American Bankers Association
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February 07, 2019

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

Re: *Request for Information on the FDIC's Deposit Insurance Application Process*
*(**FDIC**: RIN 3064-ZA03)*

Dear Sir:

The American Bankers Association[1] (ABA) appreciates the opportunity to respond to the FDIC's Request for Information on its Deposit Insurance Application Process (RFI).[2] Recognizing the constraints of the Federal Deposit Insurance Act[3] and other statutes, this RFI is seeking feedback on any "unnecessary burdens that have become a part of the [deposit insurance application] process."[4] To inform this RFI, ABA drew on feedback from the ABA *de novo* bank task force convened last year, led by then ABA Chairman Ken Burgess. This task force was largely comprised of banks that were formed around the financial crisis, yet proved successful and resilient during that difficult time. ABA also received important perspective from banks formed after Dodd-Frank was enacted, helpful input from bankers across the country, and thoughtful views from the state bank association leaders within the ABA State Association Alliance.

ABA shares FDIC Chairman McWilliams' concern that "*de novo* activity is not where it should be."[5] As Chairman McWilliams rightly noted, only 11 banks opened their doors between January 2010 and December 2018. So few *de novos* does little to abate the precipitous decline of chartered banks in the United States. At the start of 2010, there were over 8,000 chartered banks, but recent data show that number has fallen to just under 5,450. More important, the chartering of new banks helps to meet the needs of more customers and communities, brings new energy into the ranks of bankers, and demonstrates the vitality of the banking industry while being a measure of investor confidence in its future.

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[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits, and extend nearly $10 trillion in loans.
[2] *See* Request for Information on the FDIC's Deposit Insurance Application Process, 83 Fed. Reg. 63,868 (Dec. 12, 2018).
[3] As noted in the RFI, Section 6 of the FDIA, 12 U.S.C. § 1816, requires the FDIC to consider six statutory factors in evaluating deposit insurance applications. Additional considerations are found under the National Historic Preservation Act and the National Environmental Policy Act.
[4] Id. at 63,868.
[5] Jelena McWilliams, *BankThink We Can Do Better on De Novos*, AM. BANKER (Dec. 6, 2018), https://www.americanbanker.com/opinion/fdic-chairman-jelena-mcwilliams-we-can-do-better-on-de-novos.

ABA appreciates the FDIC's current and past efforts to encourage *de novo* formation. One particularly significant development stems from April 2016, when the FDIC eliminated the seven-year period of enhanced supervisory review for *de novos*, which to a significant degree acted as a post-crisis moratorium on new bank formation.[6] Without debating whether the seven-year period of enhanced supervisory scrutiny was necessary at the outset, there is little disagreement that reverting back to a three-year period moved in the direction of encouraging more *de novo* formation.

The FDIC's Handbook for Organizers of De Novo Institutions (Handbook)[7] breaks down the three major phases of *de novo* bank formation as follows: (1) pre-filing activities, (2) the application process, and (3) pre-opening activities. However, the Handbook's clean layout of these three phases belie how difficult it is for organizing groups to open a *de novo*. Just some of the first responsibilities of a bank organizing group include recruiting a team of experienced and extensively vetted executive officers, board members, and staff. Organizing groups must also satisfy state and federal regulators that a market opportunity exists, create a detailed business plan complete with modeled projections (including alternative scenarios), provide drafts of operating policies, employment agreements, equity incentive plans, offering materials, create a detailed marketing plan, and describe the product lines their projected market will need.

To finance the effort, an organizing group must raise funds for start-up expenses and ultimately capitalize the bank. Before opening, an organizing group must also negotiate and execute leases for their physical locations in addition to agreements with the third party vendors that they use for IT, core banking services, and other services.[8] Pre-opening also requires extensive staff training and systems testing. Only after extensive work and considerable expense do *de novos* even begin the journey to recover their start-up costs and strive toward profitability.

Aside from the *de novo* application and approval process itself, investor appetite to form a new bank will always start with an assessment of whether creating a new bank is a sufficiently attractive investment opportunity relative to alternative uses of capital. The challenges and regulatory burdens facing banks currently in existence are the same challenges and regulatory burdens that newly formed banks must assume. The relatively low interest in new bank formation could be viewed as a troubling bellwether that the current regulatory burdens facing America's banks are simply too much. These current regulatory burdens are compounded by the challenges these banks face in being both taxed and regulated more than many of their market competitors.

These challenges notwithstanding, ABA appreciates the FDIC's embrace of new entrants interested in assuming the benefits and responsibilities afforded to those in possession of a bank

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[6] *See* FED. DEPOSIT INS. CORP., FIL-24-2016, SUPPLEMENTAL GUIDANCE RELATED TO THE FDIC STATEMENT OF POLICY ON APPLICATIONS FOR DEPOSIT INSURANCE (2016), https://www.fdic.gov/news/news/financial/2016/fil16024.pdf [hereafter FIL-24-2016].

[7] *See* FED. DEPOSIT INS. CORP., APPLYING FOR DEPOSIT INSURANCE: A HANDBOOK FOR ORGANIZERS OF DE NOVO INSTITUTIONS (2018), https://www.fdic.gov/regulations/applications/depositinsurance/handbook.pdf [hereafter DEPOSIT INSURANCE HANDBOOK]. Available at: https://www.fdic.gov/regulations/applications/depositinsurance/handbook.pdf.

[8] Third party vendors typically provide products for core banking services and information technology, among other services.

charter. New entrants to the banking system bring fresh ideas and help spur innovations in an industry with a long track record of developing new ways to benefit bank customers and their communities.

Within this letter, ABA is not addressing every challenge with the application process, which has grown to be lengthy and cumbersome, nor every factor that encourages or discourages bank formation. However, with this context in mind, ABA offers the following response to the FDIC's RFI seeking feedback on and recommendations for the deposit application process itself.

INCREASE *DE NOVO* TIMELINE AND APPROVAL TRANSPARENCY

Recently, the FDIC created a page on its website listing pending new deposit insurance applications and the date such applications were received, which can be helpful information to potential bank organizers.[9] Before this page was created, information on pending *de novo* applicants was sparse. Monitoring new deposit insurance applications required a detailed understanding of the *de novo* process combined with regular searches on the FDIC's website for new bank applications subject to the public comment window required by the Community Reinvestment Act. ABA appreciates and supports the FDIC's effort to share more information on pending *de novo* applications.

ABA recommends expanding upon the current information shared to include when *de novo* applicants complete other key phases of the *de novo* process, provided that the organizers have no objection to sharing such information. This would help give future prospective organizers a much better sense of how long it takes to form a new bank and how long it has taken previous organizers to move from one application phase to another. Moving forward, some of the *de novo* applicant dates that might be shared include: Submission of Interagency Charter and Deposit Insurance Application, Receipt of Application, Accepted as Substantially Complete, Granted Charter, Granted Deposit Insurance, First Day Bank Opens for Business.

Providing a clearer timeline of prior *de novo* applications offers relevant information on whether or not the FDIC acts promptly[10] at each stage of the application process, which would be consistent with the FDIC's recent *"Trust Through Transparency"* initiative.[11]

On a related note, ABA recommends publicizing the criteria the FDIC uses for determining what constitutes a *de novo* while also noting which granted deposit insurance orders have led to such *de novos*. In testimony before the Senate Banking Committee, FDIC Chairman McWilliams observed that only 11 new banks had been approved and opened between January 2010 and her testimony on October 2, 2018.[12] The testimony stated that this number of new banks did not

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[9] See FED. DEPOSIT INS. CORP., SUMMARY OF NEW DEPOSIT INSURANCE APPLICATION ACTIVITIES, https://www.fdic.gov/regulations/applications/pending.html (last visited Feb. 6, 2019).
[10] It may be appropriate for the FDIC to offer context on matters that may delay the *de novo* applications process, but cannot be reasonably attributed to FDIC inaction.
[11] *See* Fed. Deposit Ins. Corp., Remarks by Jelena McWilliams, Chairman, "Trust through Transparency" (Oct. 3, 2018), https://www.fdic.gov/news/news/speeches/spoct0318.pdf.
[12] *Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 115th Cong. (2018) (statement of Jelena McWilliams, Chairman,

include shelf charters, conversions, or new subsidiaries by organizations that already have an affiliated bank.[13] However, the FDIC lists anyone that receives a decision on an application for deposit insurance in the same place and does not distinguish which of these are *de novo* institutions as the FDIC understands them.[14] From January 2010 until October 1, 2018, the FDIC website lists 35 decisions on bank applications for deposit insurance, without distinguishing which of those 35 decisions led to the 11 approved and opened *de novos* found in the Chairman's testimony.

ABA believes that having greater transparency around which orders granting deposit insurance result in approved and opened *de novos* would be helpful. Without distinguishing *de novos* from deposit insurance application approvals that are sought for different purposes, the FDIC increases the risk that the public will not accurately contextualize the conditions and capital requirements found in these very different filings. Having considerably more deposit insurance application approvals than true *de novos* listed also paints an inaccurate picture that *de novo* activity has been more fulsome than it actually was for the last ten years. A more accurate accounting of *de novo* activity on the FDIC's website is also consistent with the FDIC's *"Trust Through Transparency"* initiative.

REDUCE FDIC WASHINGTON OFFICE DELAYS

The Handbook states that, "[d]epending on the application characteristics and the findings with regard to the statutory factors, the application may be acted on at the regional level, at the divisional level (at the FDIC's Washington Office), or by the FDIC Board of Directors."[15] It further states that "[r]egardless of the nature or circumstances of the proposal, field and regional staff will communicate with organizers throughout the application process and keep them apprised of our status in considering the application."[16]

However, ABA understands there to be instances where organizers are not adequately apprised of the status of their applications. Bank organizers have expressed consistent frustration that applications (or portions of applications) needing input from the FDIC's Washington Office languish with no explanation as to who or what is holding back their application. From the perspective of organizers, decision makers in the FDIC's Washington Office are hidden from view and cannot be reached, even when assigned local case managers seem receptive to facilitating such direct communication. This lack of transparency and accountability has enabled what multiple organizers have described, at times, as a lack of urgency on the part of the FDIC's Washington Office.

Depending on how far along the applicants are in the *de novo* process, the expenses that organizing groups must bear to accommodate such delays can be significant and may require

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Federal Deposit Insurance Corporation), https://www.banking.senate.gov/imo/media/doc/McWilliams%20Testimony%2010-2-18.pdf.

[13] Id.

[14] FED. DEPOSIT INS. CORP., DECISIONS ON BANK APPLICATIONS, https://www.fdic.gov/regulations/laws/bankdecisions/depins/index.html (last visited Feb. 6, 2019).

[15] *See* DEPOSIT INSURANCE HANDBOOK, *supra* note 7, at 26.

[16] Id.

raising additional seed money during the application process. ABA has learned that it is not unusual for organizing groups to spend $100,000 a month toward the tail end of their approval, which includes significant occupancy expenses and payroll expenses for day one employees, with no revenue to offset those costs. At the later stages of organization, a 2-week delay by the FDIC is better interpreted by these groups as an unnecessary $50,000 spent.

ABA recognizes that there may be legitimate reasons for carefully reviewing applications, and that certain concerns cannot be communicated in the interest of transparency (e.g. the status of criminal background checks for key personnel). Still, there may be opportunities to resolve what many perceive to be an unacceptable delay structure. More efficient and direct communication channels would allow organizers to assess issues raised by the FDIC and resolve them in a quicker manner.

ABA recommends giving bank organizers a clear sense of who, beyond their case manager, has a decision making role in their application, particularly in Washington. In addition to being good agency practice, ABA believes that this recommendation is also consistent with the FDIC's *"Trust Through Transparency"* initiative.

EMPOWER (OR ENCOURAGE) REGIONAL OFFICES

Bank organizers typically express positive feedback about their interactions with the FDIC's Regional Offices and the case managers they work with. ABA believes that the FDIC's Washington Office should empower Regional Offices by delegating the vast majority of their *de novo* decision making authority to the FDIC Regional Offices whenever those offices and their case managers are prepared to act on *de novo* applicants. However, ABA also believes that the FDIC's Washington Office should stay alert to instances where these Regional Offices are lethargic or unduly cautious. Though bank organizers typically view their Regional Office interactions favorably, such positive experiences are not universal. In the limited instances where Regional Offices or case managers prove unduly cautious, the FDIC's Washington Office should intervene and serve as a necessary catalyst for bank formation.

To that point, quality case managers are critical to the *de novo* formation process. To create a consistent, positive climate that encourages new *de novo* creation (and more applications), it is important that *every* case manager assigned to a *de novo* application be highly competent and embrace the value of new bank formation. Whenever helpful, case managers should be supported in their review by others at the FDIC to increase the speed of application review and prevent unnecessary delays.

SIMPLIFY APPROVALS FOR BUSINESS PLAN DEVIATIONS

Section 6 of the Federal Deposit Insurance Act requires the FDIC to consider seven statutory factors in connection with an application for deposit insurance.[17] Among those factors, the FDIC must assess the future earnings prospects of a depository institution and the risk the institution would pose to the FDIC's Deposit Insurance Fund.

[17] *See* 12 U.S.C. § 1816 (2012).

Requiring *de novo* applicants to submit a business plan is one way to assist the FDIC in evaluating the statutory factors, though the business plan itself is not statutorily required. As noted in the *Interagency Charter and Federal Deposit Insurance Application*,[18] the business plan is an in-depth, comprehensive analysis and set of projections for how an institution intends to organize itself and become a sustainable banking franchise. The efforts undertaken to develop a satisfactory business plan can be valuable to both the FDIC and organizing groups to be sure that important considerations are taken into account when opening a new bank.

Still, from the perspective of a new bank, having business decisions scrutinized by the FDIC for the first 36 months of operation is taxing. When a *de novo* contemplates a material deviation from its business plan, the institution must first obtain prior approval from the FDIC.[19] In April 2016, the FDIC offered clarity on the myriad of banking decisions that constitute a material business plan deviation for *de novos*.[20] Among others, the list of material deviations include growth, a change in asset mix, a change in liability mix, a change in revenue mix, a change in product or service offerings, a change in target markets, a change in off-balance sheet activities, and capital-raising activities.

The FDIC appears to view with skepticism *de novos* that outperform their business plan, treating such performance as evidence that the *de novo's* initial projections were not sufficiently accurate. In the absence of strong evidence that such performance is based on the assumption of imprudent levels of risk, ABA believes that the FDIC should instead champion strong *de novo* performance as evidence that new franchises can be even more successful and profitable than planned.

The FDIC's careful supervision of a *de novo* comes at a time when the new bank franchise is replete with capital and operating with a management team and board that has already met the FDIC's approval. *De novos* already have powerful incentives to succeed. Investors, managers, employees, customers, and local communities have the same desire for *de novos* to be successful and sustainable. These powerful incentives for newly chartered institutions to operate successfully make the agency's detailed prescriptions in the business plan less necessary from a supervisory perspective.

ABA recognizes that the FDIC has an interest in providing a reasonable level of supervision to newly chartered institutions and can offer valuable perspectives. However, the FDIC's detailed prescriptions and prior approval process for business plan changes can risk placing too many business decisions and opportunities in the hands of agency staff when bankers are better suited and more prompt to make these banking judgments. The long list of material deviations from the business plan serve as a signal to *de novos* to eschew dynamism or unanticipated opportunities, expressing instead an agency preference to conform to regulatory expectations that new banks should begin their journey with three years of predictable "plain-vanilla" banking.

[18] *See* INTERAGENCY CHARTER AND FEDERAL DEPOSIT INSURANCE APPLICATION, https://www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf (last visited Feb. 6, 2019).
[19] However, if the FDIC is not the *de novo's* primary federal regulator, then the *de novo* must obtain prior approval from that primary federal regulator.
[20] *See* FIL 24-2016, *supra* note 6.

The FDIC's prior approval requirement for material deviations from the business plan also creates a presumption that certain legal and normal banking activities are unacceptable until they are permitted. This puts *de novos* in the position of asking the FDIC for permission to conduct banking activities with no clear timeline for when or if they will receive an FDIC response. Without prompt action, business opportunities subjected to FDIC for prior permission may quickly go elsewhere. To be responsive to customers and market opportunities, *de novos* need to have a clear and prompt timeline on when they will receive a decision on their requests.

ABA recommends changing the prior approval requirement for business plan deviations. The FDIC should move to a system where *de novos* provide the FDIC a notice of intent to deviate from their business plan. This notice of intent would trigger a short window wherein the FDIC may object, in writing, to the proposed deviation. This short window could be as little as 30 days. Absent an objection within that window, the deviation should be deemed approved by the FDIC. This would remove the presumption that certain legal and normal banking activities are off limits, placing the burden on the FDIC to articulate promptly why proposed business plan changes are objectionable. It would also give *de novos* the encouragement necessary to fill unanticipated local market needs that often come with a short window of opportunity.

Communicate Capital Expectations and Approve Applicants

When the FDIC released a draft of its Handbook in December 2016, the draft contained language stating that for *de novos*, "the FDIC does not prescribe a minimum dollar level of capital." In draft, final, and revised forms, the Handbook has remained unchanged on this point. The Handbook's latest iteration from October 2018 says that "the FDIC does not prescribe a minimum dollar level of capital for any given proposal."[21] Rather, the Handbook states that the FDIC expects initial capital to be sufficient to maintain a tier 1 capital to assets leverage ratio of not less than 8 percent for the first three years of operation.[22] This language is consistent with the FDIC's long standing Statement of Policy on Applications for Deposit Insurance (SOP).[23]

However, current and prospective bankers have consistently expressed their belief to ABA that the FDIC expects formation groups to raise a set minimum amount of capital (i.e. $20-$25 million) to start a new bank, regardless of the written statements found in the FDIC's Handbook or SOP.

High capital expectations, whether in perception or practice, clearly have the potential to discourage prospective applicants from starting a *de novo*. When institutions are asked to hold more capital than is necessary to open their doors and begin a sustainable banking franchise, these banks feel investor pressure to deploy their capital as quickly as possible. ABA recommends, instead, the exercise of appropriate flexibility on the part of the FDIC to permit binding additional capital *commitments* that can be drawn upon by a *de novo* as needed and as can be effectively deployed, lessening the inefficiency of an excessively high initial capital raise.

[21] *See* DEPOSIT INSURANCE HANDBOOK, *supra* note 7, at 18.
[22] *Id.*
[23] *See* FED. DEPOSIT INS. CORP., FDIC LAW, REGULATIONS, RELATED ACTS: FDIC STATEMENT OF POLICY ON APPLICATIONS FOR DEPOSIT INSURANCE, https://www.fdic.gov/regulations/laws/rules/5000-3000.html (last visited Feb. 6, 2019).

This could help banks attract prospective investors who might be persuaded of the value of taking a long-term view of a bank investment that generates low short-term returns.

Unnecessarily high capital expectations can increase the likelihood that *de novos* will have to gather capital beyond their local market, sometimes driving *de novos* toward investors that do expect a quicker return on their capital, which could encourage assuming more risk. When capital requirements are too high and lead to growth pressure at the new bank, the FDIC risks driving bank management to deviate from their own assessment of the optimal balance of risk and return.

Furthermore, a high initial capital expectation may have the effect of "pricing out" *de novo* banks from rural communities or other places where a smaller bank would be suitable but where there would not be enough readily available business for a more highly capitalized new bank to succeed. Chairman McWilliams recently noted how many counties in the United States currently have no resident bank at all. Excessively high initial capital requirements can make it difficult to address that problem.

ABA recommends that the FDIC continue publicizing that there is no minimum level of capital required for *de novo* formation. The FDIC should also highlight any *de novos* that open their doors with under $20 million in capital. When communicating the FDIC's position that there is no minimum capital requirement for *de novos*, a statement on the FDIC's "Applications for Deposit Insurance" page would be helpful, as would continuing to communicate this position regularly at public hearings and speaking engagements by agency principals and staff.

ABA also recommends more prominently displaying the initial capital requirements found in the orders granting applications for deposit insurance. The FDIC's webpage on "Decisions on Bank Applications for Deposit Insurance" currently has a table that has columns listing the following: *Bank Name, City, State, Date of Agency Action*. Simply adding a column that shows the required initial paid-in capital funds that the FDIC requires as a condition of approval would help highlight an important data point in demonstrating that the FDIC, as a practical matter, has embraced *de novo* applicants with varied initial capital levels. ABA believes that prominently displaying this useful information for the public would also be consistent with FDIC's "*Trust Through Transparency*" initiative.

Ultimately, clear communication around the FDIC's position that they hold no minimum expectations on capital will be most effective when augmented by approved applications for deposit insurance to organizing groups that have business plans that need less than $20 million in initial capital.

REVISE SOP TO ENSURE REASONABLE COMPENSATION TO BANK ORGANIZERS

ABA recommends modernizing the FDIC's Statement of Policy on Applications for Deposit Insurance (SOP) to permit more flexibility in setting reasonable compensation arrangements for those interested in funding bank organization costs. A strict reading of the SOP's restrictions on compensation, sometimes in combination with different state laws, can unnecessarily restrict reasonable compensation arrangements for such individuals.

Organizers that substantially contribute to the organization of a new depository institution but who do not intend to serve as an active officer or director after the bank opens for business (inactive organizers) are discussed in Section 4(b) of the SOP. These inactive organizers risk losing some or all of the "seed money" they provide to the formation group if the new bank does not ultimately get approval to open. However, there are instances where the SOP prevents these inactive organizers from deriving reasonable and timely consideration for bearing that risk. When this occurs, inactive bank organizers lose the economic incentive to provide seed money to organizing banks.

ABA believes that this is a problem within the FDIC's power to resolve. Section 4(b) of the SOP reads, in pertinent part—

> The FDIC recognizes that there will be limited instances where individuals who substantially contribute to the organization of a new depository institution do not intend to serve as an active officer or director after the institution opens for business. **The FDIC generally will not object to awarding warrants or options to incorporators who agree to accept shares of stock *in lieu of cash payment* for funds placed at risk** or for professional services rendered. In such instances, the FDIC defines funds placed at risk to include "seed money" actually paid into the organizational fund and the value of professional services rendered as the market value of legal, accounting and other professional services rendered. **Generally, warrants or options for organizers who will not participate in the management of the institution *will be considered excessive if the amount of options or warrants to be granted exceeds the number of shares of stock received in repayment for funds placed at risk* and/or for professional services rendered**. (emphasis added)

The FDIC's current reading of their SOP does not appear to contemplate the granting of warrants or options to inactive organizers that also receive cash reimbursement. However, in California, receiving shares of stock as compensation for services rendered in organizing a bank appears to be prohibited, which means organizers *must* be reimbursed in cash.[24] This required reimbursement system does not compensate inactive organizers for placing funds at risk. Instead, this reimbursement merely lets inactive organizers recover the funds they placed at risk after the bank finally opens.

Such inactive organizers would normally expect to recover their funds placed at risk, but also be granted a reasonable amount of stock options for the uncertainty of financing a new bank. However, the SOP tethers the amount of warrants or options permissible for inactive organizers to "the number of shares of stock received in repayment for funds placed at risk." Consequently, *any* amount of warrants or options granted to inactive organizers can be treated as "excessive," since any amount of options will exceed the number of shares received in repayment (i.e. zero shares). This unacceptable arrangement brought about by the SOP deters bank formation, since it removes the underlying economic incentive for inactive organizers to support bank formation.

Recognizing that organizer compensation should be reasonable and proportionate to the risks assumed, there does not appear to be any compelling public policy justification for limiting the *form* such reasonable compensation takes. ABA recommends taking steps necessary to conform the SOP to permit reasonable compensation arrangements for bank organizers, inactive or

[24] *See* Cal. Fin. Code § 1122 (West 2018). ("No bank shall issue any shares in consideration of: (a) Services rendered in the organization of such bank; or (b) Any note (whether or not negotiable and whether or not secured) made by the purchaser of such shares.").

otherwise. An important starting point for consideration is to revise the FDIC's SOP to look more like the OCC's Licensing Manual on Charters,[25] which provides greater flexibility. The OCC Licensing Manual states, in pertinent part—

> … the bank can repay organizers or founders in cash. Alternatively, the organizing group may request prior OCC approval so that an organizer or founder can receive stock, or a combination of stock and cash.[26]

ABA believes that this important revision will support the vitality of the dual banking system and permit arrangements that provide reasonable compensation to those that provide significant support to bank formation.

Conclusion

ABA appreciates the FDIC's interest in increasing transparency and removing unnecessary regulatory requirements and agency processes that impede new bank formation. We look forward to working with the FDIC to identify ways, within the FDIC's statutory framework, to encourage *de novo* formation and a dynamic banking industry. Should you have any questions about these suggestions, please do not hesitate to contact the undersigned at skern@aba.com or (202) 663-5253.

Sincerely,

[redacted]

Shaun Kern
Senior Counsel
Office of Regulatory Policy

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[25] *See* Office of the Comptroller of the Currency, Comptroller's Licensing Manual: Charters (2016), https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/charters.pdf.
[26] *Id.* at 46.