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Via electronic submission

December 4, 2018

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

Re: Request for Information on FDIC Communication and Transparency; RIN 3064-ZA02

Dear Mr. Feldman:

The Independent Community Bankers of America (“ICBA”)¹ welcomes this opportunity to provide comment in response to the Federal Deposit Insurance Corporation’s (“FDIC” or “agency”) Request for Information (“RFI”) on its communication methods and related initiatives to promote efficiency and increase transparency.² The FDIC is soliciting these comments as a means to identify ways to streamline and improve communication with insured depository institutions. In general, ICBA supports all initiatives, such as this, that seek to increase communication and transparency. We commend the FDIC for engaging in this effort.

Indeed, ICBA supports other recent FDIC efforts that have already improved supervisory policies and practices to be more transparent and easy-to-understand. These efforts include the rescission of enhanced supervisory guidance for *de novo* banks,³ an amended appeals process,⁴

¹ The Independent 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.

² 83 Fed. Reg. 50369 (Oct. 5, 2018).

³ FDIC FIL-24-2016: Supplemental Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance (April 6, 2016).

⁴ See 81 Fed. Reg. 51441 (August 4, 2016).

and the issuance of a series of financial institution letters (“FIL”) meant to emphasize the importance of open communication, especially during exams.⁵

ICBA also appreciates the FDIC’s recent changes to its examination procedures to reduce burdens on community banks, including improved pre-examination planning, reduced examiner guidance documents,⁶ and the newly issued interim final rule that extends the exam cycle for community banks with less than \$3 billion in assets.⁷ However, ICBA believes there are still areas where the FDIC could improve its practices to increase transparency and communication.

Organization and Re-Evaluation Burden of FILs and Other Regulations

ICBA supports the FDIC’s decision to evaluate outstanding FILs and determine which should be archived, retired, or preserved. This will help community banks understand which FILs they must comply with. In response to how the FILs should be organized, ICBA recommends that all outstanding FILs be listed on one unified webpage, with the option for the user to organize the FILs based on his or her use-case.

For example, in instances when a community bank wants to ensure that it is aware of the most recent FILs, the user should be able to filter the FILs based on publication date. Yet there may be other instances where a community bank might want to run a query on all FILs related to the Bank Secrecy Act or other regulation. ICBA recommends that the website have an option to filter the FILs based on category, topic, or other criteria. This could be accomplished by tagging each FIL with the requisite descriptors.

While the FDIC is reviewing the relevancy and status of FILs, ICBA recommends that the FDIC take this opportunity to also review its regulations. The FDIC should tag and filter regulations based on category, topic, or other criteria. Also like its FILs review effort, the FDIC should identify regulations that are outdated, redundant, or could otherwise be streamlined. Although the agency recently conducted such a review under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA), ICBA advocates that the FDIC review regulations on an on-going basis, similar to the one-third annual review conducted by the National Credit Union Administration (NCUA).

⁵ See FDIC FIL-51-2016. 142; FDIC Governance—Statement of the FDIC Board of Directors on the FDIC’s Code of Conduct (www.fdic.gov/about/governance/conduct.html) and Statement of the FDIC Board of Directors on the Development and Review of Supervisory Guidance (www.fdic.gov/about/governance/guidance.html). 143; FIL-71-2016, Electronic Filing of Part 363 Annual Reports and Other Reports and Notices, October 25, 2016. www.fdic.gov/news/news/financial/2016/fil16071.html.

⁶ “The Economic Growth and Regulatory Paperwork Reduction Act Joint Report to Congress” (Mar. 2017), at 13.

⁷ 83 Fed. Reg. 43961 (Aug. 29, 2018).

Rather than wait ten years to conduct a review of regulations, as prescribed under EGRPRA, the FDIC should review one-third of its regulations every year and solicit public feedback on the regulations being reviewed. This review could also utilize cost-benefit analyses to assess the burden of the regulation and determine whether initial estimates still hold.

Also, ICBA urges the FDIC to execute on a plan that responds to the Government Accountability Office's (GAO) recommendation for the FDIC to conduct evaluations that identify opportunities for streamlining bodies of regulation.⁸ This should include a collaborative review with the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

Finally, while the FDIC generally conducts cost-benefit analyses for *proposed rules*, there is no existing protocol that requires longitudinal cost-benefit analyses for *existing* rules. Such a review would comport with President Trump's Executive Order 13772 and the Department of the Treasury's report,⁹ which recommended that financial regulatory agencies conduct rigorous cost-benefit analysis. ICBA recommends that the FDIC engage in such periodical review efforts.

Increased Transparency Through Greater Use of Ombudsman in the Examination Process

Although not specifically discussed in the RFI, ICBA encourages the FDIC to identify ways that the Office of the Ombudsman could be better utilized to disseminate information and assist community banks. For example, ICBA believes that the Ombudsman could serve as an independent reviewer of certain examinations, which would help create an environment that welcomes feedback on examiner performance without fear of retaliation. A third-party review would also help provide a quality assurance check on examination results, and subsequently, hold examiners accountable for their findings.

Additionally, ICBA encourages the FDIC to explore whether aggregated and redacted post-exam survey reports could be published. Although the FDIC first implemented post-exam surveys in 2002,¹⁰ the FDIC does not publish quantitative or qualitative data from the surveys, such as adoption rate of post-exam surveys or common themes and recommendations for improvement. Reports and published analytics on post-exam surveys could help the public determine whether the goals of a healthy exam are being met, and if not, what parts of the exam can be improved upon to achieve those goals. The post-exam survey reports could also serve as tools to identify common trouble-spots of certain exam teams. For example, if a

⁸ "Community Banks and Credit Unions: Regulators Could Take Additional Steps to Address Compliance Burdens," United States Government Accountability Office (Feb. 2018), at 52.

⁹ Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (April 3, 2018) (available at <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf>).

¹⁰ FIL-116-2002.

relatively large number of surveys identified difficulty with a particular examination team, then the FDIC could take forward looking action and possibly retrain or address such trouble-spots.

Finally, the FDIC could also require each regional office to regularly provide the Division of Risk Management Supervision specific details on disputed examination issues elevated by banks to the Regional Director that do not rise to the level of a formal appeal. Such a report could include redacted information on the number of elevated disputed examination issues, details about the disputed issue and the level of effort needed to resolve it at the examiner level, the outcome of the regional determination, and the length of time it took to close the disputed issue. The report would provide unprecedented transparency while still maintaining the confidentiality of prudential examinations.

ICBA appreciates FDIC undertaking this initiative, and we support the agency's efforts to find ways to increase transparency and establish more effective communication. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111.

Sincerely,

/s/

Michael Emancipator
Assistant Vice President, Regulatory Counsel