July 21, 2023

Via Electronic Mail

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

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

Ladies and Gentlemen:

The Bank Policy Institute[1] submits this letter in response to the Federal Deposit Insurance Corporation's May 22, 2023, notice of proposed rulemaking entitled *Special Assessments Pursuant to Systemic Risk Determination*. The special assessment is intended to recover the costs to the Deposit Insurance Fund arising from the protection of uninsured depositors of Silicon Valley Bank and Signature Bank in connection with the systemic risk determination announced on March 12, 2023.[2]

Under the proposed rule, the assessment base for the special assessment would be equal to an insured depository institution's estimated uninsured deposits, reported as of December 31, 2022,[3] adjusted to exclude the first $5.0 billion of the IDI's estimated uninsured deposits.[4] This approach would exclude approximately 97% of all IDIs.[5] The special assessments

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1 BPI is a nonpartisan public policy, research, and advocacy group, representing the nation's leading banks and their customers. BPI's members include universal banks, regional banks, and major foreign banks doing business in the United States.

2 FDIC, Special Assessments Pursuant to Systemic Risk Determination, 88 Fed. Reg. 32694 (May 22, 2023) (proposed rule).

3 Estimated uninsured deposits are reported in Memoranda Item 2 on Schedule RC-O, Other Data for Deposit Insurance Assessments of both the Consolidated Reports of Condition and Income and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

4 For banks that are part of a holding company with one or more subsidiary banks, the exclusion would occur at the banking organization level. The proposing release uses the term "banking organization" to include banks that are not subsidiaries of a holding company as well as holding companies with one or more subsidiary banks.

5 The banks that are subject to the special assessment are referred to in this letter as the "assessed banks."

would be collected at an annual rate of 12.5 basis points, over eight quarterly assessment periods (*i.e.*, 3.13 basis points per quarter).[6]

The FDIC estimates that the special assessment will result in total revenue of $15.8 billion, equal to the FDIC's estimate of the losses to the DIF attributable to the protection of uninsured depositors of Silicon Valley Bank and Signature Bank. As the estimated loss is periodically adjusted, the FDIC retains the ability to cease collection early, extend the collection period, or impose a final, one-time special assessment after the receiverships for Silicon Valley Bank and Signature Bank terminate. These adjustments would account for the difference between actual or estimated losses and the amounts actually collected by the FDIC under the special assessment. The proposed effective date for the rule is 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 a first invoice payment date of June 28, 2024).

As discussed in greater detail below, there are flaws in the FDIC's rationale for the special assessment methodology that should not be perpetuated in any future assessment or otherwise reflected in any future FDIC policymaking. In particular, the proposal does not provide sufficient analysis to support the special assessment methodology. Furthermore, the proposal may have several regulatory effects on the assessed banks that should be adjusted to avoid undue impact on those banks. Lastly, the FDIC should undertake further analysis of the factors that it considered in establishing the proposed special assessment methodology and provide forward-looking guidance on the implementation of any future special assessments pursuant to a systemic risk exception.

I. The FDIC should not use the special assessment methodology in any future assessment or policymaking.

BPI understands the FDIC's desire to move forward on a simplified basis that can be applied uniformly across all the assessed banks for purposes of this special assessment. However, there are conceptual flaws in the proposed methodology that the FDIC should address in any future special or regular assessments and in other areas of its policymaking.

There are at least three key flaws in the proposed special assessment methodology:

- the use of uninsured deposits as the sole basis for the special assessment and the accompanying lack of differentiation based on the stability of various types of uninsured deposits;

- the FDIC's assumption that larger banks – particularly those with high amounts of uninsured deposits – benefited the most from the systemic risk determination; and

- the use of gross uninsured deposits, a measure that includes intercompany deposits and may double-count affiliate bank uninsured deposits.

[6] For purposes of this letter, we refer to the FDIC's proposed methodology as the "special assessment methodology."

A. Use of uninsured deposits as the base for the special assessment and treating uninsured deposits as a single, undifferentiated class

Under the proposed rule, the FDIC uses uninsured deposits as the sole determinant of the assessment base. Although a bank's uninsured deposit level may be an indicator of one broad type of risk that such bank could pose to the DIF, using uninsured deposits as the sole determinant of the assessment base is not a sufficiently risk-based approach. In any future special assessments, the FDIC should incorporate measures that better assess the different types of risks posed by various banks and should acknowledge that banks with different risk profiles will benefit differently from the FDIC's invocation of a systemic risk exception. This would also incentivize basic interest rate risk management and asset liability management principles such as funding stability.

Furthermore, we are concerned that the FDIC's discussion and use of uninsured deposits, without differentiation, as the assessment base for this special assessment overlooks significant variations in the characteristics of different types of uninsured deposits, which the FDIC acknowledges in its own regulations.[7] Some categories of uninsured deposits are generally more stable and should be treated accordingly. It is also important to recognize that imposing undifferentiated assessments on any category of deposits could discourage banks from accepting those deposits, both when markets are stable and in times of stress. As examples, the following categories of uninsured deposits have specific characteristics that make them more stable than other types of uninsured deposits and therefore should not be treated in an undifferentiated manner:

- *Operational deposits*. In establishing the methodology for calculating the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR), both U.S. and global regulators have acknowledged that operational deposits serve as a discrete and more stable funding source for banks.[8] In developing the outflow rates associated with uninsured operational deposits, the U.S. agencies contemplated the nature of such deposits, the customers' rights under their deposit agreements, and the economic incentives associated with customers' accounts, and noted that they expect operational deposits to present less liquidity risk to banks during stress periods.[9] This greater stability arises because clients must

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[7] *See, e.g.,* 12 C.F.R. Part 329.

[8] *See* Bank for International Settlements, Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (Jan. 2013) (". . . the deposit balance with the service provider that is proven to serve a customer's operational needs can qualify as stable."). In calculating a bank's "unsecured wholesale funding outflow amount" – *i.e.,* the amount of wholesale funding that is assumed to "run" – the proportion of wholesale deposits included ranges from 5% for fully insured operational deposits and 20% for fully insured, non-brokered, non-operational deposits made by financial sector entities or their consolidated subsidiaries, to 100% for uninsured wholesale funding not included in any other category. The proportion of uninsured operational deposits included in the unsecured wholesale funding outflow amount is 25%, indicating that it is among the more stable of wholesale deposit categories.

[9] *See* Office of the Comptroller of the Currency, Department of Treasury, Board of Governors of the Federal Reserve System, and FDIC, Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring, 78 Fed. Reg. 71817, 71841 (Nov. 29, 2013) ("The agencies expect operational deposits to have a lower impact on a covered company's liquidity in a stressed environment because these accounts have

maintain their operational deposits to receive related services from the deposit-taking bank, such as payment and securities settlement services, payroll administration services, distributions of client or beneficiary funds, and other services that are not readily transferable to another institution.

Operational deposits must meet strict requirements under the LCR and NSFR rules. The term "operational deposit" is defined as short-term unsecured wholesale funding or lending that is a deposit, or a collateralized deposit,[10] that is necessary for the provision of operational services as an independent third-party intermediary, agent, or administrator to the wholesale customer or counterparty providing the deposit.[11] To qualify as an operational deposit, the deposit liability must be related to one of twelve distinct operational services,[12] performed as part of cash management, clearing, or custody services, and meet stringent qualification requirements.[13] As a supervisory matter, banks are required to employ highly granular processes to accurately identify those deposits that are operational and that a client is therefore reasonably expected to hold in support of its day-to-day operations, even in periods of stress. These processes are subject to

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significant legal or operational limitations that make significant withdrawals within 30 calendar days unlikely"). *See also* Office of the Comptroller of the Currency, Department of the Treasury, Board of Governors of the Federal Reserve System, and FDIC, Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 Fed. Reg. 61439, 61497 (Oct. 10, 2014) ("Because such [operational] deposits are tied to the provision of specific services to the customer, these [operational] deposits present less liquidity risk during a stress period").

10 The term "collateralized deposits" refers to (i) a deposit of a public sector entity held at the bank that is required to be secured, (ii) a deposit of a fiduciary account awaiting investment or distribution held at the bank for which the bank is a fiduciary and is required to set aside assets of the bank as security, or (iii) a deposit of a fiduciary account awaiting investment or distribution held at a bank for which the bank's affiliated insured depository institution is a fiduciary and where the bank has set aside assets owned by the bank as security. *See* 12 C.F.R. § 50.3; 12 C.F.R. § 249.3; 12 C.F.R. § 329.3.

11 *Id*.

12 "Operational services" means the following services, provided they are performed as part of cash management, clearing, or custody services: (i) payment remittance; (ii) administration of payments and cash flows related to the safekeeping of investment assets, not including the purchase or sale of assets; (iii) payroll administration and control over the disbursement of funds; (iv) transmission, reconciliation, and confirmation of payment orders; (v) daylight overdraft; (vi) determination of intra-day and final settlement positions; (vii) settlement of securities transactions; (viii) transfer of capital distributions and recurring contractual payments; (ix) customer subscriptions and redemptions; (x) scheduled distribution of customer funds; (xi) escrow, funds transfer, stock transfer, and agency services, including payment and settlement services, payment of fees, taxes, and other expenses; and (xii) collection and aggregation of funds. *Id*.

13 These requirements include: (i) the related operational services must be performed pursuant to a legally binding written agreement whose termination would be subject to a 30-day delay or impose significant contractual or operational costs; (ii) the account must be clearly designated as an operational account; (iii) the customer must hold the deposit for the primary purpose of obtaining the operational services provided by the bank; (iv) the deposit account must not be designed to create an economic incentive for the customer to maintain excess funds; (v) the depository bank must demonstrate that the deposit is empirically linked to the operational services and that it has a methodology for identifying funds that exceed those required for the operational services, which must be excluded from the operational deposit amount; and (vi) the deposit must not be provided in connection with the bank's provision of prime brokerage services or correspondent banking services. *See* 12 C.F.R. § 50.4(b); 12 C.F.R. § 249.4(b); 12 C.F.R. § 329.4(b).

review and validation, including through the use of simulations to assess liquidity usage over time. Therefore, treating operational deposits like other uninsured deposits, without differentiation, is inconsistent, if not contradictory, with how federal banking supervisors treat operational deposits in the LCR and NSFR rules. The FDIC has provided no basis for disregarding its own prior analysis.

- *Collateralized state and municipal deposits*. Deposits of public entities are fully collateralized, making such deposits inherently more stable than other types of uninsured deposits. Collateralized state and municipal deposits serve important public purposes.[14] Penalizing banks that hold these deposits – *i.e.*, by imposing a special assessment on these deposits – is likely to discourage banks from accepting these deposits in the future, at least at the rates of interest currently paid. This, in turn, could result in a loss of income for public entities by reducing the rate of interest that banks could afford to pay for their deposits and even reducing the number of banks that provide this service. For these reasons, collateralized state and municipal deposits should be differentiated from other uninsured deposits in any future special assessment.

- *Affiliate deposits*. A bank's parent, affiliates and subsidiaries often hold deposits with the bank, and these deposits are generally more stable as compared to uninsured deposits from outside customers or counterparties. For example, a parent company's high-quality liquid assets (including parent deposits at subsidiary banks) serve as a source of liquidity to its bank subsidiaries and may be utilized as a source of strength at those subsidiaries. Regulators may utilize their supervisory authority to discourage these deposits from being withdrawn when such bank subsidiaries are in a stressed or troubled condition. Moreover, supervisors may encourage the use of affiliate deposits to comply with other prudential requirements, such as Regulation W, which requires the collateralization of certain affiliate transactions. Lastly, the FDIC's regular assessment methodology excludes deposits of a bank's subsidiary from the assessment calculation because the bank and its subsidiary are consolidated as both an accounting and regulatory matter.[15] However, under the proposed rule, such elimination would not occur, thereby further increasing the assessment base. The FDIC has not provided any analysis as to why subsidiary deposits should be treated differently for purposes of this special assessment. Given the lack of analysis or explanation in the proposal, it appears this is an unintended effect. For these reasons, the types of uninsured affiliate deposits discussed in this subsection should be differentiated from other types of uninsured deposits and we believe a

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[14] These deposits help ensure that public funds remain liquid and easily accessible, allowing public entities to maintain a steady cash flow to meet operational needs, pay salaries, and cover expenses for various public services. Moreover, collateralization of such deposits ensures safety of the public funds and can provide an avenue of recovery in the event of a failure of a bank.

[15] *See* 12 C.F.R. § 327.5(a); Financial Accounting Standards Board, Accounting Standards Codification 810-10-45-1. *See also* Consolidated Reports of Condition and Income, General Instructions at 12, *available at* https://www.fdic.gov/resources/bankers/call-reports/crinst-031-041/2022/2022-12-generalinstructions.pdf.

bank's subsidiary deposits should not be counted for purposes of determining the bank's uninsured deposit base.

B. Assumption that larger banks with more uninsured deposits benefited the most from the systemic risk determination

The proposing release repeatedly asserts that larger banks – particularly those with high amounts of uninsured deposits – benefited the most from the systemic risk determinations made in March 2023, without providing support for that assertion.[16] Specifically, the release asserts that "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" and notes that "*a number of institutions with large amounts of uninsured deposits* reported that depositors had begun to withdraw their funds."[17] However, the release does not provide any analysis as to whether all uninsured deposits, or all larger banks, fared equally in the face of stress at individual banks or that the effect was correlated with size.

In asserting that "larger banks benefited the most," the FDIC implies that all larger banks and the failed banks were similarly situated. However, larger banks do not all have the same key risk characteristics or business model as the failed banks (*e.g.*, larger banks typically have a different or more diversified client base and different uninsured deposit models (such as higher rate of operational deposits) as compared to the banks that failed). Moreover, prior to the announcement of the determination to protect uninsured deposits, larger banks experienced a range of depositor behaviors, indicating that the mere size of a bank or the sheer dollar amount of its uninsured deposits cannot be correlated with whether, or to what extent, the systemic risk determination benefited the bank. Therefore, the FDIC's assertion that larger banks universally benefited "the most" from the systemic risk determination is unfounded. In fact, the FDIC, the Board of Governors of the Federal Reserve System and the Department of the Treasury all made statements indicating that the entire banking industry and the economy as a whole – not larger banks – were the intended beneficiaries of the systemic risk determination.[18]

The failure to provide sufficient evidence to support the assertion that larger banks benefited the most is particularly problematic because it forms the primary basis for the

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16 *See* Proposed Rule, 88 Fed. Reg. at 32697, 32698, 32699, 32701, 32704, and 32705.

17 *Id.* at 32701 (emphasis added).

18 The proposing release itself states that the FDIC's decision to protect all depositors was intended to "strengthen public confidence in the nation's banking system," and not just larger banks. *See* Proposed Rule, 88 Fed. Reg. at 32695 and 32701. *See also* Joint Statement by the Department of the Treasury, Board of Governors of the Federal Reserve System, and FDIC (Mar. 12, 2023), *available at* https://www.fdic.gov/news/press-releases/2023/pr23017.html ("Today we are taking decisive actions to protect the U.S. economy by strengthening public confidence in our banking system."); Remarks by Secretary of the Treasury Janet L. Yellen at the National Association for Business Economics 39th Annual Economic Policy Conference (Mar. 30, 2023), *available at* https://home.treasury.gov/news/featured-stories/remarks-by-secretary-of-the-treasury-janet-l-yellen-at-the-national-association-for-business-economics-39th-annual-economic-policy-conference ("To be clear, the steps we took were not focused on aiding specific banks or customers. Our intervention was necessary to mitigate systemic risks and protect the broader U.S. banking system.").

proposed allocation of the special assessment, including the proposed adjustment to the assessment base to exclude the first $5.0 billion from estimated uninsured deposits.[19] Even if evidence were provided to support this assertion, the FDI Act requires the FDIC to consider all entities that benefit from any actions taken under the systemic risk determination, not only those entities that benefit the most.[20] Yet, the proposal does not explain why the FDIC disregards the benefits to the broader banking system and focuses exclusively on banks that, in the FDIC's view, benefited the "the most." Thus, it is unclear how the proposed approach comports with either the statutory factors or the actual distribution of benefits across the banking industry.[21]

C. Inclusion of affiliate bank uninsured deposits

The assessment methodology appears to have unintended effects that are not described or explained in the proposal. For example, as defined, the proposed assessment base may lead to double-counting certain deposits at the banking organization level for assessed banks that are part of a holding company with multiple subsidiary banks. If a bank's deposits with its bank affiliate are funded with uninsured deposits that it has received, the proposed special assessment methodology would result in double-counting those deposits, increasing the total assessment payable by the affected banking organization.

II. The FDIC should ensure that the special assessment does not have undue regulatory effects on the assessed banks and their holding companies.

The FDIC should work with the other federal banking agencies to reduce the associated regulatory effects of the special assessment on the assessed banks. The adjustments described below would mitigate the regulatory effects of the special assessment without affecting the FDIC's ability to recover the loss to the DIF.

A. Regulatory reconciliation

The special assessment may have several unintended regulatory effects that would unduly penalize the assessed banks, including, most significantly, by impacting the earnings and capital of assessed banks. This impact may be greater than the FDIC estimates because there is likely to be a mismatch between (i) the timing of the GAAP recognition of the assessment, which appears to be required to occur in a single quarter when the criteria in FASB ASC Topic 450 are met, and (ii) the deduction of the assessment for tax purposes, which will likely be spread out over the period during which actual payments are made. Because the special assessment may be deductible for Federal income tax purposes only as it is paid, a deferred tax asset will be established in the quarter of GAAP recognition. To the extent not deducted, this deferred tax

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[19] The proposing release asserts that the proposed methodology, including the $5 billion adjustment to the assessment base, ensures that the banks that benefited most from the systemic risk determination (*i.e.*, larger banks that hold greater amounts of uninsured deposits) would be responsible for paying the special assessment. *See* Proposed Rule, 88 Fed. Reg. at 32699.

[20] *See* 12 U.S.C. § 1823(c)(4)(G)(ii)(III).

[21] Not only is the proposed adjustment based on flawed reasoning, it has the effect of excluding from the special assessment a bank with an SVB-like ratio of uninsured deposits to total deposits so long as its total uninsured deposits were below $5.0 billion. For example, Silvergate Bank would not have been assessed under the proposed rule if it had not announced its closure several days before SVB failed.

asset would need to be capitalized using the 250% risk weight prescribed in the capital rule,[22] thereby further increasing the actual cost of the special assessment. Before the FDIC finalizes the proposed rule, the FDIC should work with the other prudential regulators to adjust the capital treatment of any deferred tax assets associated with the special assessment to avoid such an undue increase.

Therefore, we recommend that the FDIC work with the other federal banking regulators to address the following issues:

- To the extent banks must, as an accounting matter under U.S. GAAP, record the full amount of the special assessment as a cost at one time, the related reduction in regulatory capital should be amortized over the collection period. Further, any impact on the assessed banks' stress capital buffer (*i.e.*, any potential increase to the stress capital buffer resulting from the impact of the special assessment) should be assessed to avoid unintended consequences.

- For purposes of calculating requirements and guidance related to levels of dividends and stock repurchases,[23] the reduction in earnings resulting from the payment of the special assessment should be disregarded, or at least be amortized over the collection period.

- Examination findings related to earnings should exclude the special assessment from their evaluation.

B. Unintended impact of the special assessment on scorecards

The FDIC should provide an adjustment to eliminate the impact of the special assessment on Highly Complex and Large Institutions' "scorecards" for regular quarterly assessments. As drafted, the proposed rule would require a charge to earnings, which would decrease the Core Earnings / Average Quarter-End Total Assets measure, ultimately increasing base assessment rates. We do not believe this was the intended result of the proposed rule. Increasing quarterly base assessment rates due to the special assessment would be equivalent to charging the assessed banks a second time in connection with the FDIC's use of the systemic risk exception. Further, as financial statement users will likely consider the special assessment charge to be outside of assessed banks' core results of operations or other measures of profitability, we believe similar adjustments to the scorecard will provide alignment to more appropriately reflect each bank's actual profitability.

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[22] *See* 12 C.F.R. § 3.22(d); 12 C.F.R. § 217.22(d); 12 C.F.R. § 324.22(d).

[23] *See, e.g.,* Board of Governors of the Federal Reserve System, Bank Holding Company Supervision Manual Section 4060.9, Consolidated Capital Planning Processes (Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies); Board of Governors of the Federal Reserve System, Commercial Bank Examination Manual Section 3025.1, Dividends; Board of Governors of the Federal Reserve System, SR letter 09-4, Applying Supervisory Guidance and Regulations on the Payment of Dividends, Stock Redemptions, and Stock Repurchases at Bank Holding Companies.

There is precedent for this type of adjustment for deposit insurance assessment purposes. In 2020, the FDIC adopted a rule to mitigate the effect on deposit insurance assessments resulting from a bank's participation in the Paycheck Protection Program (PPP), the Paycheck Protection Program Liquidity Facility (PPPLF), and the Money Market Mutual Fund Liquidity Facility (MMLF).[24] The current special assessment warrants similar treatment in light of its extraordinary nature and the fact that its impact is out of the control of the assessed banks.

C. Timing of rule finalization

The recognition of the special assessment for U.S. GAAP purposes (*i.e.*, when the criteria in FASB ASC Topic 450 are met) may have a significant impact on quarterly income in the relevant quarter. Moreover, the timing of the finalization of the rule could significantly impact the affected banks' efforts to plan and manage their capital prudently. For these reasons, we urge the FDIC to ensure that finalization occurs sufficiently in advance of the relevant quarter end to permit the preparation of appropriate disclosures and planning for related effects on capital management.

Moreover, the FDIC should be deliberate in considering the impacts and timing of the special assessment. To that end, the FDIC should consider whether it is necessary or appropriate to adopt a final rule when the actual loss estimate is still subject to significant change and the statute does not require that the FDIC collect the special assessment within a specific period of time. The FDIC should take a considered approach within a reasonable timeframe that will cause the least disruption to the assessed banks and the industry as a whole.

D. Accounting and transparency considerations

The FDIC should formally announce, on a quarterly basis, any updates to the estimated losses to the DIF and any corresponding adjustments to be made to the special assessment collection period. This would allow assessed banks to make any necessary accounting adjustments to the previously recognized charge, to the extent there are significant changes to the estimate, and any corresponding adjustments to the collection period over time. For the avoidance of doubt, we are not suggesting that the assessment rate be adjusted based on the updated estimate of losses – simply that there be transparency as to the progress of the receivership process and the current estimate of the resulting loss.

Furthermore, we recommend that the FDIC provide a final accounting of the results of the receivership process, and the related calculation of the special assessment amount, upon termination of the receiverships, to provide transparency as to the effectiveness of the

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[24] That rule removes the effect of participation in the PPP and borrowings under the PPPLF on various risk measures used to calculate a bank's assessment rate, removes the effect of participation in the PPP and MMLF on certain adjustments to a bank's assessment rate, provides an offset to a bank's assessment for the increase to its assessment base attributable to participation in the PPP and MMLF, and removes the effect of participation in the PPP and MMLF when classifying banks as small, large, or highly complex for assessment purposes. *See* FDIC, Assessments, Mitigating the Deposit Insurance Assessment Effect of Participation in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility, 85 Fed. Reg. 38282 (June 26, 2020).

special assessment in tracking the actual costs of the receivership and the impact on the assessed banks.

Finally, the FDIC should provide more information on the termination of a bank's obligation to pay the special assessment, because this information is relevant to the application of IFRS accounting principles. Specifically, the proposing release provides that when the insured status of a bank is terminated, and the deposit liabilities of such bank are not assumed by another bank, the special assessment should be paid consistently with existing regulations[25] – *i.e.*, the bank whose insured status is terminating must continue to pay assessments for the assessment periods that its deposits are insured, but not thereafter.[26] We request that the FDIC clarify at what point the obligation to pay the special assessment would end if a bank were to voluntarily terminate its insured status during the collection period because this is relevant to when the special assessment is reflected under IFRS accounting principles.[27]

III. The FDIC should undertake further analysis on this proposed rule and provide forward-looking guidance on special assessments.

As described in Section I above, the FDIC has asserted that larger banks were the principal beneficiaries of the systemic risk determination. However, the proposed rule does not provide sufficient analysis to support this conclusion. More fundamentally, it is unclear what effects or impacts the FDIC considered to be "benefits" for purposes of the statutory criteria, and what types of benefits will be taken into account in any future special assessments. Accordingly, we recommend that the FDIC (i) undertake further analysis to support its assertion that larger banks benefited the most for purposes of this particular special assessment, and (ii) provide more general forward-looking guidance on the types of benefits, both direct and indirect, it will consider and the type of information and data that it will consult in determining which institutions benefit from any future use of the systemic risk exception.

The forward-looking guidance should also address other factors that the FDIC will consider if and when it is required to impose a special assessment related to a systemic risk exception in the future. As described in Sections I and II above, there are material practical and economic implications for the assessed banks – related to, for example, tax, regulatory capital, and the FDIC's regular assessments – that the FDIC did not address in its proposal. Such guidance would help provide transparency and predictability in the structuring of special assessments. Banks, Congress, and the public should have an understanding of how the FDIC will approach future special assessments, even if those assessments are ultimately imposed to respond to idiosyncratic or unusual events and must be tailored to reflect the circumstances of those events.

In formulating this guidance, the FDIC should seek input from interested parties, which may allow the FDIC to identify data sources that may be helpful in determining the extent to which different financial institutions benefit from systemic risk determinations. Even if some aspects of future special assessments cannot be determined in advance, a robust, public

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[25] 12 C.F.R. § 327.6(c).

[26] *See* Proposed Rule, 88 Fed. Reg. at 32701.

[27] *See* IFRIC 21 of the IFRS Accounting Standards.

discussion of the process will enable them to be fair, appropriate and imposed in a manner that reflects the factors set forth in the statute.

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We appreciate the opportunity to comment on the FDIC's proposed rule. If you have any questions, please contact the undersigned by email at tabitha.edgens@BPI.com.

Sincerely,

Tabitha Edgens

Tabitha Edgens
Senior Vice President and
Senior Associate General Counsel
Bank Policy Institute