August 3, 2023

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th St. NW
Washington, DC 20429

Dear Chairman Gruenberg:

We write regarding the Federal Deposit Insurance Corporation's (FDIC) public notice revealing that some giant banks "are not reporting estimated uninsured deposits in accordance with [FDIC] instructions."[1] We are concerned these banks may be misreporting important information in an effort to reduce their Deposit Insurance Fund (DIF) assessments, and we are troubled by the agency's feeble response to these concerns, which consisted of a "reminder" to the banks via a Financial Institution Letter.[2] We write to ask for more information on this problem and the tools the agency has to discourage this behavior.

Federal deposit insurance is a foundational consumer protection that guarantees an account holder's money at an FDIC-insured bank is safe up to $250,000.[3] In the event of a bank failure – like the recent collapses of Silicon Valley Bank (SVB) and Signature Bank – the FDIC steps in to pay out depositors on their insurance, take control of the bank's assets, and resolve the bank's debts, including any claims above the insured limit.[4] The FDIC manages deposit insurance funds through the DIF, which is primarily funded by quarterly assessments on FDIC-insured banks.[5] FDIC ensures that the level of the DIF is sufficient to "maintain public confidence in the U.S. financial system and to resolve failed banks."[6] Since the FDIC's founding in 1933, the DIF has helped guarantee that "no depositor has lost a penny of FDIC-insured funds."[7]

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[1] Federal Deposit Insurance Corporation, "Estimated Uninsured Deposits Reporting Expectations," July 24, 2023, https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html
[2] *Id.*
[3] Federal Deposit Insurance Corporation, "Deposit Insurance At A Glance," September 13, 2022, https://www.fdic.gov/resources/deposit-insurance/brochures/deposits-at-a-glance/index.html
[4] *Id.*
[5] Federal Deposit Insurance Corporation, "Deposit Insurance Fund," July 14, 2021, https://www.fdic.gov/resources/deposit-insurance/deposit-insurance-fund/
[6] Federal Deposit Insurance Corporation, "Fund Management," December 7, 2022, https://www.fdic.gov/resources/deposit-insurance/deposit-insurance-fund/dif-fund-management.html
[7] Federal Deposit Insurance Corporation, "Understanding Deposit Insurance," July 13, 2020, https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance/

In contrast, any deposits over $250,000 are not insured by the FDIC, meaning there is no guarantee depositors will be paid out for any losses of those funds in the event of a bank failure.[8]
High rates of uninsured deposits amplify the risk of a bank run and were a significant contributor to the failures of SVB and Signature Bank. While deposit insurance helps insulate most consumers from a bank run, at banks with high levels of uninsured deposits, depositors are more "likely to flee somewhere safer at the first sign of trouble."[9] Whereas roughly half of all deposits are uninsured at most banks, by the end of 2022, 93.9% of SVB deposits and 89.7% of Signature Bank deposits were uninsured.[10] Though these banks were outliers, larger banks tend to have more uninsured deposits – at banks with asset sizes of over $250 billion, just over half of deposits were uninsured, compared to around a third for those with asset sizes of $1 to $5 billion.[11]

On March 12, 2023, the U.S. Department of the Treasury (Treasury), the Federal Reserve System, and FDIC released a joint statement announcing a "systemic risk exception" for SVB and Signature Bank, enabling the FDIC to fully protect all depositors, including those with uninsured deposits.[12] The statement explained that none of the losses associated with the resolution "will be borne by the taxpayer."[13] Instead, losses to the DIF to reimburse uninsured depositors – estimated at around $15.8 billion between the two banks[14] – "will be recovered by a special assessment on banks, as required by law."[15] On May 11, 2023, the FDIC issued a proposed rule that would institute a legally-mandated special assessment to recover these losses.[16] The special assessment will be restricted to the largest banks (those with uninsured deposits totaling over $5 billion), begin in 2024 and continue for two years on a quarterly basis, and be calculated based off of a bank's estimated uninsured deposits reported as of December 31, 2022.[17] The assessment is limited to big banks because, "[g]enerally speaking, larger banks benefited the most from the stability provided to the banking industry under the systemic risk determination."[18] After the determination was announced, the FDIC "observed a significant

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[8] Federal Deposit Insurance Corporation, "Deposit Insurance At A Glance," September 13, 2022, https://www.fdic.gov/resources/deposit-insurance/brochures/deposits-at-a-glance/index.html
[9] Axios, "Why failed Silicon Valley Bank was an outlier," Felix Salmon, March 15, 2023, https://www.axios.com/2023/03/15/silicon-valley-bank-outlier-uninsured-deposits
[10] *Id.*
[11] Federal Deposit Insurance Corporation, "Special Assessments Pursuant to Systemic Risk Determination," May 22, 2023, p. 32699, https://www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf
[12] Federal Deposit Insurance Corporation, "Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC," March 12, 2023, https://www.fdic.gov/news/press-releases/2023/pr23017.html
[13] *Id.*
[14] Federal Deposit Insurance Corporation, "Notice of Proposed Rulemaking on Special Assessment Pursuant to Systemic Risk Determination," May 11, 2023, https://www.fdic.gov/news/financial-institution-letters/2023/fil23024.html
[15] Federal Deposit Insurance Corporation, "Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC," March 12, 2023, https://www.fdic.gov/news/press-releases/2023/pr23017.html
[16] Federal Deposit Insurance Corporation, "Notice of Proposed Rulemaking on Special Assessment Pursuant to Systemic Risk Determination," May 11, 2023, https://www.fdic.gov/news/financial-institution-letters/2023/fil23024.html
[17] *Id.,* p. 32699.
[18] Federal Deposit Insurance Corporation, "Special Assessments Pursuant to Systemic Risk Determination," May 22, 2023, p. 32697, https://www.fdic.gov/news/board-matters/2023/2023-05-11-notice-dis-a-fr.pdf

slowdown in uninsured deposits leaving certain institutions."[19] The rule's methodology ensures banks "that hold greater amounts of uninsured deposits" – and thus benefitted most from the stability created by the systemic risk exception – "pay[] higher special assessments."[20]

The FDIC provides clear and specific instructions on how to report uninsured deposits.[21] But on July 24, 2023, the agency sent a letter to insured banks noting it had "observed that some [banks] are not reporting estimated uninsured deposits in accordance with the instructions" in quarterly call reports.[22] Specifically, the letter identified that some banks had "reduced the amount reported" by deducting uninsured deposits that are "collateralized by pledged assets" and "excluding intercompany deposit balances of subsidiaries."[23] According to a Wall Street Journal analysis, "47 banks restated their Dec. 31 uninsured-deposit figures downward by a total of $198 billion."[24]

This is much more than a technical matter, and there is no excuse for the bank's inaccurate reporting: the reporting requirements here are not new, nor are they confusing. The bank's revisions to their reports however, do have important implications. Because the special assessment is based on uninsured deposits held by banks as of December 31, 2022, lowering those reported numbers serves as a boon for the nation's biggest banks. The largest revision was by Bank of America – the country's second largest bank[25] – which restated its uninsured deposits by $125 billion, 14% lower than what it originally reported.[26] With its new estimates, Bank of America's payments to the DIF would be reduced by $310 million.[27] Huntington Bank, the 22nd largest in the country,[28] followed closely behind, providing numbers 40% lower than originally reported.[29] The banks' revisions would reduce their individual payments – payments which are fairly calculated based on the benefit *they* received from the FDIC's actions – and leave a gap in the DIF that could result in significant problems in the event of another large bank failure or series of bank failures. This isn't the first time that banks have tried to get out of paying their fair share to the DIF. Soon after the special assessment was announced, Senator

[19] *Id.*, p. 32698.
[20] *Id.*
[21] Federal Deposit Insurance Corporation, "Bank Call Report Information: June 2023," July 3, 2023, https://www.fdic.gov/resources/bankers/call-reports/index.html
[22] Federal Deposit Insurance Corporation, "Estimated Uninsured Deposits Reporting Expectations," July 24, 2023, https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html
[23] *Id.*
[24] Wall Street Journal, "FDIC Scolds Banks for Manipulating Deposit Data," Jonathan Weil and Shane Shifflett, July 24, 2023, https://www.wsj.com/articles/fdic-scolds-banks-for-manipulating-deposit-data-f7fe93d7
[25] Federal Reserve Statistical Release, "Insured U.S.-Chartered Commercial Banks that Have Consolidated Assets of $300 Million or More, Ranked by Consolidated Assets," March 31, 2023, https://www.federalreserve.gov/releases/lbr/current/
[26] Wall Street Journal, "FDIC Scolds Banks for Manipulating Deposit Data," Jonathan Weil and Shane Shifflett, July 24, 2023, https://www.wsj.com/articles/fdic-scolds-banks-for-manipulating-deposit-data-f7fe93d7
[27] *Id.*
[28] Federal Reserve Statistical Release, "Insured U.S.-Chartered Commercial Banks that Have Consolidated Assets of $300 Million or More, Ranked by Consolidated Assets," March 31, 2023, https://www.federalreserve.gov/releases/lbr/current/
[29] *Id.*

Warren wrote to the FDIC about reports of a big bank "gambit" that would have allowed them to make the special assessment payments with devalued Treasury bonds.[30]

Given the importance of accurate reporting on uninsured deposits, it is critical that the FDIC use all of its tools to ensure that banks are meeting their requirements. And the agency does have powerful tools: Under Section 7(a) of the *Federal Deposit Insurance Act*, if a bank "knowingly or with reckless disregard for the accuracy of any information or report . . . submits or publishes any false or misleading report or information, the [FDIC] may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected."[31]

As the FDIC noted in its letter, "[e]ach [bank] is responsible for the accuracy of the data in its Call Report."[32] But the agency appears to be doing nothing to hold banks that are reporting inaccurate data accountable. The agency's Financial Institution Letter names no names, and imposes no consequences. The banks that are inaccurately reporting uninsured deposits are making millions of dollars doing so, while putting the entire banking system at increased risk – without receiving even the lightest slap on the wrist.

This is a deeply troubling response. We ask that the FDIC use the full suite of tools at its disposal to ensure that banks are meeting reporting requirements. In order to understand the magnitude of the issue and the FDIC's response, we also ask that the FDIC provide responses to the following no later than August 17, 2023:

1. What prompted the FDIC to send the July 24, 2023 Financial Institution Letter?
2. What are the implications of banks' widespread restatements of their uninsured deposits for the DIF?
3. Which banks have underreported their uninsured deposits on their December 31, 2022 reports? Please provide a list of the banks and the amount they underreported their uninsured deposits, as well as the amount it would reduce their special assessment payments to the DIF.
4. What authority does the FDIC have to address inaccurate reporting of uninsured deposits by big banks?
5. Is the FDIC investigating whether these banks reported their uninsured deposits "knowingly or with reckless disregard for the accuracy"[33] of those reports? Is the FDIC considering using its Section 7(a) authority to punish and discourage banks from providing false information in their reports? If not, why is it not exploring that avenue? What other options is the FDIC considering to ensure banks comply with their reporting obligations?

[30] Letter from Senator Elizabeth Warren to Federal Deposit Insurance Corporation Chairman Martin J. Gruenberg, May 18, 2023, https://www.warren.senate.gov/imo/media/doc/2023.05.18%20Letter%20to%20FDIC%20re%20replenishment%20of%20deposit%20insurance%20fund.pdf
[31] 12 U.S.C. 1817(a).
[32] Federal Deposit Insurance Corporation, "Estimated Uninsured Deposits Reporting Expectations," July 24, 2023, https://www.fdic.gov/news/financial-institution-letters/2023/fil23037.html#_ftn2
[33] 12 U.S.C. 1817(a).

6. What other steps is the FDIC taking to ensure that big banks comply with the law and pay their special assessment amounts in full?

Sincerely,

Elizabeth Warren
United States Senator

Katie Porter
Member of Congress