DATE: November 17, 2020

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley DOREEN EBERLEY Digitally signed by DOREEN EBERLEY Date: 2020.11.13 16:17:28 -05'00'
Director, Division of Risk Management Supervision

SUBJECT: Interagency Interim Final Rule: Temporary Asset Thresholds

SUMMARY AND RECOMMENDATION

Staff recommends that the Federal Deposit Insurance Corporation (FDIC) Board of Directors (the Board) approve, and authorize for publication in the *Federal Register*, the attached interagency interim final rule, which temporarily changes the dates as of which the assets of FDIC-supervised institutions may be measured for determining whether they meet asset thresholds for the applicability of certain regulations. This interim final rule would amend certain rules adopted by the FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (together, the agencies) to provide regulatory burden relief to supervised banking entities with under $10 billion in total consolidated assets as of December 31, 2019 (community banking organizations), including banks, savings associations, bank holding companies, savings and loan holding companies, and U.S. branches and agencies of foreign banking organizations.

Staff recommends that the Board approve this interim final rule and authorize its publication in the *Federal Register* with an effective date as of the date of publication, and with a 60-day public comment period.

Concur:

NICHOLAS PODSIADLY Digitally signed by NICHOLAS PODSIADLY Date: 2020.11.13 15:47:45 -05'00'

Nicholas J. Podsiadly
General Counsel

DISCUSSION

Background

In light of ongoing strains in economic conditions related to COVID-19 and continued stress in U.S. financial markets, the agencies have issued a number of rules and supervisory guidance communications designed to mitigate the consequences of the COVID-19 pandemic and to facilitate the safe and effective operations of banking organizations.[1]

Community banking organizations have played an instrumental role in the nation's financial response to the COVID-19 pandemic, and many have experienced a significant increase in balance sheet growth as a result of the pandemic and the policy response to the pandemic. Policies encouraging banks to work with their customers, such as the Small Business Administration (SBA)'s Paycheck Protection Program (PPP)[2] and the interagency statement encouraging financial institutions to work with borrowers affected by the COVID event,[3] have offered much-needed emergency liquidity to small businesses, including, but not limited to, individuals operating sole proprietorships or acting as independent contractors, certain franchisees, nonprofit corporations, veterans organizations, Tribal businesses, and households. As a result, during the pandemic, many community banking organizations have experienced an unexpected and sharp increase in asset growth, increasing their balance sheets in a few cases by 25 percent or more.[4]

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[1] See "Coronavirus (COVID-19) Information for Bankers and Consumers," available at https://www.fdic.gov/coronavirus/.

[2] The SBA's PPP was created under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to market distress caused by the COVID-19 pandemic. Pub. L. 116-136, 134 Stat. 281.

[3] "Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus" (Apr. 7, 2020), available at https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-50a.pdf. and https://www.fdic.gov/news/financial-institution-letters/2020/fil20036.html.

[4] Data derived from the Consolidated Reports of Condition and Income (Call Report) and Financial Statements for Holding Companies (FR Y-9C) data, December 31, 2019 to June 30, 2020.

Community banking organizations are subject to various statutory requirements, regulations and reporting requirements predicated on their risk profile and asset size. Due to their response to the COVID-19 pandemic, some community banking organizations exceed, or may soon exceed, certain asset thresholds that could subject them to additional regulatory or reporting requirements. In the absence of relief, complying with these new or more stringent regulatory standards, especially if the community banking organization's assets are expected to be above a threshold only for a limited time, would impose significant transition and compliance costs on community banking organizations. This interim final rule would provide community banking organizations more time to either reduce their balance sheets by shedding temporary growth, or to prepare for higher regulatory and reporting requirements.

Description of the Interim Final Rule

As noted above, the agencies are issuing an interim final rule that would provide relief to the agencies' supervised entities with under $10 billion in total assets as of December 31, 2019, by temporarily changing the date assets are measured to determine the applicability of certain asset-based regulatory thresholds. More specifically, the interim final rule would permit community banking organizations to use the lesser of total assets reported as of December 31, 2019 or total assets reported as of the date on which the applicability of certain thresholds are normally determined, in order to determine the applicability of various regulatory asset thresholds during calendar years 2020 and 2021. This means that asset growth in 2020 or 2021 will not trigger certain new regulatory requirements for these organizations until January 1, 2022, at the earliest. The agencies would also make conforming changes to their regulatory reports.

This temporary relief in the interim final rule would apply to the following asset-based regulatory thresholds applicable to FDIC-supervised institutions:

- Eligibility for the community bank leverage ratio framework ($10 billion in total consolidated assets) (12 CFR 324.12(a));
- Threshold in the FDIC's rule regarding management official interlocks ($10 billion) (12 CFR 348.3(c)); ($100 million) (12 CFR 348.2(k)(1)); ($50 million) (12 CFR 348.3(b));
- Eligibility for reduced reporting of the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 3064-0052) ($5 billion) (12 CFR 304.12); and
- Thresholds concerning the frequency of examinations ($3 billion) for domestic banks (12 CFR 337.12) and insured branches of foreign banks (12 CFR 347.211).

Under this interim final rule, the relief described above generally would be available to institutions that experience asset growth above the applicable thresholds. However, there may be limited instances in which such relief would be inappropriate. Therefore, in connection with the temporary relief provided in this interim final rule, each of the agencies has reserved the authority to determine that a community banking organization is not eligible to use the relief provision with respect to one or more of the asset thresholds covered by the rule if the agency makes an institution-specific determination that relief would not be appropriate. Circumstances in which such relief would not be appropriate could include when there is significant growth due to a merger or acquisition or when there is a material change in the business model, risk profile, or complexity of the community banking organization. Specifically, amendments to the FDIC's capital regulations governing eligibility for use of the community bank leverage ratio framework and regulations affecting the prohibition on certain management official interlocks each include a reservation of authority. Amendments to the regulations governing eligibility to use the short-form Call Report (FFIEC 051) and permitting the FDIC to examine certain institutions less frequently than annually do not include new reservations of authority because the existing reservations of authority would continue to apply. The existing Call Report rule reserves the FDIC's authority to require an otherwise eligible covered depository institution to file the FFIEC 041 version of the report of condition.[5] Similarly, the FDIC retains significant flexibility regarding examination frequency for FDIC-supervised institutions.[6]

Staff recommends that the FDIC Board delegate to the Director of the Division of Risk Management Supervision, or her designee, on an institution-specific basis, the authority to determine that a FDIC-supervised community banking organization is not eligible to use the relief provisions with respect to one or more of the asset thresholds covered by the interim final rule, upon consideration of the factors included in the interim final rule.

The agencies are *not* proposing to revise the interagency regulations (adopted by the FDIC, FRB, OCC, CFTC and SEC) under Section 13 of the Bank Holding Company Act (the Volcker Rule), which prohibits proprietary trading and certain interests in and relationships with covered funds as part of this interim final rule. Under section 13 of the Bank Holding Company Act, an entity that newly becomes a "banking entity" for purposes of the Volcker Rule has two

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[5] *See* 12 CFR 304.14.

[6] *See* 12 CFR 337.12(c) and 12 CFR 347.211(c).

years to come into compliance with the requirements of the Volcker Rule, and may seek an extension of the conformance period from the Board. A banking entity that ceases to be a banking entity during that period—for example by virtue of reducing its asset size below the statutory $10 billion total consolidated assets threshold—would no longer be subject to the Volcker Rule.

Finally, in this interim final rule, the agencies seek comment on all aspects of the regulatory relief provided. In particular, the agencies seek comment on whether a longer period of temporary relief is necessary and on whether additional forms of relief are needed. Comments would be due 60 days after publication of the interim final rule in the *Federal Register*.

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