



12 CFR Part 327

RIN 3064-AF85

Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation is adopting a final rule that incorporates updated accounting standards in the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs. The FDIC calculates deposit insurance assessment rates for large and highly complex IDIs based on supervisory ratings and financial measures, including the underperforming assets ratio and the higher-risk assets ratio, both of which are determined, in part, using restructured loans or troubled debt restructurings (TDRs). The final rule includes modifications to borrowers experiencing financial difficulty, an accounting term recently introduced by the Financial Accounting Standards Board (FASB) to replace TDRs, in the underperforming assets ratio and higher-risk assets ratio for purposes of deposit insurance assessments.

DATES: The final rule is effective January 1, 2023.

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SUPPLEMENTARY INFORMATION:

I. Policy Objective and Overview of Final Rule

The Federal Deposit Insurance Act (FDI Act) requires that the FDIC establish a

risk-based deposit insurance assessment system.¹ The risk-based assessment system calculates assessments by weighing, among other things, the risks attributable to “different categories and concentrations of assets” and “any other factors the Corporation determines are relevant” to the risk of a loss to the DIF, as well as “the revenue needs of the Deposit Insurance Fund.”² The purpose of this final rule is to address a change to accounting standards that affects the FDIC’s calculations of risk-based assessments for IDIs.

In 2022, the Financial Accounting Standards Board (FASB) eliminated the recognition and measurement guidance of certain loans with changes to the original terms, known as troubled debt restructurings (TDRs), and, instead, introduced new requirements related to financial statement disclosure of certain modifications of receivables made to borrowers experiencing financial difficulty, or “modifications to borrowers experiencing financial difficulty.”³ TDRs reported by large and highly complex IDIs have been used in the FDIC’s risk-based assessment system as one component in the calculation of a bank’s overall level of risk.⁴ These restructured loans typically present an elevated level of credit risk as the borrowers are not able to perform according to the original contractual terms, and the FDIC prices for this risk through the large and highly complex bank scorecards.

In order to ensure that the risk-based assessment system continues to capture the risk posed by restructured loans, the FDIC is finalizing its proposal to include modifications to borrowers experiencing financial difficulty in the large and highly

¹ 12 U.S.C. 1817(b).

² See Section 7(b)(1)(C) of the FDI Act, 12 U.S.C. 1817(b)(1)(C).

³ FASB Accounting Standards Update (ASU) No. 2022-02, “Financial Instruments - Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures,” March 2022, available at https://www.fasb.org/page/getarticle?uid=fasb_Media_Advisory_03-31-22.

⁴ For deposit insurance assessment purposes, large IDIs are generally those that have \$10 billion or more in total assets. A highly complex IDI is generally defined as an institution that has \$50 billion or more in total assets and is controlled by a parent holding company that has \$500 billion or more in total assets, or is a processing bank or trust company. See 12 CFR 327.8(f) and (g). As used in this final rule, the term “large bank” is synonymous with “large institution,” and the term “highly complex bank” is synonymous with “highly complex institution,” as those terms are defined in 12 CFR 327.8.

complex bank scorecards, as such term will replace TDRs upon adoption of ASU 2022-02. To incorporate the updated accounting standards into deposit insurance assessments, the final rule defines “restructured loans” in the underperforming assets ratio to include modifications to borrowers experiencing financial difficulty, and includes such modifications in the definitions used in the higher-risk assets ratio. Both of these ratios are used to determine risk-based deposit insurance assessments for large and highly complex banks. Absent the final rule, the FDIC would not be able to price for modifications to borrowers experiencing financial difficulty, which are restructured loans and a meaningful indicator of credit risk, once most institutions adopt ASU 2022-02 and updates to the Call Report have been implemented as of March 31, 2023. Failure to capture this risk in deposit insurance assessments for large and highly complex banks could adversely affect the DIF.

II. Background

A. Deposit Insurance Assessments

The FDIC charges all IDIs an assessment for deposit insurance equal to the IDI’s deposit insurance assessment base multiplied by its risk-based assessment rate.⁵ An IDI’s assessment base and assessment rate are determined each quarter using supervisory ratings and information collected from the Consolidated Reports of Condition and Income (Call Report) or the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), as appropriate. Generally, an IDI’s assessment base equals its average consolidated total assets minus its average tangible equity.⁶

An IDI’s assessment rate is calculated using different methods dependent upon whether the IDI is classified for deposit insurance assessment purposes as a small, large, or highly complex bank.⁷ Large and highly complex banks are assessed using a scorecard

⁵ See 12 CFR 327.3(b)(1).

⁶ See 12 CFR 327.5.

⁷ See 12 CFR 327.8(e), (f), and (g).

approach that combines CAMELS ratings and certain forward-looking financial measures to assess the risk that a large or highly complex bank poses to the Deposit Insurance Fund (DIF).⁸ The score that each large or highly complex bank receives is used to determine its deposit insurance assessment rate. One scorecard applies to most large banks and another applies to highly complex banks. Both scorecards use quantitative financial measures that are useful for predicting a large or highly complex bank's long-term performance. Two of the measures in the large and highly complex bank scorecards, the credit quality measure and the concentration measure, are determined using restructured loans or TDRs. These measures are described in more detail below.

B. Credit Quality Measure

Both the large bank and the highly complex bank scorecards include a credit quality measure. The credit quality measure is the greater of (1) the criticized and classified items to the sum of Tier 1 capital and reserves score or (2) the underperforming assets to the sum of Tier 1 capital and reserves score.⁹ Each risk measure, including the criticized and classified items ratio and the underperforming assets ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.¹⁰

The underperforming assets ratio is described identically in the large and highly complex bank scorecards as the sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and other real estate owned (ORE), excluding the maximum amount recoverable from the U.S. Government, its agencies, or Government-sponsored agencies, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.¹¹

The specific data used to identify the “restructured loans” referenced in the above

⁸ See 12 CFR 327.16(b); *see also* 76 FR 10672 (Feb. 25, 2011) and 77 FR 66000 (Oct. 31, 2012).

⁹ See 12 CFR 327.16(b)(1)(ii)(A)(2)(iv).

¹⁰ See 12 CFR part 327, appendix B.

¹¹ See 12 CFR part 327, appendix A.

description are those items that banks disclose in their Call Report on Schedule RC-C, Part I, Memorandum items 1.a. through 1.g, “Loans restructured in troubled debt restructurings that are in compliance with their modified terms.” The portion of restructured loans that are guaranteed or insured by the U.S. Government are excluded from underperforming assets. This data is collected in Call Report Schedule RC-O, Memorandum item 16, “Portion of loans restructured in troubled debt restructurings that are in compliance with their modified terms and are guaranteed or insured by the U.S. government.”

C. Concentration Measure

Both the large and highly complex bank scorecards also include a concentration measure. The concentration measure is the greater of (1) the higher-risk assets to the sum of Tier 1 capital and reserves score or (2) the growth-adjusted portfolio concentrations score.¹² Each risk measure, including the higher risk assets ratio and the growth-adjusted portfolio concentrations ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values.¹³ The higher-risk assets ratio captures the risk associated with concentrated lending in higher-risk areas. Higher-risk assets include construction and development (C&D) loans, higher-risk commercial and industrial (C&I) loans, higher-risk consumer loans, nontraditional mortgage loans, and higher-risk securitizations.¹⁴

Higher-risk C&I loans are defined, in part, based on whether the loan is owed to the bank by a higher-risk C&I borrower, which includes, among other things, a borrower that obtains a refinance of an existing C&I loan, subject to certain conditions. Higher-risk consumer loans are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default within two years is greater

¹² See 12 CFR 327.16(b)(1)(ii)(A)(2)(iii).

¹³ See 12 CFR part 327, appendix C.

¹⁴ *Id.*

than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan. A refinance for purposes of higher-risk C&I loans and higher-risk consumer loans is defined in the assessment regulations and explicitly does not include modifications to a loan that would otherwise meet the definition of a refinance, but that results in the classification of a loan as a TDR.

D. FASB's Elimination of Troubled Debt Restructurings

On March 31, 2022, FASB issued ASU 2022-02.¹⁵ This update eliminated the recognition and measurement guidance for TDRs for all entities that have adopted FASB Accounting Standards Update No. 2016-13 (ASU 2016-13), "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments" and the Current Expected Credit Losses (CECL) methodology.¹⁶ The rationale was that ASU 2016-13 requires the measurement and recording of lifetime expected credit losses on an asset that is within the scope of ASU 2016-13, and as a result, credit losses from TDRs have been captured in the allowance for credit losses. Therefore, stakeholders observed and asserted that the additional designation of a loan modification as a TDR and the related accounting were unnecessarily complex and provided less meaningful information than under the incurred loss methodology.¹⁷

The update eliminates the recognition of TDRs and, instead, introduces new and enhanced financial statement disclosure requirements related to certain modifications of receivables made to borrowers experiencing financial difficulty, or "modifications to borrowers experiencing financial difficulty." Such modifications are limited to those that result in principal forgiveness, interest rate reductions, other-than-insignificant payment

¹⁵ FASB Accounting Standards Update No. 2022-02, "Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures," available at <https://www.fasb.org/Page/ShowPdf?path=ASU+2022-02.pdf>.

¹⁶ FASB Accounting Standards Update No. 2016-13, "Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments," June 2016, available at <https://www.fasb.org/Page/ShowPdf?path=ASU+2016-13.pdf>.

¹⁷ FASB Accounting Standards Update No. 2022-02, at BC19, pp. 57-58.

delays, or term extensions in the current reporting period. Modifications to borrowers experiencing financial difficulty may be different from those previously captured in TDR disclosures because an entity no longer would have to determine whether the creditor has granted a concession, which is a current requirement to determine whether a modification represents a TDR. The update requires entities to disclose information about (a) the types of modifications provided, disaggregated by modification type, (b) the expected financial effect of those modifications, and (c) the performance of the loans after modification.

For entities that have adopted CECL, ASU 2022-02 is effective for fiscal years beginning after December 15, 2022.¹⁸ FASB also permitted the early adoption of ASU 2022-02 by any entity that has adopted CECL. For regulatory reporting purposes, if an institution chooses to early adopt ASU 2022-02 during 2022, Supplemental Instructions to the Call Report specify that the institution should implement ASU 2022-02 for the same quarter-end report date and report “modifications to borrowers experiencing financial difficulty” in the current TDR Call Report line items.¹⁹ These line items include Schedule RC-C, Part I, Memorandum items 1.a. through 1.g., which are used to identify “restructured loans” for the underperforming asset ratio used in the large and highly complex bank scorecards, described above. As a result, to date, a large or highly complex institution that has early adopted ASU 2022-02 and is reporting modifications to borrowers experiencing financial difficulty in the current TDR Call Report line items is assigned a deposit insurance assessment rate that relies, in part, on this reporting. The FDIC and other members of the Federal Financial Institutions Examination Council (FFIEC) are planning to revise the Call Report forms and instructions to replace the

¹⁸ Generally, entities that are U.S. Securities and Exchange Commission (SEC) filers, excluding smaller reporting companies as defined by the SEC, were required to adopt CECL beginning in January 2020. Most other entities are required to adopt CECL beginning in January 2023.

¹⁹ See Financial Institution Letter (FIL) 17-2022, Consolidated Reports of Condition and Income for First Quarter 2022. See also Supplemental Instructions, March 2022 Call Report Materials, First 2022 Call, Number 299, available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_FFIEC051_suppinst_202203.pdf.

current TDR terminology with updated language from ASU 2022-02 for the first quarter of 2023.

III. Discussion of Comments Received

On July 27, 2022, the FDIC published in the **Federal Register** a notice of proposed rulemaking, (the proposed rule, or proposal)²⁰ that would incorporate into the large and highly complex bank assessment scorecards the updated accounting standard that eliminates the recognition of TDRs and, instead, requires new financial statement disclosures on “modifications to borrowers experiencing financial difficulty.” Specifically, the FDIC proposed to expressly define restructured loans in the underperforming assets ratio to include “modifications to borrowers experiencing financial difficulty.” The FDIC also proposed to amend the definition of a refinance for the purposes of determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan, both elements of the higher-risk assets ratio. Under the proposal, a refinance would not include modifications to a loan that otherwise would meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty. The proposal would not affect the small bank deposit insurance assessment system.

The FDIC issued the proposed rule with a 30-day comment period. The FDIC received two comment letters in response to the proposal. Commenters included two trade associations that submitted a joint comment letter (collectively, the Associations) and an insured depository institution. Generally, the commenters expressed support for the removal of TDRs from the large and highly complex bank assessment scorecards upon adoption of CECL and ASU 2022-02.

The commenters also asked the FDIC to consider removing TDRs without replacement, stating that the new accounting term, “modifications to borrowers

²⁰ 87 FR 45023 (July 27, 2022).

experiencing financial difficulty,” is not an appropriate replacement for TDRs in the large and highly complex bank scorecards. The Associations stated that modifications to borrowers experiencing financial difficulty are not a measure of asset quality and are not analogous to TDRs.

With respect to these comments, the FDIC recognizes that while modifications to borrowers experiencing financial difficulty and TDRs are not identically defined, they both are types of restructured loans and are indicators of elevated credit risk. TDRs have been an important component of risk-based pricing for large and highly complex banks, as they have been shown to be a statistically significant predictor of the performance of large institutions during a stress period.²¹ Though not identical to TDRs, modifications to borrowers experiencing financial difficulty are made to borrowers who are unable to perform according to the original contractual terms of their loans. Such modification activity typically indicates an elevated level of credit risk. While the reporting of TDRs will be eliminated under ASU 2022-02, the risk presented by restructured loans remains.

All commenters supported the removal of TDRs from the large and highly complex bank scorecards, and one commenter stated that the alternative of requiring large banks to continue to report TDRs solely for purposes of calculating deposit insurance assessments would impose significant burdens whose costs would not justify the benefits. In the absence of TDRs, the FDIC believes that the new accounting term should be included in the large bank scorecard’s credit quality measure as an indicator of elevated credit risk. The alternative suggested by commenters, eliminating TDRs entirely from the large bank scorecard and not replacing them with modifications to borrowers experiencing financial difficulty, would eliminate a significant indicator of credit risk. Accounting for this risk is important to meeting the FDIC’s statutory obligation to assess institutions based on risk, and failure to capture this risk in deposit insurance assessments

²¹ 76 FR at 10688 (Feb. 25, 2011).

for large and highly complex banks could adversely affect the DIF.

The Associations also wrote that replacing TDRs with modifications to borrowers experiencing financial difficulty would result in double-counting of these loans in the underperforming asset ratio because such modifications include both performing and non-performing loans. Currently, reporting by early adopters distinguishes between performing and non-performing modifications to borrowers experiencing financial difficulty, thereby ensuring that such loans will not be double-counted in the underperforming assets ratio. The FDIC will monitor future updates to the reporting of modifications to borrowers experiencing financial difficulty for changes that would result in double-counting in the underperforming assets ratio, if any.

All commenters suggested that including modifications to borrowers experiencing financial difficulty in large bank pricing would discourage banks from working with their borrowers and would result in pro-cyclical assessments. With respect to this concern, the FDIC does not believe that its proposal to include modifications to borrowers experiencing financial difficulty in the large bank and highly complex bank scorecards is inconsistent with guidance that encourages institutions to work prudently and constructively with borrowers who are unable to meet their contractual payment obligations due to financial stress.²² Loan modification programs can serve as proactive measures that are in the best interests of institutions and their borrowers, and can ultimately reduce overall loss exposure. At the same time, modifications typically reflect elevated credit risk compared to loans that have not been modified and should be included in a credit quality measure for risk-based deposit insurance assessments. Institutions have an incentive to work prudently and constructively with borrowers through loan modification programs to reduce the likelihood of the loans not performing

²² See, e.g., FDIC Press Release 49-2020, “Agencies Issue Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus,” dated April 7, 2020, available at <https://www.fdic.gov/news/press-releases/2020/pr20049.html>.

and facing both higher losses and deposit insurance assessments as a result of reporting increased non-performing loans and losses. Lastly, the Federal banking agencies emphasize that examiners will exercise judgment in reviewing loan modifications. Examiners will not automatically adversely classify such loans or criticize institutions for working with borrowers in a safe and sound manner.

All commenters asked the FDIC to consider limiting the data on modifications to borrowers experiencing financial difficulty to those loan modifications that occurred in the prior 12 months from the reporting date of the assessment. The commenters stated that ASU 2022-02 requires the disclosure of certain modifications to borrowers experiencing financial difficulty for the current reporting period and then certain performance disclosures for modifications to borrowers experiencing financial difficulty in the 12 months after the modifications, in contrast with TDRs which are reported on a cumulative basis. To allow bankers to better understand how loan modifications to borrowers experiencing financial difficulty will be reported on the Call Report, and to comment on how the proposed changes would affect assessments, the Associations requested that the FDIC reopen the comment period for the proposal once revisions to the Call Report instructions have been made.

As discussed above, the FDIC and other members of the FFIEC are planning to revise the Call Report forms and instructions to replace the current TDR terminology with updated language from ASU 2022-02 for the first quarter of 2023. The proposed revisions to the instructions would describe how institutions would apply ASU 2022-02 and report modifications to borrowers experiencing financial difficulty. Institutions will have an opportunity to comment on the joint notice and request for comment on the proposed revisions to the Call Report, including the aspects of the collections of information, such as burden and utility of the information to be collected.

As commenters noted, and as described below in the *Expected Effects* section, the

FDIC will not have the information necessary to fully estimate the impact of the final rule even once updated Call Report instructions are in place, as the majority of large and highly complex banks have not yet adopted ASU 2022-02 and are not reporting data on modifications to borrowers experiencing financial difficulty. Modifications to borrowers experiencing financial difficulty could be higher, lower, or similar to previously reported TDRs, due to a number of factors beyond the Call Report instructions.

Modifications to borrowers experiencing financial difficulty are restructured loans and, in the FDIC's view, are an indicator of elevated credit risk that should be included in the large bank and highly complex bank scorecards. Furthermore, such elevated credit risk is not necessarily eliminated within a given time frame, such as a 12 month period.

Accounting for such risk is particularly important once institutions implement ASU 2022-02 and no longer report TDRs, which for most institutions will be March 31, 2023. Therefore, the FDIC intends to use the modifications data as defined in the updated Call Report instructions once they are finalized. Reopening the comment period would delay the effective date of the final rule and the FDIC would not be able to account for the risk posed by modifications to borrowers experiencing financial difficulty. Once banks begin to report modifications to borrowers experiencing financial difficulty, such modifications will be the only replacement available to capture the risk presented by restructured loans that has previously been captured by the reporting of TDRs for large and highly complex bank deposit insurance assessments. While commenters stated that modifications to borrowers experiencing financial difficulty were not an appropriate substitute for TDRs, no commenter offered an alternative that would sufficiently capture the risk presented by restructured loans.

In light of commenters' concerns about how modifications to borrowers experiencing financial difficulty will be reported, and given that there may be some uncertainty over how the inclusion of modifications to borrowers experiencing financial

difficulty in lieu of TDRs might affect underperforming assets and assessments, the FDIC recognizes that it may need to propose an additional data collection item or revise the underperforming assets ratio after a reasonable period of observation to adequately price for the risk presented by such modifications.

IV. The Final Rule

A. Summary

The FDIC is adopting the proposed rule without change. Under the final rule, the FDIC will incorporate into the large and highly complex bank assessment scorecards the updated accounting standard that eliminates the recognition of TDRs and, instead, requires new financial statement disclosures on “modifications to borrowers experiencing financial difficulty.” The FDIC also will expressly define restructured loans in the underperforming assets ratio to include “modifications to borrowers experiencing financial difficulty.” Lastly, the FDIC will amend the definition of a refinance for the purposes of determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan, both elements of the higher-risk assets ratio. Under the final rule, a refinance would not include modifications to a loan that otherwise would meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty. The final rule does not affect the small bank deposit insurance assessment system.

B. Underperforming Assets Ratio

The FDIC is amending the underperforming assets ratio used in the large and highly complex bank pricing scorecards to conform to the updated accounting standards in ASU 2022-02. The amended text will explicitly define restructured loans to include modifications to borrowers experiencing financial difficulty, which the FDIC will use to calculate assessments for large and highly complex banks that have adopted CECL and ASU 2022-02, and TDRs, which the FDIC will continue to use for the remaining large

and highly complex banks.

C. Higher-Risk Assets Ratio

The FDIC is amending the definition of a refinance, in determining whether a loan is a higher-risk C&I loan or a higher-risk consumer loan for deposit insurance assessment purposes, to conform to the updated accounting standards in ASU 2022-02. Specifically, a refinance of a C&I loan will not include a modification or series of modifications to a commercial loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022-02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks. For purposes of higher-risk consumer loans, a refinance will not include modifications to a loan that would otherwise meet the definition of a refinance, but that result in the classification of a loan as a modification to borrowers experiencing financial difficulty, for a large or highly complex bank that has adopted CECL and ASU 2022-02, or that result in the classification of a loan as a TDR, for all remaining large and highly complex banks.

V. Expected Effects

As of June 30, 2022, the FDIC insured 144 banks that were classified as large or highly complex for deposit insurance assessment purposes, and that will be affected by the final rule.²³ The FDIC expects most of these institutions will adopt CECL by January 1, 2023, the effective date of the rule. Absent the final rule, the FDIC would not be able to price for modifications to borrowers experiencing financial difficulty, which are restructured loans and a meaningful indicator of credit risk, once most institutions adopt ASU 2022-02 and updates to the Call Report have been implemented as of March 31, 2023. Failure to capture this risk in deposit insurance assessments for large and highly

²³ FDIC Call Report data June 30, 2022.

complex banks could adversely affect the DIF.

The primary expected effect of the final rule is the change in underperforming assets, and the consequent change in assessment rates, that will occur as a result of the difference between the amount of TDRs that most banks are currently reporting and the amount of modifications to borrowers experiencing financial difficulty that banks will report upon adoption of ASU 2022-02. The effect of this final rule on assessments paid by large and highly complex banks is difficult to estimate since most banks have not yet implemented ASU 2022-02 and are not reporting modifications to borrowers experiencing financial difficulty, and the FDIC does not know how the amount of reported modifications to borrowers experiencing financial difficulty will compare to the amount of TDRs that affected banks report over time.

In general, the FDIC continues to expect that the initial amount of modifications made to borrowers experiencing financial difficulty will be lower than previously reported TDRs. This is because under ASU 2022-02, reporting of modifications to borrowers experiencing financial difficulty should be applied prospectively and would therefore apply only to modifications made after a bank adopts the standard. However, in the long term it is possible that the amount of modifications to borrowers experiencing financial difficulty could be higher or lower than the amount of TDRs that banks would have reported prior to adoption of ASU 2022-02. Therefore, under the final rule, the underperforming assets ratio could be higher or lower due to the adoption of ASU 2022-02, and the resulting ratio may or may not affect an individual bank's assessment rate, depending on whether it is the binding ratio for the credit quality measure.

The FDIC does not have the information necessary to estimate the expected effects of the final rule to incorporate the new accounting standard into the large and highly complex bank scorecards. Analysis detailed in the notice of proposed rulemaking illustrates a range of potential outcomes based on TDRs reported as of December 31,

2021, the last quarter before FASB issued ASU 2022-02. The analysis is unchanged because some large banks may have early adopted ASU 2022-02 during 2022, so December 31, 2021, is still the last quarter all banks were required to report TDRs.

The FDIC calculated some illustrative examples of the effect on assessments if modifications made to borrowers experiencing financial difficulty are lower than certain amounts of previously reported TDRs. For example, if all large and highly complex banks had reported zero TDRs as of December 31, 2021, before FASB issued ASU 2022-02, the impact on the underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately \$90 million; if modifications were 50 percent lower than TDRs reported as of December 31, 2021, annualized assessments would have decreased by \$52 million.

Alternatively, as an extreme and unlikely scenario, if all large and highly complex banks had reported zero TDRs during a period when overall risk in the banking industry was higher, such as December 31, 2011, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by an annualized amount of approximately \$957 million. Between 2015 and 2019, if TDRs were zero, the resulting underperforming assets ratio would have reduced total deposit insurance assessment revenue by about \$279 million annually, on average.

Over time, however, large and highly complex banks will implement ASU 2022-02 and begin to report modifications to borrowers experiencing financial difficulties. As noted above, the effect on assessments will depend on how the newly reported modifications compare to the TDRs that would have been reported under the prior accounting standard. For example, if all large and highly complex banks had reported modifications to borrowers experiencing financial difficulty that were 25 percent greater than the TDRs reported as of December 31, 2021, the impact on the underperforming assets ratio would have increased total deposit insurance assessment revenue by an

annualized amount of approximately \$30 million; if the modifications exceeded TDRs by 50 percent, annualized assessments would have increased by \$65 million; and if the modifications exceeded TDRs by 100 percent, annualized assessments would have increased by \$137 million.

The analysis presented above serves as an illustrative example of potential effects of the final rule. The analysis does not estimate potential future modifications to borrowers experiencing financial difficulty or how those amounts, once reported, will compare to previously reported TDRs for a few reasons. First, banks were granted temporary relief from reporting TDRs that were modified due to the COVID-19 pandemic, so recent reporting of TDRs is likely lower than it may otherwise have been.²⁴ Second, the amount of modifications or restructurings made by large or highly complex banks vary based on economic conditions and future economic conditions are uncertain. Third, as commenters noted, a restructuring of a debt constitutes a TDR if the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider, while a modification to borrowers experiencing financial difficulty is not evaluated based on whether or not a concession has been granted. Finally, future Call Report revisions and instructions on how modifications to borrowers experiencing financial difficulties are required to be reported will affect the future reported amount of modifications to borrowers experiencing financial difficulty.

With regard to the higher-risk assets ratio, the effect on assessments paid by large and highly complex banks is likely to be more muted. The assessment regulations define

²⁴ On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. Section 4013 of the CARES Act, "Temporary Relief From Troubled Debt Restructurings," provided banks the option to temporarily suspend certain requirements under U.S. GAAP related to TDRs to account for the effects of COVID-19. Division N of the Consolidated Appropriations Act, 2021 (Title V, subtitle C, section 541) was signed into law on December 27, 2020, extending the provisions in Section 4013 of the CARES Act to January 1, 2022. This relief applied to certain loans modified between March 1, 2020 and January 1, 2022.

a higher-risk C&I or consumer loan as a loan or refinance that meets certain risk criteria. The final rule will exclude modifications to borrowers experiencing financial difficulty from the definition of a refinance for purposes of the higher-risk assets ratio. As a result, if a modification to a C&I or consumer loan results in the classification of the loan as a TDR, under the current regulations, or as a modification to borrowers experiencing financial difficulty, under the final rule, a large or highly complex bank will not have to re-evaluate whether the modified loan meets the definition of a higher-risk asset.

For example, if a higher-risk C&I loan was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it will not be considered a refinance and, therefore, will continue to be considered a higher-risk asset. Conversely, if a C&I loan that does not meet the definition of a higher-risk asset was subsequently modified as a TDR or modification to borrowers experiencing financial difficulty, it will not be considered a refinance and, therefore, will not have to be re-evaluated to determine if it meets the definition of a higher-risk asset. The FDIC assumes that these possible outcomes are generally offsetting and this aspect of the final rule will have minimal to no effect on deposit insurance assessments for large and highly complex banks.

VI. Alternatives Considered

The FDIC considered two reasonable and possible alternatives as described below. On balance, the FDIC believes the final rule will determine deposit insurance assessment rates for large and highly complex banks in the most appropriate, accurate, and straightforward manner.

One alternative would be to require banks to continue to report TDRs specifically for deposit insurance assessment purposes, even after they have adopted CECL and ASU 2022-02. This alternative would maintain consistency of the data used in the underperforming assets ratio and higher-risk assets ratio with prior reporting periods. However, and as one commenter noted, this alternative would impose additional

reporting burden on large and highly complex banks. This alternative would also fail to recognize the potential usefulness of the new data on modifications to borrowers experiencing financial difficulty. Ultimately, the FDIC does not believe any benefits from continued reporting of TDRs expressly for assessment purposes would justify the cost to affected banks.

The FDIC also considered a second alternative: removing restructured loans from the definition of underperforming assets entirely and not incorporating the new data on modifications to borrowers experiencing financial difficulty. Similar to the first alternative, this second alternative would apply uniformly to all large and highly complex banks, regardless of their early adoption status. Both commenters supported this alternative. However, this alternative fails to recognize that modifications to borrowers experiencing financial difficulty are restructured loans and are a meaningful indicator of credit risk throughout economic cycles that should be included in credit quality measures such as the underperforming assets ratio and the higher-risk assets ratio. Failure to capture this risk in deposit insurance assessments for large and highly complex banks could adversely affect the DIF.

The FDIC believes that the new modifications data required under ASU 2022–02 will provide valuable information and would not impose additional reporting burden. Incorporating this new data in place of TDRs would be the most reasonable option to ensure that large and highly complex banks are assessed fairly and accurately.

VII. Effective Date and Application Date

The FDIC is issuing this final rule with an effective date of January 1, 2023, and applicable to the first quarterly assessment period of 2023 (i.e., January 1 through March 31, 2023, with an invoice payment date of June 30, 2023). Most institutions that have implemented CECL, will adopt FASB’s ASU 2022-02 in 2023, unless an institution chooses to early adopt in 2022. Institutions (those with a calendar year fiscal year)

implementing CECL on January 1, 2023, will also adopt, FASB’s ASU 2022-02 at that time. Therefore, by the first quarter of 2023, ASU 2022-02 also will be in effect for most, if not all, large and highly complex banks. The FDIC believes that coordinating the assessment system amendments to conform to the new accounting standards will promote a more efficient transition and will result in affected banks reporting their data in a consistent manner based on the correct accounting concepts.

VIII. Administrative Law Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a final rule, to prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities.²⁵ However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets of less than or equal to \$750 million.²⁶ Certain types of rules, such as rules relating to rates, 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.²⁷ Because the final rule relates directly to the rates imposed on IDIs for deposit insurance and to the deposit insurance assessment system that measures risk and determines each bank’s assessment rate, the final rule is not subject to the RFA. Nonetheless, the FDIC is voluntarily presenting information in this RFA section.

²⁵ 5 U.S.C. 601 *et seq.*

²⁶ The SBA defines a small banking organization as having \$750 million or less in assets, where an organization'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 87 FR 18627, effective May 2, 2022). In its determination, the 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 the purposes of RFA.

²⁷ 5 U.S.C. 601.

Based on Call Report data as of June 30, 2022, the FDIC insures 4,780 IDIs, of which 3,394 are defined as small entities by the terms of the RFA.²⁸ The final rule, however, will apply only to institutions with \$10 billion or greater in total assets which, by definition, do not meet the criteria to be considered small entities for the purposes of the RFA. Therefore, no small entities will be affected by the final rule.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.²⁹ The FDIC's OMB control numbers for its assessment regulations are 3064-0057, 3064-0151, and 3064-0179. The final rule does not create any new, or revise any of these existing assessment information collections pursuant to the PRA and consequently, no submissions in connection with these OMB control numbers will be made to the OMB for review. However, the final rule affects the agencies' current information collections for the Call Report (FFIEC 031 and FFIEC 041, but not FFIEC 051). The agencies' OMB control numbers for the Call Reports are: OCC OMB No. 1557-0081; Board OMB No. 7100-0036; and FDIC OMB No. 3064-0052. The changes to the Call Report forms and instructions will be addressed in a separate **Federal Register** notice.

C. Riegle Community Development and Regulatory Improvement Act

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and

²⁸ FDIC Call Report data, June 30, 2022.

²⁹ 44 U.S.C. 3501-3521.

the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.³⁰ In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.³¹

The final rule will not impose additional reporting, disclosure, or other new requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. Accordingly, section 302 of RCDRIA does not apply. The FDIC invited comments regarding the application of RCDRIA in the proposed rule, but did not receive comments on this topic. Nevertheless, the requirements of RCDRIA have been considered in setting the final effective date.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act³² requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invited comment regarding the use of plain language in the proposed rule but did not receive any comments on this topic.

E. The Congressional Review Act

For purposes of the Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.³³ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take

³⁰ 12 U.S.C. 4802(a).

³¹ 12 U.S.C. 4802(b).

³² Pub. L. 106-102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

³³ 5 U.S.C. 801 *et seq.*

effect until at least 60 days following its publication.³⁴

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or Local government agencies or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.³⁵

The OMB has determined that the final rule is a major rule for purposes of the Congressional Review Act. As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority for 12 CFR part 327 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817-19, 1821.

2. Amend appendix A to subpart A in section IV by:

- a. In the entries for “Balance Sheet Liquidity Ratio,” “Potential Losses/Total Domestic Deposits (Loss Severity Measure),” and “Market Risk Measure for

³⁴ 5 U.S.C. 801(a)(3).

³⁵ 5 U.S.C. 804(2).

Highly Complex Institutions,” redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8, respectively;

b. Redesignating footnotes 5, 6, and 7 as footnotes 6, 7, and 8 at the end of the table;

c. Revising the entry for “Credit Quality Measure”; and

d. Adding new footnote 5 at the end of the table.

The revision and addition read as follows:

Appendix A to Subpart A of Part 327—Method to Derive Pricing Multipliers and Uniform Amount

* * * * *

IV. Description of Scorecard Measures

Scorecard measures ¹	Description
* * * * *	
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/Tier 1 Capital and Reserves ²	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary Federal regulator have graded “Special Mention” or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments. ⁴ Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. Government, its agencies, or Government-sponsored enterprises, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves ²	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans ⁵ (including restructured 1-4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. Government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.

* * * * *

¹ The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

² The applicable portions of the current expected credit loss methodology (CECL) transitional amounts attributable to the allowance for credit losses on loans and leases held for investment and added to retained earnings for regulatory capital purposes pursuant to the regulatory capital regulations, as they may be amended from time to time (12 CFR part 3, 12 CFR part 217, 12 CFR part 324, 85 FR 61577 (Sept. 30, 2020), and 84 FR 4222 (Feb. 14, 2019)), will be removed from the sum of Tier 1 capital and reserves.

* * * * *

⁴ A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

⁵ Restructured loans include troubled debt restructurings and modifications to borrowers experiencing financial difficulty, as these terms are defined in the glossary to the Call Report, as they may be amended from time to time.

* * * * *

3. Amend appendix C to subpart A by:

a. In section I.A.2., under the heading “Definitions,” revising the entry for “Refinance”; and

b. In section I.A.3., revising the “Refinance” section preceding section I.A.4.

The revisions read as follows:

Appendix C to Subpart A of Part 327—Description of Concentration Measures

I. * * *

A. * * *

2. * * *

Definitions

* * * * *

Refinance

For purposes of a C&I loan, a refinance includes:

- (a) Replacing an original obligation by a new or modified obligation or loan agreement;
- (b) Increasing the master commitment of the line of credit (but not adjusting sub-limits under the master commitment);
- (c) Disbursing additional money other than amounts already committed to the borrower;
- (d) Extending the legal maturity date;
- (e) Rescheduling principal or interest payments to create or increase a balloon payment;
- (f) Releasing a substantial amount of collateral;
- (g) Consolidating multiple existing obligations; or
- (h) Increasing or decreasing the interest rate.

A refinance of a C&I loan does not include a modification or series of modifications to a commercial loan other than as described above or modifications to a commercial loan that would otherwise meet this definition of refinance, but that result in the classification of a loan as a troubled debt restructuring (TDR) or a modification to borrowers experiencing financial difficulty, as these terms are defined in the glossary of the Call Report instructions, as they may be amended from time to time.

* * * * *

3. * * *

Refinance

For purposes of higher-risk consumer loans, a refinance includes:

- (a) Extending new credit or additional funds on an existing loan;
- (b) Replacing an existing loan with a new or modified obligation;
- (c) Consolidating multiple existing obligations;
- (d) Disbursing additional funds to the borrower. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. A material increase in the amount of a line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit; however, a temporary increase in a credit card line of credit is not a material increase;
- (e) Increasing or decreasing the interest rate (except as noted herein for credit card loans); or
- (f) Rescheduling principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months.

A refinance for this purpose does not include:

- (a) A re-aging, defined as returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due, provided:
 - (i) The re-aging is part of a program that, at a minimum, adheres to the re-aging guidelines recommended in the interagency approved Uniform Retail Credit Classification and Account Management Policy;^[12]
 - (ii) The program has clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and monitoring their effectiveness; and

- (iii) The bank monitors both the number and dollar amount of re-aged accounts, collects and analyzes data to assess the performance of re-aged accounts, and determines the effect of re-aging practices on past due ratios;
- (b) Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR or modification to borrowers experiencing financial difficulty;
- (c) Any modification made to a consumer loan pursuant to a government program, such as the Home Affordable Modification Program or the Home Affordable Refinance Program;
- (d) Deferrals under the Servicemembers Civil Relief Act;
- (e) A contractual deferral of payments or change in interest rate that is consistent with the terms of the original loan agreement (*e.g.*, as allowed in some student loans);
- (f) Except as provided above, a modification or series of modifications to a closed-end consumer loan;
- (g) An advance of funds, an increase in the line of credit, or a change in the interest rate that is consistent with the terms of the loan agreement for an open-end or revolving line of credit (*e.g.*, credit cards or home equity lines of credit);
- (h) For credit card loans:
 - (i) Replacing an existing card because the original is expiring, for security reasons, or because of a new technology or a new system;
 - (ii) Reissuing a credit card that has been temporarily suspended (as opposed to closed);
 - (iii) Temporarily increasing the line of credit;
 - (iv) Providing access to additional credit when a bank has internally approved a higher credit line than it has made available to the customer; or

(v) Changing the interest rate of a credit card line when mandated by law (such as in the case of the Credit CARD Act).

* * * * *

[¹²] Among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.

* * * * *

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 18, 2022.

James P. Sheesley,

Assistant Executive Secretary.

BILLING CODE 6714-01-P

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