American Bankers Association
Building Success. Together.

Joshua Stein
Vice President –Accounting and Financial Management
202-663-5318

November 23, 2020

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20249

Via email

Re: *Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021* (RIN 3064-AF63)

Dear Mr. Feldman:

The American Bankers Association (ABA[1]) appreciates the opportunity to comment on the Interim Final Rule: *Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021* (IFR). Under 12 CFR Part 363 of the FDIC's regulations (Part 363):

- A bank with consolidated total assets of $500 million or more must, among other things, have its financial statements audited by an independent public accountant, prepare a management report describing certain aspects of its internal control framework and its compliance with laws and regulations, and have an audit committee that oversees the work of the independent public accountant.
- A bank with consolidated total assets of $1 billion or more must prepare an assessment by management of the effectiveness of its internal controls over financial reporting and obtain an audit of that assessment by an independent public accountant.
- A bank with consolidated total assets of $3 billion or more must include members with banking or related financial management expertise on their audit committee and provide audit committee members their own outside counsel.

Due to the unexpected asset growth resulting almost entirely from government initiatives enacted in response to the COVID-19 pandemic, approximately 290 banks would be newly required to comply with these additional regulations in 2021. We also believe hundreds more could soon qualify if further significant stimulus programs are enacted. The IFR provides temporary relief from additional regulatory requirements under Part 363 that results from balance sheet growth since December 31, 2019.

[1] The American Bankers Association is the voice of the nation's $20.3 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard more than $15.8 trillion in deposits, and extend nearly $11 trillion in loans.

ABA agrees with effectively freezing asset levels to those at December 31, 2019 for the purpose of determining eligibility under these requirements.[2] More specifically, foregoing an attempt to allocate growth for specific reasons to determine eligibility (for example, limiting the relief only to PPP loans) allows relief corresponding to each respective institution's unique circumstances. Therefore, ABA fully supports this proposal and thanks the FDIC for its efforts in providing this temporary relief. Rather than spending costly resources on compliance with requirements that will often be temporary in nature, the IFR allows these banks to concentrate on serving communities and working with borrowers during this unprecedented pandemic time period.

With this in mind, it has been 15 years since the Part 363 thresholds were set to current levels and may be inappropriate in today's environment. ABA recommends, therefore, that the FDIC consider a recalibration of the asset threshold levels in to levels consistent with other recent rulemaking recalibrations. Specific examples include the expansion of the use of Call Report Form 051 for qualifying institutions up to $5 billion in assets[3] and the Securities Exchange Commission (SEC) rulemaking[4] to expand the definition of a Smaller Reporting Company (SRC). Therefore, ABA recommends that the FDIC revisit these threshold levels.

ABA appreciates the opportunity to share this feedback. Thank you for your swift and timely temporary relief and for considering our comments. If you need additional information or have questions, please contact me (jstein@aba.com; 202-663-5318).

Sincerely,

[redacted]

Joshua Stein

---

[2] Per the IFR asset levels are "based on the lesser of (a) an insured depository institution's consolidated total assets as of December 31, 2019, or (b) an insured depository institution's consolidated total assets as of the beginning of its fiscal year ending in 2021."

[3] Reduced Reporting for Covered Depository Institutions (12 CR Part 52, Part 208, Part 304) effective July 22, 2019.

[4] Smaller reporting companies are exempt from Sarbanes Oxley rule 404(b) and, thus, are not required to obtain an independent audit opinion over internal controls for financial reporting. In 2018, the SEC expanded the definition of a "small reporting company" to include registrants with public float of up to $250 million and registrants with public float up to $700 million but with $100 million or less in revenues.