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Via electronic submission

May 12, 2020

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

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

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans [Docket No. OCC-2020-0018; Docket No. R-1712; RIN 7100-AF86; RIN 3064-AF49]

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates this opportunity to provide feedback in response to the Office of the Comptroller of the Currency (“OCC”), Board of Governors of the Federal Reserve System (“Board”), and Federal Deposit Insurance Corporation (“FDIC”)’s Interim Final Rule (“IFR”) which amends the agencies’ Regulatory Capital Rules to account for Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans.²

The outbreak of the COVID-19 pandemic presents challenges to the health and welfare of the American public and to the American economy that are unprecedented in modern times. In response to this national health crisis, 48 states have declared a state of emergency, and millions

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$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 85 Fed. Reg. 71, at 20387.

of Americans have been ordered to stay at home in order to reduce the virus's spread. The dramatic steps taken to fight COVID-19 have had a profound effect on the economy and millions of small businesses have been severely impacted.

In order to save these small businesses, which are experiencing solvency problems through no fault of their own, Congress enacted the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, which provided the Small Business Administration ("SBA") with \$349 billion to guarantee loans provided through the Paycheck Protection Program ("PPP"). Under the PPP borrowers are entitled to loan forgiveness up to the principal amount of the PPP covered loan, if the proceeds of the PPP covered loan are used for covered expenses like payroll, rent and utilities. Lenders that participate in the PPP are reimbursed by the SBA for any amount of a PPP loan that is forgiven.

In order to facilitate this program, the Federal Reserve Banks have been authorized pursuant to their Section 13(3) authority to extend credit to small business lenders under the Paycheck Protection Program Lending Facility ("PPPL Facility").³ The PPPL Facility is designed to provide small business lenders with liquidity by extending non-recourse loans to PPP lenders, secured by PPP covered loans that are guaranteed by the SBA with respect to both principal and interest.

The IFR implemented by the agencies allows banks that participate in the PPP program, including community banks, to "neutralize the regulatory capital effects of loans pledged to the PPPL Facility."⁴ Furthermore, the IFR, in accordance with Section 1102 of the CARES Act, also requires banks to apply a zero percent risk weight to PPP covered loans for purposes of risk-based capital requirements.⁵

ICBA's Comments

ICBA supports the agencies' IFR and praises their quick action to aid in the response to COVID-19. The success of community banks is linked to the success of the small businesses they serve. Though community banks hold less than 20 percent of U.S. banking industry assets, they hold a majority of small business loans under \$1 million, supporting a sector responsible for more job creation than any other.

In order to ensure the continued viability of these small businesses, community banks have made billions of dollars' worth of PPP loans. ICBA believes that the Federal Reserve's PPPL Facility

³ 12 U.S.C. 343(3).

⁴ 85 Fed. Reg. 71, at 20389.

⁵ See 12 CFR 3.32(a)(1); 12 CFR 217.32(a)(1); 12 CFR 324.32(a)(1).

and the regulatory capital treatment of PPP Loans described in the IFR are necessary steps that will help community banks meet their small business customers' demand for relief in the form of PPP loans.

The PPPL Facility will inject liquidity into the market for PPP loans, and provide smaller banks the capital they need to originate new loans to small businesses. A virtue of the PPPL Facility's structure is that it allows for the creation of a private secondary market for PPP loans. While the Board is permitted to buy PPP loans on the secondary market, by exercising its 13(3) lending authority, it has left room for investors to buy PPP loans from originating banks, thereby increasing the availability of private capital.

In order for the PPP to deliver on its promise to bring relief to small businesses, participating banks need to feel confident that making PPP loans will not negatively impact their leverage ratio. This rule is an important step in that direction. As stated by the IFR, the rule allows banks to "exclude exposures pledged as collateral to the PPPL Facility from a banking organization's total leverage exposure, average total consolidated assets, advanced approaches-total risk-weighted assets, and standardized total risk-weighted assets."⁶ Importantly, the IFR adds that "[t]his treatment would extend to the community bank leverage ratio."⁷

ICBA also supports the decision, mandated by Section 1102 of the CARES Act, to allow banks to assign a zero percent risk weight to PPP loans. This is the same risk weighting that is applied to U.S. Treasury securities and securities issued by federal agencies. Like these other 'riskless' assets, PPP loans are SBA-guaranteed and backed by the full faith and credit of the United States Government. Therefore, it makes sense to apply the same zero percent risk weight to these loans.

Because PPP loans are fully backed by the SBA, they do not create significant risks for the financial system or raise safety and soundness concerns. In fact, the systemic risk created by failing to extend credit to America's small businesses and allowing them to fail far exceeds the risks associated with the PPP. Therefore, ICBA encourages the agencies to continue to monitor the ability of the banking system to make PPP loans to all eligible applicants, and to supply liquidity and regulatory forbearance as needed to ensure the program succeeds.

Finally, in light of the limited duration of the PPP program and the necessity to respond to the COVID-19 pandemic in real time, ICBA agrees with the agencies' conclusion that there was "good cause consistent with the public interest to issue the rule without advance notice and comment."⁸

⁶ 85 Fed. Reg. 71, at 20389.

⁷ 85 Fed. Reg. 71, at 20389, note 8.

⁸ 85 Fed. Reg. 71, at 20390.

Conclusion

ICBA thanks the Board, the OCC, and the FDIC for addressing the effect of PPP loans on regulatory capital requirements. We reiterate that meeting the financial needs of America's small businesses is central to the main-street oriented business model of community banks. The provisions of this rule will help community banks respond to ongoing economic consequences of COVID-19 and bring relief to businesses that are struggling.

If you have any questions or would like additional information, please do not hesitate to contact me at Chris.Cole@icba.org.

Sincerely,
/s/Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel