

## FDIC finalizes \$16.3 billion special assessment to recover loss from SVB and Signature Bank failures

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The Federal Deposit Insurance Corporation (FDIC) finalized the special assessment to recoup losses to the Deposit Insurance Fund (DIF) from protecting uninsured depositors following the closures of Silicon Valley Bank and Signature Bank. The final rule essentially adopts the assessment as proposed, with minor adjustments.

The FDIC's final special assessment is largely unchanged from the proposed rule:

- The assessment base is equal to the amount of an insured depository institution's (IDI) uninsured deposits, as reported for the quarter ended December 31, 2022, minus up to \$5 billion of uninsured deposits at the IDI (or, if a banking organization has more than one IDI, at the banking organization in the aggregate); and
- The special assessment will be collected over eight quarterly assessment periods.

The final rule becomes effective on April 1, 2024, and the first collection will be reflected on the invoice for the first quarterly assessment period of 2024 (January 1 – March 31), with the first payment due on June 28, 2024.

### Background – FDIC's obligation to recover DIF losses

The FDIC is required by statute to recover any losses incurred by the DIF after any use of the systemic risk exception through one or more special assessments on IDIs, IDI holding companies, or both. 12 U.S.C. § 1823(c)(4)(G)(ii)(I). The systemic risk exception was invoked by the Secretary of the Treasury on March 12, 2023, to protect all uninsured depositors of Silicon Valley Bank and Signature Bank. The FDIC is also statutorily mandated to maintain the DIF reserve ratio of the net worth of the DIF to the value of the aggregate estimated insured deposits at a minimum of 1.35 percent, and to implement a plan to restore that reserve ratio if it falls below 1.35 percent. Owing to the COVID-19 pandemic, the DIF reserve ratio fell below 1.35 percent, leading the FDIC to adopt a [restoration plan](#) in September 2020 (later [amended](#) in June 2022) which imposed higher assessment rates on IDIs. The just-finalized special assessment is in addition to the increased assessment rates that IDIs are already subject to as part of the FDIC's restoration plan.

The estimated losses to the DIF in the final rule are higher than the estimate in the [proposal](#), and the assessment rate is higher as well. Under the [final rule](#), IDIs will be assessed 13.4 basis points annually, up from 12.5 basis points in the proposal, to recover an estimated loss of approximately \$16.3 billion, up from the estimate in the proposal of approximately \$15.8 billion. The assessment base will be equal to each IDI's estimated uninsured deposits in its December 31, 2022, call report after excluding the first \$5 billion of uninsured deposits. The special assessment will be collected on a quarterly basis for eight quarters beginning with the first quarter of 2024, although the FDIC retained the flexibility to extend the special assessment period as well as impose a one-time shortfall assessment to collect any remaining amount to fully recover the losses to the DIF.

The final rule largely adopts all aspects of the proposal, with "clarifications to promote transparency and a modification to apply any corrective amendments to estimated uninsured deposits for the December 31, 2022, reporting period to the

calculation of the special assessment, following adoption of the final rule,” which are discussed below. The FDIC estimates that the special assessment will apply to 114 banking organizations, including 48 banking organizations with total assets over \$50 billion with the remainder falling on banking organizations with total assets between \$5 and \$50 billion.

## The final rule

### Changes from the proposal...

#### Prior period amendments

Under the proposal, any amendments to an IDI’s call report for the December 31, 2022, reporting period made after the adoption of a final rule would not have affected that IDI’s special assessment rate or base. The FDIC has modified this concept in the final rule and will now apply any amendments to correct the reporting of estimated uninsured deposits that are confirmed through, or associated with the result of, the FDIC’s review of an IDI’s reporting methodology for estimated uninsured deposits and related items on call reports (Assessment Reporting Review).

In particular, the final rule notes that some IDIs filed amendments to their December 31, 2022, call reports that “incorrectly reduced the amount of uninsured deposits,” because they were, for example, collateralized or were certain intercompany deposit balances. The FDIC also received comment letters that “raised concerns about the accuracy of the amount of estimated uninsured deposits reported on the Call Report.” In the final rule, the FDIC notes that it is conducting an Assessment Reporting Review to review the reporting methodology for call report items. Because the Assessment Reporting Review may result in amendments to call reports if the FDIC determines an IDI was not correctly reporting estimated uninsured deposits, the final rule will apply any such amendments in calculating the special assessment.

#### Mergers, consolidations, and terminations of deposit insurance

Under the proposed rule, if an IDI were to merge with or acquire another IDI, the acquirer would be required to pay for both IDIs’ special assessments, although the acquirer’s assessment base would be adjusted if the collection period was extended or if a one-time final shortfall assessment was imposed. If an IDI’s insured status was terminated, whether voluntarily or not, the IDI would have been obligated to continue to pay assessments, including the special assessment, for the assessment periods that its deposits are insured. The final rule makes two main adjustments to the proposed rule on these points.

First, if the special assessment is extended beyond eight quarters, or a one-time final shortfall special assessment is imposed, an IDI’s assessment base will **not** be adjusted for mergers or failures that occurred after adoption of the final rule. The FDIC explains its view that this change ensures that “an acquiring bank’s special assessment, and any special assessment assumed for an acquired bank, continues to reflect each banking organization’s relative benefit from the assistance provided under the systemic risk determination.” This change will also result in an acquiring bank benefiting from an acquired bank’s \$5 billion deduction. The FDIC further clarifies that any mergers or consolidations before the March 12, 2023 systemic risk determination would result in an adjustment to the acquiring bank’s special assessment base, to include the uninsured deposits of the acquired bank, but that the IDI would benefit only from a single \$5 billion deduction.

Second, the FDIC will require any bank that voluntarily terminates its insured status after the final rule is adopted to still pay its share of the special assessment. Doing so, the FDIC notes, will “avoid incentivizing banks to voluntarily terminate their insured status to avoid paying the special assessment.”

### ... But it’s mostly the same, despite opposing comments

Although various commenters argued for changes to the special assessment base (e.g., what IDIs would be charged on, such as total assets, total deposits, uninsured deposits, etc.), the FDIC retained the proposed special assessment base of all uninsured deposits. Comments arguing for the exclusion of, or adjustments based on, collateralized deposits, operational deposits, and intercompany deposits were all rejected on the basis that any reduction in the amount of the special assessment for banking organizations with these kinds of deposits would increase the assessment burden for all other institutions holding other types of uninsured deposits. Because the FDIC’s approach is evidently shaped by data showing that larger banking organizations hold higher amounts of uninsured deposits, and its conviction that even the largest banking organizations benefited indirectly from the systemic risk exception, the FDIC was clearly reluctant to

depart from an approach that places the greater burden on IDIs with higher amounts of uninsured deposits.

The FDIC adopted the proposed \$5 billion exclusion and no others. In the FDIC's own words, "[g]enerally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination. With the \$5 billion deduction from the assessment base, the banks that benefited the most—banks of larger asset sizes and that hold greater amounts of uninsured deposits—will be responsible for paying the special assessment."

Commenters also suggested the special assessment base of uninsured deposits be measured as of dates other than December 31, 2022, such as March 31, 2023, or June 30, 2023, on the basis that those periods more fairly or accurately represented the extent to which institutions benefited from the systemic risk determination. The FDIC opted for December 31, 2022, as proposed, because it "most closely approximate[s] an institution's vulnerability to significant deposit withdrawals in the absence of the determination of systemic risk, and therefore reflect[s] the institutions that most benefited from such determination." In the final rule, the special assessment rate was increased because of "[t]he decline in the total assessment base combined with the increase in the cost estimate," resulting in a quarterly rate of 3.36 basis points.

The FDIC also rejected comments suggesting that the special assessment be restructured so that it could be accounted for as a prepaid expense that could be amortized over a multi-year period. Instead, banking organizations will recognize the accrual of a liability and related expense for the entire special assessment in Q4 2023 pursuant to FASB ASC Topic 450.

The FDIC also adopted as proposed in the final rule provisions regarding (1) the collection and payment of the special assessment and (2) its discretion to extend the special assessment collection period or to assess a one-time final special assessment to address any shortfall.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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