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February 11, 2019

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

Re: Request for Information on the Deposit Insurance Application Process, RIN 2064-ZA03

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the FDIC's Request for Information (RFI) concerning all aspects of the deposit insurance application process. The FDIC is particularly concerned with the transparency and efficiency of the process and any unnecessary burdens that have become part of the process. Our letter addresses Questions 1-7 of the RFI which deals with the de novo application process for traditional community banks and how it could be improved.²

Background

We agree with the FDIC that de novo banks are a key source of new capital, talent, ideas and ways to serve customers. New entrants into the banking industry are always a good sign of economic opportunity and growth and offer communities more competition and greater economic activity.

Although ICBA is pleased that as of January 29, 2019, there were seven applications for deposit insurance pending before the FDIC and that most of those applications were to form a traditional bank, this is still not close to the de novo banking activity that we saw before the recent economic downturn. For instance, even in the depths of the savings and loan crisis in the 1980s,

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

² Our recommendations in this letter only concern the application process for de novo traditional community banks. ICBA believes the FDIC should impose a moratorium on any new deposit insurance applications for industrial loan corporations or ILCs. Furthermore, Congress should close the ILC loophole because it threatens the financial system and creates an uneven playing field for community banks®.

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when 1,800 banks and savings institutions failed, an average of 196 de novo banks and savings institutions were formed annually from 1984 through 1992. There were 181 charters started in 2007 but between 2010 and 2016, only two new de novo banks were opened.

In 2016, ICBA was pleased when, in response to our advocacy, the FDIC changed its de novo bank policy and stated that applicants do not need to provide upfront capitalization sufficient to maintain a tier 1 leverage capital ratio of at least 8 percent for the first seven years of operation. Instead, the initial capital raised by a proposed institution can be a tier 1 leverage capital ratio of 8 percent through the first three years of operation. Also, the Business Plan submitted with the application can cover the first three years of operation, not the first seven years.

During the past three years, ICBA has also commended the FDIC for a number of other initiatives to improve the deposit insurance application process. In 2016, the FDIC held outreach meetings in several regions around the country to ensure that industry participants were well informed about the FDIC's application review processes and the tools and resources available to assist organizing groups. ICBA attended and participated in a number of those roundtable meetings.

More recently, the FDIC has (1) updated two publications, *Applying for Deposit Insurance—A Handbook for Organizers of De Novo Institutions*, and *Deposit Insurance Applications Procedures Manual*, both of which are excellent resources and address the informational needs of organizers, (2) re-published its timeframe guidelines for applications and made those available on its website, and (3) created a new, designated mailbox by which bankers and applicants may pose questions regarding specific applications or the application process in general.

In addition to this RFI, the FDIC again plans to hold more roundtables across the country in each of the FDIC regional offices to solicit feedback on a number of topics concerning the deposit insurance application process. In December, the FDIC held a very informative roundtable discussion with four trade associations, including ICBA.

ICBA Comments

While the dramatic slowdown in de novo banking activity following the economic downturn was due to many reasons including the recovering economy, the low interest rate environment, and narrow profit margins for banks generally, **we believe further changes to the deposit insurance application process could go a long way to encourage the creation of new community banks. We also believe there needs to be a fundamental shift in the overly conservative attitude of regulators towards de novo banking.** No longer should the FDIC expect that every de novo applicant must convincingly demonstrate that there is a zero chance the bank will fail. Furthermore, while the recent initiatives of the FDIC have been very positive and helpful, we urge the FDIC to move from just being helpful to actually encouraging de novo banking.

Capital Requirements

The biggest obstacle to de novo bank formation is raising capital. The expectation now is that it takes anywhere between \$15-\$30 million to start a bank which far exceeds what was expected prior to the economic downturn. A recent article in the *American Banker* describes in detail the experiences that three de novo bank organizing groups had in North Carolina.³ Organizers of Spirit Community Bank in Statesville and Dogwood State Bank in Raleigh ended up withdrawing their applications because of the capital requirements. Spirit, which according to the article, received approval from the FDIC in mid-December, pulled its application after the FDIC required them to raise \$25.5 million. Dogwood State, which withdrew its charter application in November, is pursuing another path to obtaining a bank. As the North Carolina bank commissioner pointed out at the last FDIC roundtable discussion on de novo banking in December, it is just too difficult to raise capital in his state for a new bank.

To ease the burden of raising capital, ICBA recommends that the FDIC consider phasing in its capital requirements for de novo banks particularly in areas where access to capital can be quite limited. For instance, at present, the FDIC expects the initial capital of each de novo institution to be sufficient to provide a tier-one-capital-to-assets leverage ratio of not less than 8 percent throughout the first three years of operation. In addition, the institution must maintain an adequate allowance for loan and lease losses. In short, the de novo institution must have capital on day one equal to 8 percent of what it projects its assets will be three years from the opening date. ICBA recommends that the FDIC phase in the capital requirements so that the bank would only be required to have 6 percent capital on day 1, 7 percent at the beginning of the second year, and 8 percent at the beginning of the third year. This would give the community bank some extra time to meet the current strenuous capital requirements.

Shorten the Application Process

According to FDIC statistics which are now on its website, the average number of days it takes to approve a deposit insurance application is 174 days and the median time is 189 days. We believe this should be shortened to no more than 120 days. Furthermore, while we commend the FDIC for recently establishing a voluntary process for the receipt and review of draft deposit insurance proposals, we hear from applicants that the pre-filing process can often take a long time—sometimes longer than several months—and that it is often difficult for applicants to know whether their application has a good chance of being approved. We recommend that more authority be given to the FDIC Regional Director to approve de novo bank applications. Furthermore, we also recommend that applicants be given a candid evaluation during the pre-filing application process of the likelihood that the application will be approved. Applicants should know as soon as possible as to whether there will be regulatory obstacles to the application.

Streamline the Application Form

³ See the *American Banker* article dated January 25, 2019 entitled “De Novo Activity’s Up, But Organizers Face Familiar Obstacles.”

The Application Form and in particular the Business Plan section of the Application Form needs to be streamlined significantly. In fact, the Application Form is so intimidating that most de novo bank organizing groups are forced to hire an expensive consultant (in addition to an attorney) to help with the application process. We like the suggestion made by University Bank⁴ that the FDIC should create an intelligent web-form-based service that would act as an expert system to guide applicants through the application process and generate the actual application to be submitted to the FDIC. This would allow an experienced banker to complete the forms online without the help of a consultant.

We also believe the FDIC should serve, to some extent, as an adviser to the applicant, and actually assist the applicant with answering some of the more difficult questions in the Business Plan. For instance, the FDIC could help applicants with forecasting market demand and competition, offering suggestions as to how past applicants have made those forecasts. The FDIC also could help with economic assumptions and with risk management tools. Since the Business Plan requires the applicant to discuss accounting and internal control systems and compliance management, including BSA and anti-money laundering controls, the FDIC could make suggestions as to how the applicant can address those issues. In short, the FDIC should offer its assistance where needed to complete the complicated and very difficult Business Plan section of the Application.

Greater Flexibility with Regard to the Business Plan

According to the FDIC Procedures Manual, Business Plan change requests are expected to be “rare for a newly insured institution” and all new institutions are required to seek the prior approval of their primary federal regulator for any proposed major deviation or material change from the Business Plan during the first three years of operation. “Major deviations or material changes” are defined very broadly and include adjustments to the target geographic market, additional branching or expansion plans, new products or services, new activities or third-party relationships, growth that exceeds or falls short of projections, or other unexpected outcomes that could influence the institution’s risk profile.

At one of the roundtables the FDIC conducted in 2016, a de novo bank CEO discussed how his bank had inadvertently violated the bank’s Business Plan by unintentionally increasing the amount of the bank’s reciprocal deposits. He was very concerned the FDIC would put his bank under an enforcement order once it learned of the unintentional increase. ICBA urges the FDIC to exercise greater regulatory flexibility with regard to compliance with the Business Plan—certainly enough leeway that inadvertent violations should not require regulatory approval. Any new business must adjust quickly to the changing reality of its market, but unlike other businesses, de novo banks must jump through significant and bureaucratic regulatory hoops before they can deviate. This can be disconcerting to both investors and customers. ICBA recommends that de novo banks be given more discretion with their Business Plan so that not all deviations need regulatory approval. Business Plan requests should also be approved within 15 days, not 30 days as currently permitted under the Procedures Manual.

⁴ See University Bank’s comment letter to the FDIC dated December 9, 2018.

Consider Creating a Sandbox Approach for Traditional De Novo Bank Applicants in Rural Areas

Just like for fintech companies, a regulatory sandbox approach for traditional de novo bank applicants in rural areas would be useful. As FDIC Chairman McWilliams indicated in a recent speech, 122 counties in rural America have only one banking office, and 33 counties have no banking offices. To encourage more de novo banks in those areas, the FDIC could create a regulatory sandbox that would provide more regulatory assistance for those rural bank applicants. Regulatory requirements could be phased in for those applicants including capital requirements, convenience and needs, and BSA requirements. The objective would be provide the necessary regulatory assistance to encourage the formation of more brick and mortar banks in rural areas.

Conclusion

ICBA believes that easing capital requirements, shortening the application process and streamlining the application form will go a long way towards improving the de novo bank application process. But as we indicated earlier, the most important thing is that there needs to be a fundamental shift in attitude towards the application process. The FDIC should be willing to approve de novo banks that have a chance of failing and not require that in every instance the applicant submit a foolproof Business Plan. ICBA urges the agency to go beyond being helpful and encourage de novo bank applications in every way it can.

ICBA appreciates the opportunity to comment on the FDIC's RFI concerning deposit insurance applications and the de novo bank application process. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel