



441 G St. N.W.
Washington, DC 20548

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December 18, 2023

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Patrick McHenry
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Deposit Insurance Corporation: Special Assessment Pursuant to Systemic Risk Determination*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Deposit Insurance Corporation (FDIC) entitled “Special Assessment Pursuant to Systemic Risk Determination” (RIN: 3064-AF93). We received the rule on December 4, 2023. It was published in the *Federal Register* as a final rule on November 29, 2023. 88 Fed. Reg. 83329. The effective date is April 1, 2024.

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

Enclosed is our assessment of FDIC’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: M. Andy Jiminez
Director – Office of Legislative Affairs
Federal Deposit Insurance Corporation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION
ENTITLED
“SPECIAL ASSESSMENT PURSUANT TO SYSTEMIC RISK DETERMINATION”
(RIN: 3064-AF93)

(i) Cost-benefit analysis

The Federal Deposit Insurance Corporation (FDIC) conducted an analysis of the final rule and its expected effects. FDIC’s analysis included a discussion of the types of entities that benefit, a discussion of the effects on the industry, an analysis of capital and earnings, a discussion of economic conditions, and a discussion of alternatives considered to the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FDIC stated that because the final rule relates directly to the rates imposed on FDIC-insured institutions, the final rule is not subject to the Act. Nevertheless, FDIC stated that it was voluntarily presenting information in an RFA section. Given that no small entity has reported \$5 billion or more in uninsured deposits, FDIC stated that it does not believe the final rule will have a direct effect on any small entity.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FDIC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FDIC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On May 22, 2023, FDIC published a proposed rule. 88 Fed. Reg. 32694. FDIC states that it received 312 comment letters from depository institutions, depository institution holding companies, trade associations, members of Congress, and other interested parties. FDIC responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FDIC states that the final rule does not create any new information collections or revise any existing information collections pursuant to the Act. Consequently, FDIC states that no submissions will be made to OMB for review.

Statutory authorization for the rule

FDIC promulgated this final rule pursuant to sections 1813, 1815, 1817, 1818 ,1819, 1821, and 1823 of title 12, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FDIC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FDIC is not subject to the Order.