6714-01-P

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 327**

**RIN 3064-AF16**

**Assessments**

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

**ACTION:** Notice of proposed rulemaking; supplemental notice.

**SUMMARY:** On September 4, 2019, the Federal Deposit Insurance Corporation (FDIC) issued a notice of proposed rulemaking with request for comments on proposed that would amend the deposit insurance assessment regulations that govern the use of small bank assessment credits (small bank credits) and one-time assessment credits (OTACs) by certain insured depository institutions (IDIs). The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019.

**DATES:** Comments on the updated regulatory flexibility analysis must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES**: You may submit comments by any of the following methods:

• *FDIC Website:* https://www.fdic.gov/regulations/laws/federal/. Follow instructions for submitting comments on the agency website.

• *E-mail:* Comments@fdic.gov. Include RIN 3064-AF16 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

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

• *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.

Please include your name, affiliation, address, e-mail address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

*Public Inspection:* All comments received will be posted generally without change to https://www.fdic.gov/regulations/laws/federal/, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Ryan T. Singer, Chief, Regulatory Analysis Section, Division of Insurance and Research, (202) 898-7352, *rsinger@fdic.gov*; Jennifer M. Jones, Counsel, Legal Division, (202) 898-6768, *jennjones@fdic.gov*.

**SUPPLEMENTARY INFORMATION:**

On September 4, 2019, the FDIC issued a notice of proposed rulemaking with request for comments on proposed that would amend the deposit insurance assessment regulations that govern the use of small bank credits and OTACs by certain IDIs. (See 84 FR 45443 (August 29, 2019).) The FDIC is supplementing that notice of proposed rulemaking with an updated regulatory flexibility analysis to reflect changes to the Small Business Administration's monetary-based size standards which were adjusted for inflation as of August 19, 2019. (See 84 FR 34261 (July 18, 2019).)

**Updated Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., 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 a proposed rule on small entities.[1] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not 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 $600 million.[2] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Certain types of rules, such as rules of particular applicability relating to rates or 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.[3] The proposed rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment

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[1] 5 U.S.C. 601 *et seq*.

[2] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution'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 84 FR 34261, effective August 19, 2019). ''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 a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for purposes of the RFA.

[3] 5 U.S.C. 601.

system that measures risk and determines each established small bank's assessment rate and is, therefore, not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

Based on quarterly regulatory report data as of March 31, 2019, the FDIC insures 5,371 depository institutions, of which 4,004 are defined as small entities by the terms of the RFA. Further, 4,001 RFA-defined small, FDIC-insured institutions have small bank credits totaling $183.7 million.

As stated previously, the proposed rule eliminates the possibility that affected small, FDIC-insured institutions would begin receiving small bank credits in the quarter when the reserve ratio first reaches or exceeds 1.38 percent, but that these credits then would be suspended if the reserve ratio subsequently falls below 1.38 percent (but remains at least 1.35 percent). Therefore, the economic effect of this aspect of the proposed rule is a reduction in the potential future costs associated with a disruption of the type just described in the application of small bank credits by affected small, FDIC-insured institutions. It is difficult to accurately estimate the magnitude of this benefit to affected small, FDIC-insured institutions, because it depends, among other things, on future economic and financial conditions, the operational and financial management practices at affected small, FDIC-insured institutions, and the future levels of the reserve ratio. However, the FDIC believes the economic effects of the proposed rule are likely to be small, because an estimated 41 percent of the aggregate amount of small bank credits would be applied in the first quarter that the reserve ratio is at least 1.38 percent. Further, the FDIC estimates that 3,851 small, FDIC-insured institutions (or 96.3 percent) would exhaust their individual shares of small bank credits within four assessment periods. Of the 150 small, FDIC-insured institutions that the FDIC estimates would have small bank credits that would last more than four quarters, 139 are expected to exhaust their individual shares after being applied for two additional assessment periods (i.e., after a total of six assessment periods of application), and four within four additional assessment periods of application (i.e., after a total of eight assessment periods), and seven will last more than eight quarters. Therefore, the dollar amount of remaining small bank credits declines substantially after the initial application of credits in the first quarter of use, reducing the effects of credit application being suspended due to a decrease in the reserve ratio. Additionally, recent history suggests a generally positive near-term outlook for the banking sector (implying lower costs to the DIF), therefore the probability of suspension of applying small bank credits is low, particularly in the near-term quarters.

As stated previously, the proposed rule would require the FDIC to remit the outstanding balances of remaining OTACs in a lump-sum payment, in the next assessment period in which the reserve ratio is at least 1.35 percent, at the same time that the outstanding small bank credit balances are remitted. As of March 31, 2019, only two IDIs have outstanding OTACs, totaling approximately $300,000. However, both institutions are subsidiaries of large banking organizations and therefore do not qualify as small entities under the RFA. Therefore, this aspect of the proposed rule would not affect any small, FDIC-insured institutions. 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?

Federal Deposit Insurance Corporation.
Dated at Washington, DC, on September 26, 2019.

**Robert E. Feldman,**
*Executive Secretary.*
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