



February 11, 2019

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

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

Dear Sir:

The California Bankers Association (CBA) appreciates the opportunity to respond to the FDIC's Request for Information on its Deposit Insurance Application Process (RFI).

CBA has reviewed the comments of the American Bankers Association (ABA) dated February 7, 2019, and wholeheartedly supports the content of the ABA letter. In this letter, CBA will highlight certain issues addressed by the ABA that are of particular importance to California bank organizers generally, and/or have directly affected one or more CBA members.

#### Ensuring Reasonable Compensation to Bank Organizers

As the ABA letter notes at pages 8-10, Section 4(b) of the FDIC's Statement of Policy on Applications for Deposit Insurance (SOP) provides, in pertinent part, that [t]he 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.

However, Section 4(b) goes on to state that warrants or options for organizers who will not participate in the management of the institution will be considered excessive if their amount exceeds the number of shares of stock received in repayment for funds placed at risk or for services rendered in connection with the organization of the bank.

Unfortunately, California Financial Code Section 1122 provides that "[n]o bank shall issue any shares in consideration of . . . [s]ervices rendered in the organization of such bank."

So, arguably, inactive organizers of California *de novos* cannot receive any warrants or options in exchange for their investment or in consideration for services rendered, because the number of shares they receive will always be zero. These inactive organizers will have no economic incentive to invest in or provide services to potential *de novo* institutions, thus chilling state bank formation in California.

CBA joins the ABA in recommending that the FDIC amend the SOP to expand the forms of compensation that bank organizers, inactive or otherwise, may receive in consideration for their investments and/or services, which increases the likelihood of investment in *de novo* institutions.

#### Firming Up the De Novo Approval Timeline and Reducing FDIC Washington Office Delays

The ABA letter discusses the need for more transparency and responsiveness in the *de novo* application extensively on pages 3-5. CBA emphatically concurs with the concerns expressed by the ABA.

The recent experience of a CBA member is illustrative. That member observed no sense of urgency or responsiveness in the processing of its application, particularly when communication and coordination between the FDIC regional office and the Washington DC office were required. Several times, the member rushed to provide information that was requested by the regional office, only to have it languish for weeks in the Washington DC office.

The member also expressed frustration at its inability to determine what was required for the FDIC to declare its application "substantially complete." The member responded to multiple sets of questions and supplied supporting data, only to be asked to respond to more questions and supply more data, before its application was determined to be "substantially complete" and the FDIC's substantive review could begin. Sometimes weeks would go by between communications from the FDIC despite the member's diligence in responding to FDIC requests.

CBA recommends that the FDIC develop a transparent timeline for the *de novo* process so that organizers can manage their expectations and plan accordingly. Bank organizers expend hundreds of thousands in pre-opening expenses that only increase the more the application process is delayed. CBA also concurs with the ABA's recommendation that the FDIC expand on the amount of information the FDIC currently provides concerning pending *de novo* applications to include the dates upon which the various stages of the application

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process are completed, which so prospective bank organizers can better understand the time it actually takes to form a new bank.

Again, thank you for the opportunity to respond to this request for information.

Very truly yours,

CALIFORNIA BANKERS ASSOCIATION



By: Martha Evensen Opich  
Vice President, Association Counsel