banking organizations that reported \$5 billion or more in uninsured deposits, as of December 31, 2022. Given that no small entity has reported \$5 billion or more in uninsured deposits, the FDIC does not believe the proposed rule will have a direct effect on any small entity.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects on small entities that the FDIC has not identified?

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995<sup>51</sup> (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 proposed rule does not 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)<sup>52</sup> 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

<sup>50</sup> December 31, 2022 Call Report data.

<sup>51</sup> 44 U.S.C. 3501–3521.

<sup>52</sup> 12 U.S.C. 4802(a).

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.<sup>53</sup>

The proposed rule would 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. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process, and the FDIC invites comments that will further inform its consideration of RCDRIA.

#### D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act<sup>54</sup> requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposed rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

#### 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 proposes to amend 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 (f) of this section and, if necessary, the extended special assessment period as defined in paragraph (g) of this section, and if further necessary, on a one-time basis as described in paragraph (l) 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 special assessment.* 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 (f)(2) or (g)(3) of this section, as appropriate, by the institution’s special assessment base as defined in paragraph (f)(3) or (g)(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. 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 special assessment.* 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) *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 last quarterly assessment period of 2025, except the initial special assessment period will cease the first quarterly assessment period after 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 3.13 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, as described in paragraph (h) of this section; minus

(B) The \$5 billion deduction; 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:

(A) The institution’s uninsured deposits, as described in paragraph (h) of this section; minus

(B) The institution’s portion of the \$5 billion deduction, determined according to paragraph (i) of this section; provided, however, that an institution’s special assessment base cannot be negative.

(g) *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

<sup>53</sup> 12 U.S.C. 4802(b).

<sup>54</sup> Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

minimum number of quarters required to recover the shortfall amount at a rate under paragraph (g)(3) of this section that is at or below 3.13 basis points per quarter.

(3) *Assessment rate during extended special assessment period.* The assessment rate during the extended special assessment period will be the shortfall amount, divided by the total amount of uninsured deposits for the quarter ended December 31, 2022, 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, determined according to paragraph (i) of this section, divided by the minimum number of quarters that results in the quarterly rate being no greater than 3.13 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, as described in paragraph (h) of this section, adjusted for mergers, consolidation, and termination of insurance as of the last assessment period of 2025; minus

(B) The \$5 billion deduction; 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, as described in paragraph (h) of this section, adjusted for mergers, consolidation, and termination of insurance as of the last assessment period of 2025; minus

(B) The institution's portion of the \$5 billion deduction, determined according to paragraph (i) of this section; provided, however, that an institution's special assessment base cannot be negative.

(h) *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 date this rule is adopted. 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 special assessments or a shortfall special assessment under this section, the amount of uninsured deposits for such institutions as of December 31, 2022, is zero.

Amendments to an institution's Call Report or FFIEC 002 subsequent to the date this rule is adopted by the Board do not affect the amount of the institution's uninsured deposits for purposes of calculating special assessments or shortfall special assessments under this section.

(i) *Special assessment base— institution's portion of the \$5 billion deduction.* For purposes of paragraphs (f)(3)(ii)(B) and (g)(4)(ii)(B) of this section, an institution's portion 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.

(j) *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).

(k) *Effect of mergers, consolidations, and other terminations of insurance on special assessments—(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 assessments or final shortfall special assessments 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.* 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, if any, from the quarter of the acquisition through the remainder of the initial or extended special

assessment period, including any final shortfall special assessments.

(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, special assessments and any shortfall special assessments shall be paid consistent with § 327.6(c).

(l) *One-time final shortfall special assessment.* If the aggregate amount of special assessments collected during the initial or 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 final shortfall special assessment.* The FDIC shall notify each insured depository institution of the amount of such institution's final shortfall special assessment no later than 45 days before such shortfall assessment is due.

(2) *Aggregate final shortfall special assessment amount.* The aggregate amount of the 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 special assessments collected under this section through initial and extended special assessment periods.

(3) *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 for the quarter ended December 31, 2022, 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, determined according to paragraph (i) of this section.

(4) *Final shortfall special assessment base.* (i) The 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, as described in paragraph (h) of this section, adjusted for mergers, consolidation, and termination of

insurance as of the assessment period preceding the final short fall assessment period; minus

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

(ii) The 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, as described in paragraph (h) of this section, adjusted for mergers, consolidation, and termination of insurance as of the assessment period preceding the final shortfall assessment period; minus

(B) The institution's portion of the \$5 billion deduction, determined according to paragraph (i) of this section; provided, however, that an institution's final shortfall special assessment base cannot be negative.

(5) *Calculation of 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 final shortfall special assessment base as defined in paragraph (l)(4) of this section.

(6) *One-time final special assessment.* The one-time final shortfall special assessment shall be collected on a one-time quarterly basis after final 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.

(m) *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).

(n) *Special assessment collection in excess of losses.* Any special assessments collected under this section that exceed 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.

(o) *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 May 11, 2023.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2023–10447 Filed 5–19–23; 8:45 am]

**BILLING CODE 6714–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2023–0188]

RIN 1625–AA09

### Drawbridge Operation Regulation; Cuyahoga River, Cleveland, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to create a new operating schedule to govern all movable bridges over the Cuyahoga River. The Coast Guard is also proposing new rules that will assist mariners signal for and anticipate bridge openings. Mariners have raised concerns to the Ninth Coast Guard District Commander regarding the safety and consistency of moveable bridge operations on the Cuyahoga River. These additions are proposed in response to those concerns. We invite your comments on this proposed rulemaking.

**DATES:** Comments and relate material must reach the Coast Guard on or before July 21, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0188 using Federal Decision-Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email If you have questions on this temporary final rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Table of Abbreviations**

CFR Code of Federal Regulations

CRSTF Cuyahoga River Safety Task Force  
DHS Department of Homeland Security  
FR Federal Register  
IGLD85 International Great Lakes Datum of 1985  
LWD Low Water Datum Based on IGLD85  
OMB Office of Management and Budget  
PAWSA Ports And Waterway Safety Assessment  
NPRM Notice of Proposed Rulemaking  
§ Section  
U.S.C. United States Code

## **II. Background, Purpose, and Legal Basis**

The Cuyahoga River is over 100-miles in length and empties into Lake Erie at Cleveland, Ohio, but only the last 7-miles of the river are considered navigable for interstate commerce purposes. The Cuyahoga River system consists of the Cuyahoga River and the Old River Channel, the original outflow channel of the Cuyahoga River. The Cuyahoga River has multiple sharp bends that make visibility down river impossible and is designated as an American Heritage River by Executive Order 13061.

Twenty-four bridges cross the Cuyahoga River. These bridges accommodate small powered and non-powered recreational vessels, along with large commercial vessels of up to 700 feet in length.

The Cuyahoga River is considered one of the major industrial centers in the Great Lakes and handles several commodities for domestic and international commerce, including steel, heavy machinery, dry and liquid bulk products, and salt.

The United States and Canadian Coast Guard conduct fall and spring ice-breaking operations in the Cuyahoga River, depending on shipping schedules and weather conditions.

Heavy recreational traffic is concentrated in the Old River and on the Cuyahoga River up to mile 2.42 during the summer.

All vertical clearances over the Cuyahoga River and Old River Channel are based on IGLD85. Two bridges cross the Old River Channel:

1. The CSX Railroad Bridge, mile 0.89, is a single leaf bascule bridge that provides a horizontal clearance of 170-feet and a vertical clearance of 6-feet in the closed position and an unlimited clearance in the open position. This bridge is maintained in the open position.

2. The Willow Avenue Bridge, mile 1.02, is a vertical lift bridge that provides a horizontal clearance of 150-feet and a vertical clearance of 12-feet in the closed position and 98 feet in the open position.