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July 21, 2023

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: SPECIAL ASSESSMENTS PURSUANT TO SYSTEMIC RISK DETERMINATION [RIN 3064-AF93]

Dear Mr. Sheesley:

The Independent Community Bankers of America[1] ("ICBA") is pleased to provide comments in response to the Federal Deposit Insurance Corporation's ("FDIC" or "the agency") notice of proposed rulemaking regarding its special assessments pursuant to systemic risk determinations following the closures of Silicon Valley Bank ("SVB") and Signature Bank ("SBNY").[2]

ICBA applauds the FDIC for developing a special assessments methodology that is appropriately scaled, protective of liquidity needs within the banking system, and not procyclical. ICBA strongly and emphatically supports the FDIC's proposal to use an assessment base for the

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding $5.8 trillion in assets, $4.8 trillion in deposits, and $3.8 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at **www.icba.org**.

[2] Federal Deposit Insurance Corporation, Notice of Proposed Rulemaking, *Special Assessments Pursuant to Systemic Risk Determination*, RIN 3064-AF93, 88 Fed. Reg. 32694 (May 22, 2023) available at: https://www.govinfo.gov/content/pkg/FR-2023-05-22/pdf/2023-10447.pdf.

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special assessments 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 – a methodology that, if finalized, will not result in any special assessments for any community bank with fewer than $5 billion in assets. **ICBA urges the FDIC to finalize this rule as proposed and ensure that no community bank with fewer than $5 billion in assets, or fewer than $5 billion in uninsured deposits, pays any special assessment for the large bank failures of SVB and SBNY.**

Importantly, the FDIC's proposed methodology is both rational and fair. Tying the special assessment to an institution's uninsured deposits is a dynamic approach that ensures institutions of varying sizes are not subject to a punitive, uniform assessment while also ensuring the institutions with the most similar risk exposures as SVB and SBNY (i.e., large institutions holding large amounts of uninsured deposits) compensate the Deposit Insurance Fund ("DIF") for their risk. ICBA commends the FDIC for recognizing that thousands of community banks with fewer than $5 billion in uninsured deposits should not be responsible for subsidizing large banks' outsized reliance on uninsured deposits, and the resulting systemic risks posed to the financial system. Additionally, the proposal appropriately preserves a diverse banking system by scaling assessments among the nation's 113 largest banking organizations that hold the largest quantities of uninsured deposits and collecting insurance funds from these institutions in exchange for their exposures to this unstable and risky funding source.

As detailed in the U.S. Government Accountability Office's ("GAO") preliminary review of agency actions related to the March 2023 bank failures, SVB and SBNY were among the 30 largest U.S. banks at the time of their closures.[3] These large banks were also highly concentrated in uninsured deposits. At the end of 2021, SVB and SBNY reported uninsured deposits to total assets at 80 percent and 82 percent, respectively – at the time of failure these uninsured deposits amounted to 67 percent and 88 percent of these institutions' respective deposits.[4] The FDIC estimates the losses incurred by the DIF to protect these two banks' uninsured depositors was $15.8 billion – a loss amount more than thirty times greater than the total asset size of the average community bank.[5] **The community banks the FDIC proposes to**

[3] United States Government Accountability Office, GAO-23-106736, "BANK REGULATION: Preliminary Review of Agency Actions Related to March 2023 Bank Failures" (April 2023).

[4] *Id. See also* FDIC Proposal at 32696.

[5] "[T]he average asset size of community banks in 2019 was about $470 million." FDIC, *Community Banking Study*, page 2-8 (December 2020) available at: https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf.

exempt from the special assessment bear no resemblance to SVB or SBNY – community banks are not among the largest banks in the country, do not assume outsized risks, do not pursue rapid unrestrained growth through unstable funding sources, and are not overly concentrated in uninsured deposits. In light of these differences, it is evident community banks did not benefit from the systemic risk determinations to protect the depositors of these banks and should not be required to pay for the miscalculations and speculative practices at SVB and SBNY.

In designing the special assessment, section 13(c)(4)(G) of the FDI Act requires the FDIC to consider (1) the types of entities that benefit from any action taken or assistance provided under the determination of systemic risk; (2) economic conditions; (3) the effects on the industry; (4) and such other factors as the FDIC deemed appropriate and relevant to the action taken or assistance provided.[6] As applied to the failures of SVB and SBNY, these factors strongly favor the FDIC's proposal to exempt community banks with fewer than $5 billion in uninsured deposits (and in effect, those with fewer than $5 billion in assets) from paying any special assessment.

- *Types of entities that benefit.* While community banks were not the beneficiaries of the FDIC's decision to protect massive quantities of uninsured deposits held at SVB and SBNY, large banks benefitted from the systemic risk determinations in two ways. First, as the FDIC observes in its proposal, the systemic risk determinations stabilized and prevented massive deposit outflows of uninsured deposits from large banks. Yet, at the same time, the systemic risk determinations also reinforced public perceptions about bank bailouts – which caused large banks to benefit from deposit inflows. As such, the FDIC's systemic risk determination benefitted large banks by preventing and stabilizing deposit outflows from large banks while also attracting deposit inflows to these large institutions.

- *Economic conditions.* As of January 1, 2023, community banks have been disproportionately impacted by the FDIC's recent uniform increases to base deposit insurance assessments – material increases that in some cases resulted in 50% or higher increases to deposit insurance assessments even for well capitalized institutions.[7] Higher base deposit insurance assessments for community banks, which became

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[6] 12 U.S.C. 1823(c)(4)(G)(ii)(III).

[7] *See* FDIC, *Assessments, Revised Deposit Insurance Assessment Rates*, RIN 3064-AF83, 87 Fed. Reg. 64314 (Oct. 24, 2022) available at: https://www.fdic.gov/news/board-matters/2022/2022-10-18-notice-dis-a-fr.pdf.

effective during the first quarter of 2023, are being levied at the same time the FDIC's quarterly banking profile data shows community banks are beginning to experience slight declines in net income, net interest margin, and net operating revenue.[8] In light of these trends, the FDIC should ensure community banks are not needlessly burdened with additional special assessments – particularly when the systemic risk determinations for SVB and SBNY were specifically designed to protect large banks, not community banks.

- *Effects on the industry.* Because community banks are the only physical banking presence in one in three U.S. counties, protecting the diversity of the banking system and the community bank model are critically important policy objectives the FDIC should consider in designing any special assessment – especially because community bank practices played no part in the panic, risks, and failures of SVB and SBNY. Community banks best serve local economies and support reinvestment in their communities – community banks should not be specially assessed for the failures of large banks.

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

ICBA strongly encourages the FDIC to calculate the special assessments for SVB and SBNY as proposed because the methodology limits assessments to the largest banks that benefitted the most from the systemic risk determinations. Key drivers of the FDIC's systemic risk determinations for SVB and SBNY were these institutions' significantly large holdings of uninsured deposits. The majority of SVB and SBNY's deposits were unstable, highly susceptible to depositor flight, and panic among uninsured depositors threatened to spillover and impact other large banks holding large quantities of uninsured deposits.

Given that SVB, SBNY, and other large banking organizations were extremely vulnerable to uninsured depositor runs in March 2023, it is appropriate that large banks with similarly large amounts of uninsured deposits as SVB and SBNY pay special assessments while community banks with significantly fewer amounts of uninsured deposits be exempt from paying any special assessment. As the FDIC notes in the proposal, "on average, the largest banking organizations by asset size fund a larger share of assets with uninsured deposits . . . [and] reported significantly greater uninsured deposit concentrations relative to smaller banking

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[8] FDIC, *Quarterly Banking Profile 1st Quarter 2023*, Vol. 17 No. 2 available at: https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023mar/qbp.pdf#page=1.

organizations."[9] Because banks with fewer than $5 billion in assets are generally the least reliant on uninsured deposits for funding, the FDIC should finalize its proposal to exempt these institutions from the requirement to pay a special assessment.

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?

ICBA encourages the FDIC to finalize this rule as proposed. We agree with the FDIC's analysis that the proposed methodology is superior to all of the six alternative methodologies the FDIC considered and rejected. As compared to the alternatives the FDIC considered, the proposed methodology best achieves the FDIC's objectives for the following reasons:

(1) The proposal facilitates timely collection of special assessments without imposing procyclical or overly steep one-time assessments.
(2) The proposal provides the FDIC sufficient flexibility to cease special assessments if losses to the DIF are lower than expected.
(3) The proposal preserves liquidity across a multi-quarter collection period.
(4) The proposal avoids asset threshold "cliff effects" where institutions just above an asset threshold would pay significantly more than institutions just below an asset threshold.
(5) The proposal is scaled to ensure smaller institutions with small amounts of uninsured deposits do not have to contribute to the special assessments.
(6) The proposal ensures large banks and regional banks with large amounts of uninsured deposits (those who benefitted the most from the stability provided under the systemic risk determinations) pay the most in special assessments.
(7) The proposal is based on estimated uninsured deposits as of December 31, 2022, and does not allow institutions to proactively shield their assessment base.
(8) The proposal appropriately balances the goal of applying special assessments to the types of entities that benefitted the most from the protection of uninsured depositors provided under the systemic risk determinations while also ensuring equitable, transparent and consistent treatment based on amounts of uninsured deposits.

[9] *See* FDIC Proposal at 32697.

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?

It is important the special assessment base be equal to estimated uninsured deposits reported as of December 31, 2022, or an earlier date, rather than a future date occurring after the publication date of this proposal. In considering "Alternative 5,"[10] the agency rejected a methodology based on future call report data as of December 31, 2023, citing "potential incentives for IDIs to reduce their amounts 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."

After this proposal was published, the FDIC's hypothesis that banks would begin to "reduce their amount of uninsured deposits" was confirmed: fifty-five banks restated their total of uninsured deposits on their December 31, 2022 call reports – a volume "well above the number of restatements in prior quarters" according to an analysis by S&P Global Market Intelligence.[11] It is reported that the vast majority of these restatements were downward revisions, which could signal attempts to minimize uninsured deposit assessment bases in response to this proposal.[12]

As proposed, the FDIC has concluded that large banks with large amounts of uninsured deposits were the primary beneficiaries of the systemic risk determination. The FDIC should not create a path for the largest banks to engage in creative accounting to shelter their assessment base and manipulate their uninsured deposit volumes. Therefore, the FDIC should not tie the special assessment base to future call reports. Doing so would allow the banks subject to a special

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[10] In "Alternative 5" the FDIC considered and rejected an alternative to the proposed methodology, wherein the agency would charge IDIs for 50 percent of special assessments in year 1 based on uninsured deposits as of December 31, 2022, and charge the remainder in year 2 based on uninsured deposits reported as of December 31, 2023. *See* FDIC Proposal at 32705.

[11] S&P Global Market Intelligence, Zoe Sagalow & David Hayes, *More US banks revise call reports as uninsured deposits come under scrutiny* (Jul. 6, 2023) available at: https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/more-us-banks-revise-call-reports-as-uninsured-deposits-come-under-scrutiny-76311117.

[12] *Id.* For example, the largest bank by asset size to report a downward revision, and the bank that reported the largest revision by dollar amount, restated the December 31, 2022 call report to reflect $125.34 billion fewer uninsured deposits than previously reported.

assessment to reduce their uninsured deposits to avoid insurance payments that would ultimately be borne by other institutions in the form of higher and/or prolonged assessments.

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

The assessment base for the SVB and SBNY special assessments should be equal to estimated uninsured deposits. The FDI Act provides the agency broad flexibility to assess the unique facts and circumstances of any bank's failure when designing special assessments. While the systemic risk determinations for SVB and SBNY mark the first time the FDIC has made any systemic risk determination post Dodd-Frank, the agency's decision to use an assessment base equal to estimated uninsured deposits will not bind the agency to take an identical or even similar approach in the future. In this instance, ICBA believes the FDIC is taking the correct approach by designing this special assessment based on the facts presented by SVB and SBNY failures, not concerns about future precedent, implied guarantees of all uninsured deposits, or future applications of the FDIC's emergency powers to protect uninsured depositors.

The FDIC, and the Board of Governors of the Federal Reserve System each published reports on the failures of SVB and SBNY, concluding the uninsured deposits at SVB and SBNY were distinguishing features of these large banks, that runs on these uninsured deposits accelerated the banks' failures and that depositor flight at these institutions threatened to spread panic and widespread contagion to other regional banks. Under these circumstances, it is therefore appropriate for the FDIC to use an assessment base equal to estimated uninsured deposits for the special assessments it must collect for the failures of SVB and SBNY. Doing so satisfies the statutory requirement the FDIC consider, among other factors, the entities who benefitted the most from the agency's actions, while also ensuring community banking institutions that do not share the same risk attributes of SVB and SBNY are not required to pay any assessment.

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?

ICBA strongly supports the deduction of $5 billion of aggregate estimated uninsured deposits from the special assessment base. ICBA believes this deduction is essential to the proposal because it facilitates two key policy objectives. First, because the methodology and the deduction are tied to estimated uninsured deposits, not assets, the proposal is dynamic and

avoids a “cliff effect” that may result if the proposal were tied to asset size only. Under the proposed methodology, not only are community banks with fewer than $5 billion in assets exempt from the special assessment, but also some community banks with greater than $5 billion in assets but fewer than $5 billion in uninsured deposits may also be exempt from paying any special assessment. Further, because the deduction lowers the assessment base for institutions subject to the proposal, it ensures institutions with smaller quantities of uninsured deposits are not paying the same assessment as other institutions that, like SVB and SBNY, may be overly concentrated in uninsured deposits or maintain higher amounts of uninsured deposits.

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?

The FDIC should collect special assessments over an eight-quarter collection period to preserve liquidity at banks and to minimize the possibility the assessments may have a procyclical effect. According to a recent study published by the FDIC’s Center for Financial Research, “deposit insurance premiums . . . can be a significant driver of bank credit procyclicality.”[13] To ensure banks subject to the special assessment are not forced to pay sudden and steep assessments and can instead pay steady assessment rates throughout economic and credit cycles, the FDIC should finalize its proposal to collect assessments over an eight-quarter period.

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

ICBA encourages the FDIC to clarify whether collateralized municipal deposits can be excluded from the special assessment base.

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

ICBA agrees that if any shortfall assessment proves necessary, the shortfall assessment base should mirror the underlying special assessment base of estimated uninsured deposits reported as of December 31, 2022, with a $5 billion deduction for each banking organization.

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[13] FDIC Center for Financial Research, Ryan Hess & Jennifer Rhee, *The Procyclicality of FDIC Deposit Insurance Premiums* (August 2022) FDIC CFR WP 022-10 available at: https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-10.pdf.

Conclusion

ICBA commends the FDIC for recognizing the importance of community banks to the nation's financial system, and designing a methodology to collect special assessments that avoids a uniform "one-size-fits-all" approach. The FDIC's proposed methodology satisfies the statutory requirements and policy objectives of the FDI Act, promotes fairness, and protects the diversity of the nation's banking system. We encourage the FDIC to finalize this rulemaking as proposed and ensure no community bank with fewer than $5 billion in assets or fewer than $5 billion in uninsured deposits pays any special assessments because of the systemic risk and failures of SVB and SBNY.

Once again, ICBA appreciates this opportunity to share our views on the proposed special assessments. Please feel free to contact Jenna Burke at jenna.burke@icba.org should you wish to discuss our comments in further detail.

Sincerely,

/s/ Jenna Burke

Jenna Burke
Executive Vice President, General Counsel
Government Relations & Public Policy
Independent Community Bankers of America