March 13, 2009

Contacts

Heather S. Archer
1900 K Street NW
Washington, DC 20006
(214) 468-3304
harcher@hunton.com

Peter G. Weinstock
1445 Ross Avenue Suite 3700
Dallas, Texas 75202-2799
(214) 468-3395
pweinstock@hunton.com

FDIC Increases Previously Announced Changes in Assessment Rates

by Heather S. Archer and Peter G. Weinstock

The FDIC has revised its October 7, 2008 Notice of Proposed Rulemaking ("NPR") to increase deposit assessment rates for all categories of institutions in a Final Rule adopted on February 27, 2009 (the "Final Rule"). The anticipated deposit assessment rate increase has grown materially and has attracted significantly more attention and outrage due to its concurrent release with an interim rule proposing a one-time 20 basis point emergency special assessment. The emergency assessment will be imposed on deposits as of June 30, 2009, which assessment will be collected on September 30, 2009, concurrent with the first assessment collected under the Final Rule.

The emergency assessment will be collected to restore losses to the Deposit Insurance Fund as a result of a large number of bank failures in 2008. The FDIC estimates that the impact of the assessment on profitable institutions will result in a 10 percent to 13 percent decrease in pretax income. For unprofitable institutions, pretax losses will increase on average between 3 percent and 6 percent.

The FDIC interim rule requests comments, which will surely be submitted by banks of all sizes, particularly about the rate of the emergency assessment and the uniform application of the assessment. Based on comments made by Sheila Bair, institutions are anticipating a decrease in the emergency assessment rate.

For the Final Rule, the FDIC has retained the formulaic deposit assessment rate calculations announced in the NPR, but has revised the determination of certain line items. Most important, it has increased assessments universally. The following table sets forth the base assessment rates effective as of April 1, 2009. Except for Risk Category IV, the total base assessment in all rate categories increased by two basis points.

Total Base Assessment Rates*

	Risk Category I	Risk Category II	Risk Category III	Risk Category IV
Initial base assessment rate	12 – 16	22	32	45
Unsecured debt adjustment	-5 – 0	-5 – 0	-5 – 0	-5 – 0
Secured liability adjustment	0 – 8	0 – 11	0 – 16	0 – 22.5
Brokered deposit adjustment		0 – 10	0 – 10	0 – 10
Total base assessment rate	7 – 24.0	17 – 43.0	27 – 58.0	40 – 77.5

*All amounts for all risk categories are in basis points annually. Rates for institutions that did not pay the minimum or maximum rate would vary between these rates. Adjustments would be applied in the order listed in the table. The large bank adjustment would be made before any other adjustment.

In addition, the following changes were made to assessment rate determination:

Initial Base Assessment Rate

For Risk Category I institutions, the NPR included an additional item in the initial base assessment rate for brokered deposits, but only to the extent that an institution has (i) increased its total assets by more than 20 percent over the previous four-year period and (ii) brokered deposits of more than 10 percent of its domestic deposits. Accordingly, if either test is not met, the initial base assessment rate formula will remain the same. The Final Rule increased the total asset threshold to 40 percent. For institutions with brokered deposits levels exceeding 10 percent and asset growth of more than 70 percent during the immediately preceding four years (as opposed to 40 percent in the NPR), the adjusted brokered deposit ratio will equal the institution's ratio of brokered deposits to domestic deposits, less the 10 percent threshold. For Risk Category I institutions, the Final Rule also excludes from the definition of brokered deposits "reciprocal deposits," which are those deposits that an insured institution receives through a deposit placement network, allowing institutions to place amounts with other depository institutions in the network and agree to a uniform interest rate to be paid on all deposits in the network.

Each financial ratio that comprises the initial base assessment rate is then computed using the new pricing multipliers set forth in the Final Rule, with the result that the initial base assessment rate cannot be less than 12 basis points and greater than 16 basis points for a Risk Category I institution.

Unsecured Debt Adjustment

For all Risk Categories, the initial base assessment rate can be lowered by an "unsecured debt adjustment." Long-term unsecured debt would include senior unsecured and subordinated debt with at least one year remaining until maturity, including senior unsecured debt issued under the Temporary Liquidity Guarantee Program. This decrease will be based on the amount of the institution's long-term unsecured debt as a percentage of domestic deposits, multiplied by 40 basis points (rather than 20 basis points identified in the NPR). Under the Final Rule, institutions under $10 billion in total asset size calculate the unsecured debt adjustment by including "qualified Tier 1 capital." Qualified Tier 1 capital for purposes of the unsecured debt adjustment is the portion of Tier 1 capital that exceeds a ratio of Tier 1 capital to adjusted average assets of 5.0 percent. The qualified Tier 1 capital, together with the institution's long-term debt, will be multiplied by 20 basis points to determine the unsecured debt adjustment. The amount of the reduction as a result of the unsecured debt adjustment cannot exceed five basis points (as opposed to a two-basis-point reduction permitted under the NPR).

Secured Liability Adjustment

The base assessment rate will be increased for all risk categories if the institution's ratio of secured liabilities to domestic deposits is greater than 25 percent (as opposed to 15 percent in the NPR). Secured liability adjustments in excess of 25 percent result in an increase in the assessment rate by up to 50 percent of the base assessment rate prior to the adjustment.

Brokered Deposit Adjustment

The brokered deposit adjustment calculation for institutions in Risk Categories II, III and IV remains the same in the Final Rule. The FDIC has made it clear that the reciprocal deposit rule applicable to Risk Category I institutions does not apply to other risk categories. Therefore, all brokered deposits are included in the adjustment for Risk Categories II, III and IV.

For additional information, including sample calculations of certain aspects of the assessment rates, see our client alert from October 2008, titled "The FDIC Adds to the Cost of Brokered Deposits with Changes in Assessment Rates."