Description of document:	Federal Deposit Insurance Corporation (FDIC) submission to the Senate Committee on Banking, Housing, and Urban Affairs regarding the regulatory approach of the FDIC, 2011-2012
Requested date:	22-July-2012
Released date:	30-August-2012
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Source of document:	FDIC, Legal Division FOIA/PA Group 550 17th Street, NW Washington, D.C. 20429 Fax: 703-562-2797 FDIC's Electronic Request Form

FDIC
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429-9990

Legal Division

August 30, 2012

FDIC FOIA Log No. 12-0808

This letter is in response to your letter of July 22, 2012 in which you requested, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, a copy of a letter that was sent to Senator Tim Johnson from Acting Chairman Martin Gruenberg in response to questions asked in a November 9, 2011 letter. Enclosed is a copy of the letter that is responsive to your request, consisting of 22 pages. Pursuant to FOIA Exemption 6, 5 U.S.C. §§ 552 (b)(6), which permits the withholding of personal information which, if released, would constitute a clearly unwarranted invasion of personal privacy, we have withheld employee email addresses and signatures.

Should you consider the withholding of information in the records not provided to you to be a denial of your request, you may appeal the denial to the FDIC's General Counsel within 30 business days following receipt of this letter. If you decide to appeal, please submit your appeal in writing to the Legal Division, FOIA/Privacy Act Group, at the above address. Please refer to the FDIC log number and include any additional information that you would like the General Counsel to consider.

Your request was categorized as "all other" and was processed at no cost to you.

This completes the processing of your request. Thank you your interest in the FDIC. Please contact me at 703-562-2719 if you have questions or need additional information.

Sincerely,

/Original Signed/

Hugo A. Zia, Supervisory Counsel
FOIA/Privacy Act Group

Enclosure
(22 Pages)

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510–6075

November 9, 2011

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NE
Washington, D.C. 20551

Mr. Raj Date
Special Advisor to the Secretary of the Treasury
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, D.C. 20036

The Honorable Martin Gruenberg
Acting Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
Washington, D.C. 20551

The Honorable Debbie Matz
Chairman
National Credit Union Administration
1775 Duke St.
Alexandria, VA 22314

Mr. John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

The Honorable Gary Gensler
Chairman
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairmen, Directors, and Advisor:

As you know, the key to designing and maintaining effective financial rules is taking a smart regulatory approach that, over the long run, provides the greatest benefit at the lowest cost to society as a whole. This approach should promote public participation and consider a wide range of factors for each rule you write. It should also ensure that new and existing regulations work together in concert to provide clear direction to those entities you supervise, as well as provide robust safeguards for those whom the rules are designed to protect.

We must not forget that our economy suffered from inadequate regulations that contributed to the worst financial crisis since the Great Depression. American families and small businesses bore tremendous costs in lost jobs, homes, and savings. In response, Congress enacted the Wall Street

Reform and Consumer Protection Act to address regulatory gaps and enhance protections for consumers, investors, and taxpayers while ensuring our financial markets remain the envy of the world. The long-term success of these reforms depends upon your agencies crafting clear, effective and robust financial regulations that build a stronger foundation for sustainable economic growth.

Efforts to repeal or undermine these new Wall Street reforms threaten the stability of our financial system at a time when we can least afford it. These efforts to slow down Wall Street reform prevent responsible businesses, including community banks and credit unions, from having the certainty they deserve with finalized rules that fully honor Congressional intent behind the new law. To ensure the Wall Street Reform Act continues to be implemented thoughtfully and responsibly with full consideration of relevant issues, we respectfully ask that you send us a written response to the following requests:

1. Provide a detailed description of your agency's rulemaking process, including the variety of economic impact factors considered in your rulemaking. Please note to what degree you consider the benefits from your rulemaking, including providing certainty to the marketplace and preventing catastrophic costs from a financial crisis. Also describe any difficulties you may have in quantifying benefits and costs, as well as any challenges you may face in collecting the data necessary to conduct economic analysis of your rulemaking.

2. Provide your agency's current and future plans to regularly review and, when appropriate, modify regulations to improve their effectiveness while reducing compliance burdens. Please include a description of actions your agency has taken, or plans to take, to streamline regulations; for example, the Consumer Financial Protection Bureau's "Know Before You Owe" effort drastically simplifies mortgage and student loan disclosure requirements. Also note statutory impediments, if any, that prevent your agency from streamlining any duplicative or inefficient rules under your purview.

3. Provide details of how your agency encourages public participation in the rulemaking process, including through administrative procedures, public accessibility, and informal supervisory policies and procedures.

4. Provide details of how your agency addresses the unique challenges facing smaller institutions when dealing with regulatory compliance, including any related advisory committees your agency may have or other opportunities for small institutions to be heard by your agency. Please also detail how your agency responds to concerns raised by small institutions.

5. Describe how regulatory interagency coordination has improved since the creation of the Financial Stability Oversight Council established by the Wall Street Reform Act. Provide specifics of how coordination has helped, either formally or informally, in your rulemaking process.

Strong financial regulations will greatly benefit the American people for generations to come. Robust and efficient regulations will provide greater certainty to the marketplace, and will restore the business and consumer confidence necessary for economic growth. They will also provide greater clarity to American consumers and investors so that they are empowered to make sound financial decisions. Thank you for your consideration, and we look forward to working with you.

Sincerely,

Tim Johnson

TIM JOHNSON
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

January 11, 2012

Honorable Tim Johnson
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson:

Thank you for your letter of November 9, 2011, regarding implementation of the important financial reforms mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

As you know, the Dodd-Frank Act vested the Federal Deposit Insurance Corporation with sole rule writing authority in two primary areas: orderly liquidation authority and deposit insurance reforms that strengthen the Deposit Insurance Fund (DIF). I am pleased to report that within one year after passage of the Dodd-Frank Act, the FDIC had completed five major final rules for which the Act granted it sole rulemaking authority. Those rulemakings included final rules implementing increases in deposit insurance coverage and the FDIC's enhanced authority to manage the DIF, which included adoption of a long-term fund management plan designed to maintain a positive fund balance even during a banking crisis while preserving steady and predictable assessment rates through economic and credit cycles. Furthermore, the FDIC has largely completed the core rulemakings necessary to carry out its systemic resolution responsibilities under the Dodd-Frank Act and has, along with Federal Reserve Board staff, started the process of engaging with individual companies on the preparation of their resolution plans.

As we proceed with implementing the Dodd-Frank Act, we are mindful that one of the critical lessons of history is that efficient and stable financial markets require clear regulatory guidelines that promote market discipline and sound risk management. The FDIC believes that, in crafting these rules, it is essential to solicit input from all interested parties to ensure the rulemaking process is open and transparent and to carefully consider alternative approaches to regulatory goals to minimize burden while maintaining supervisory standards. We believe that successful implementation of the Act will represent a significant step forward in providing a foundation for a financial system that is more stable and less susceptible to crises in the future and better prepared to respond to future crises.

We are working on a number of fronts to achieve that necessary balance, as described more fully in the enclosed responses to your questions. Also enclosed is the FDIC's current statement of policy providing direction on rulemaking at the FDIC. One of the main purposes of the policy statement is to ensure that our rulemaking process achieves legislative goals effectively and efficiently. We also are enclosing our recently issued regulatory review plan and examples of the kinds of analyses the FDIC undertakes for rulemakings.

If you have further questions, please do not hesitate to call me at (202) 898-3888 or Paul Nash, Deputy to the Chairman for External Affairs, at (202) 898-6962.

Sincerely,

(b)(6)
[redacted]

Martin J. Gruenberg
Acting Chairman

Enclosures

FDIC Responses to Questions from Chairman Johnson, Senate Committee on Banking Housing and Urban Affairs on the Rulemaking Process

Q1. Provide a detailed description of your agency's rulemaking process, including the variety of economic impact factors considered in your rulemaking. Please note to what degree you consider the benefits from your rulemaking, including providing certainty to the marketplace and preventing catastrophic costs from a financial crisis. Also describe any difficulties you may have in quantifying benefits and costs, as well as any challenges you may face in collecting the data necessary to conduct economic analysis of your rulemaking.

A1: In our experience, there is no doubt that banks, consumers, and members of the public benefit from having clear rules and procedures, which provide much needed certainty in the marketplace. There are several ways the FDIC works to achieve this. First, the FDIC conducts all rulemakings in accordance with the requirements of the Administrative Procedure Act (APA).[1] The FDIC satisfies all of the basic requirements for informal rulemakings under the APA, which generally include the following:[2]

- publication of a Notice of Proposed Rulemaking (NPR) in the Federal Register;
- opportunity for public participation by submission of written comments;
- consideration by the agency of the public comments and other relevant material; and
- publication of a final rule not less than 30 days before its effective date, with a statement explaining the purpose of the rule.

The FDIC also is subject to certain other laws to minimize regulatory burden and has taken actions, including interagency coordination, to reduce burden and provide certainty to the marketplace. These laws include:

- **Regulatory Flexibility Act:** Requires agencies to conduct and publish an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities or certify that the final rule does not have a significant economic impact on a substantial number of small entities (financial institutions with total assets of $175 million or less under current Small Business Administration standards).[3]
- **Paperwork Reduction Act:** Requires agencies that conduct or sponsor a "collection of information" from the public to file a request with the Office of

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[1] 5 U.S.C. § 500 *et seq.*

[2] 5 U.S.C. § 553.

[3] 5 U.S.C. §§ 601-12.

Management and Budget (OMB) for approval, to minimize burden for individuals and small businesses and cost to the federal government.[4]

- **Section 722 of the Gramm-Leach-Bliley Act:** Requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[5]
- **Section 302 of the Riegle Community Development and Regulatory Improvement Act:** In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements, requires federal banking agencies to consider any administrative burdens that the regulation would place on depository institutions, including small depository institutions and bank customers, and the benefits of the regulation.[6]
- **Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA):** Requires federal banking agencies to conduct a comprehensive review of each of their regulations every 10 years to identify any outdated, unnecessary, or unduly burdensome regulatory requirements imposed on regulated financial institutions.[7]
- **Small Business Regulatory Enforcement Fairness Act (SBREFA):** Requires agencies to determine whether a rule is a "major rule" (a final rule that will result in a significant impact on the economy, consumers, industry, or government) and to file reports with Congress and the U.S. Government Accountability Office (GAO) for review of rules issued under the APA.[8]

Since 1998, the FDIC has had a *Statement of Policy on the Development and Review of FDIC Regulations and Policies* (Policy Statement), which enumerates basic principles that guide the FDIC's development and review of rulemaking (Attachment 1). Our Policy Statement provides that the FDIC "is committed to improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently."[9] In the FDIC's recently issued regulatory review plan, we committed to reviewing the Policy Statement to determine whether incorporating additional principles regarding cost-benefit analysis or making other changes would better serve the purpose of reducing regulatory burden. A copy of the FDIC's regulatory review plan is enclosed as Attachment 2.[10]

With respect to economic impact factors considered in rulemakings, our current procedures allow staff the discretion and flexibility necessary for the FDIC to conduct the

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[4] 44 U.S.C. § 3501 *et seq.*

[5] Pub.L. 106-102, 12 U.S.C. § 4809.

[6] Pub.L. 103-325, 12 U.S.C. § 4802.

[7] Pub. L. 104-208, 12 U.S.C. § 3311.

[8] 5 U.S.C. § 801 *et seq.*

[9] FDIC Policy Statement, 63 FR 25157 (May 7, 1998).

[10] http://www.fdic.gov/regulations/laws/plans/index.html.

most effective economic analysis appropriate for specific rulemakings. In a recent evaluation of FDIC economic analysis, the FDIC Inspector General recognized the importance of flexibility in determining the most appropriate economic analysis, stating that:

> The Policy Statement is not prescriptive in terms of the analysis that must be performed in order to comply with its principles because the nature of analysis required depends on the particular rulemaking. In complying with the Policy Statement, each rulemaking team – which is comprised of subject matter experts – determines the appropriate type of analysis needed, taking into consideration any analysis prescribed by Congress and the legislative history of an authorizing statute. At other times a statute is less prescriptive, and rulemaking teams determine, based on the nature of the rule and any legislative history, the appropriate analysis to perform in order to evaluate the impact of a particular rulemaking.[11]

Attachment 3 sets forth a number of detailed examples of the kinds of analyses the FDIC undertakes in differing statutory and regulatory contexts, pointing up the need for flexibility as referred to above.

The FDIC faces certain challenges in conducting the kinds of cost-benefit analyses prescribed in OMB Circular A-4 in every rulemaking. For example, the FDIC is subject to many express statutory requirements, including some contained in the Dodd-Frank Act. The FDIC Inspector General's Report acknowledged these challenges, concluding that "[e]ach proposed rulemaking effort implements a specific Congressional mandate in the Dodd-Frank Act; thus, the FDIC's consideration of alternatives or cost and benefit factors was limited by those statutory requirements." Additional challenges are noted in the GAO report entitled, "Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination."[12] For example, the FDIC faces challenges in evaluating benefits and costs due to tight time frames for issuing regulations and a lack of available data. Often, data that is available is proprietary and should not be made public during the public rulemaking process. Also, requiring data input for cost-benefit analysis could result in increasing, rather than reducing, regulatory burden for institutions that are required to submit data. The GAO report also noted that it has long been recognized that the private costs of regulation are difficult to obtain, in part because businesses have difficulty separating the costs of regulatory compliance from other costs related to risk management or recordkeeping, and measuring the benefits is a more difficult and perhaps intractable challenge, in part because regulations seeking to ensure financial stability aim to prevent low-probability, high-cost events.[13]

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[11] EVAL 11-003, entitled, **Evaluation of the FDIC's Economic Analysis of Three Rulemakings to Implement Provisions of the Dodd-Frank Act,** page 9 (June 2011)(http://www.fdicig.gov/reports11/11-003EV.pdf).

[12] GAO-12-151, Nov 10, 2011.

[13] Id., at 19; GAO-08-32, at 12-13, Oct. 2007

Q2. Provide your agency's current and future plans to regularly review and, when appropriate, modify regulations to improve their effectiveness while reducing compliance burdens. Please include a description of actions your agency has taken, or plans to take, to streamline regulations; for example, the Consumer Financial Protection Bureau's "Know Before You Owe" effort drastically simplifies mortgage and student loan disclosure requirements. Also note statutory impediments, if any, that prevent your agency from streamlining any duplicative or inefficient rules under your purview.

A2: The FDIC and the other agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) are required by EGRPRA to undertake a comprehensive review of their regulations at least once every ten years to identify and eliminate any outdated, unnecessary, or unduly burdensome regulations.[14] The FDIC completed its last comprehensive review in 2006 and must therefore complete the next regulatory review by 2016. In order to prepare for the next EGRPRA review process, the FDIC expects to publish for public comment in early 2012 a plan outlining the process for the FDIC's next comprehensive review of its rules.

In addition to the comprehensive regulatory review process mandated by EGRPRA, the FDIC regularly considers ways to streamline its regulations. For instance, as part of our efforts to implement the Dodd-Frank Act, the FDIC is engaged in an ongoing review of its existing rules affected by the Dodd-Frank Act. As appropriate, we will be updating, streamlining, or rescinding some of our rules to comply with and conform to the Dodd-Frank Act. Moreover, in response to input from members of the FDIC's Advisory Committee on Community Banking, we conducted a review of questionnaires and reports that banks file with us and made changes to streamline the filing process through greater use of technology and automation.

Finally, on November 10, 2011, the FDIC released a regulatory review plan that outlines a number of initiatives that the FDIC will be undertaking to review its existing rules and rulemaking process to make sure they continue to be the most effective without imposing unnecessary burdens on the industry (attached).

Q3. Provide details of how your agency encourages public participation in the rulemaking process, including through administrative procedures, public accessibility, and informal supervisory policies and procedures.

A3: The FDIC makes every effort to encourage widespread public participation in our rulemaking process. We do this by publishing Advance Notices of Proposed Rulemakings (ANPRs), Notices of Proposed Rulemakings (NPRs) and Interim Rules for public comment, including posting those documents and the comments received on our website for easy access by the public. The FDIC recognizes the importance of providing adequate time for the public comment process so we generally provide a 60-day comment period for each significant proposed rule, and for some rules we have even provided comment periods as long as 90 days. However, there may be circumstances under which

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[14] Pub. L. 104-208, 12 U.S.C. § 3311.

the FDIC must propose rules with a shorter comment period, as permitted by the APA, such as when it may be necessary to meet a statutory deadline. In addition, the FDIC often puts informal supervisory guidance out for comment by all stakeholders.

In August 2010, the FDIC announced an "open door policy" that made it easier for the public to provide input and track the rulemaking process for the FDIC's implementation of the Dodd-Frank Act. The FDIC's open door policy goes beyond the notice and comment requirements of the APA governing federal agency rulemakings by providing the public the ability to play a role in the process even before specific regulations are drafted and proposed. In addition, the FDIC's policy enhances transparency and accountability in the rulemaking process through the agency's voluntary disclosure of meetings between senior FDIC officials and private sector individuals to discuss how to interpret or implement provisions of the Dodd-Frank Act that are subject to independent or joint rulemaking.

The key elements of the FDIC's open door policy include:

- The FDIC holds roundtable discussions as needed with external parties on implementation issues related to the Dodd-Frank regulatory reforms. These events are designed to provide balanced public input throughout the rulemaking process and are available for public viewing via webcasts posted to the FDIC website.
- The FDIC releases, on a regular basis, the names and affiliations of private sector individuals who meet with senior FDIC officials to discuss how the FDIC should interpret or implement provisions of the Dodd-Frank Act that are subject to independent or joint rulemaking. The FDIC also discloses the subject matter of the meetings.[15]
- To encourage public input in the process from the widest audience possible, the FDIC has created a dedicated electronic mailbox to collect input from interested parties. These comments are reviewed for content and applicability and become part of the public record posted on the FDIC website.[16]
- Consistent with its open door policy, the FDIC has provided a dedicated link on its website through which members of the public can request a meeting with FDIC staff on regulatory reform implementation issues.[17]
- The FDIC webcasts all open Board meetings, including those regarding regulatory reform, and these webcasts are made available on the FDIC website. Staff memoranda and draft Federal Register notices pertaining to matters considered by the FDIC's Board are routinely provided to members of the public attending open meetings and also are posted on the FDIC website—in most cases, in their entirety.[18]

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[15] *See* https://www.fdic.gov/regulations/reform/meetings.html.

[16] *See* https://www.fdic.gov/regulations/laws/publiccomments/.

[17] *See* https://fdicsurvey.inquisiteasp.com/fdic/cgi-bin/qwebcorporate.dll?S3GJR6.

[18] *See* https://www.fdic.gov/regulations/laws/federal/index.html.

In addition, the FDIC has set up a subscription list allowing members of the public to sign up for a subscription service to receive email notices on major developments, and has made bill summaries and other resources on the Dodd-Frank Act available on the FDIC's dedicated financial reform webpage, http://www.fdic.gov/financialreform/.

Q4: Provide details of how your agency addresses the unique challenges facing smaller institutions when dealing with regulatory compliance, including any related advisory committees your agency may have or other opportunities for small institutions to be heard by your agency. Please also detail how your agency responds to concerns raised by small institutions.

A4: The FDIC is the primary federal supervisor for the majority of community banks in the United States. Community banks, defined as institutions with assets under $1 billion, make up nearly 7,000 of the approximately 7,500 FDIC-insured financial institutions in the country. The financial crisis and ensuing recession have taken a serious toll on community banks. Still, the large majority of community banks have come through this crisis in good shape and provide a wide range of critical services for their communities.

During the recent real estate and economic downturn, the FDIC has advocated policies that help community banks navigate these challenging times and comply with new laws and regulations. Through our regional and field offices, the FDIC actively communicates with the community banks we supervise and provides recommendations for addressing financial and regulatory compliance issues. The FDIC benefits from a cooperative relationship with the community banking sector through engagement with individual institutions and, at the state and national levels, through dialogue with industry trade groups.

Given the importance of community banking to the national and local economies, as well as to the financial services sector, in 2009 the FDIC established an Advisory Committee on Community Banking. The Advisory Committee comprises representatives from community banks and academia and provides the FDIC with an informed perspective on the challenges small banks face. The FDIC leverages the Advisory Committee's knowledge and experience to obtain input on banking policy, refine our supervisory programs, and address unnecessary regulatory burden. The Advisory Committee has provided valuable input on credit conditions, regulatory compliance matters, and community banks' ability to remain competitive in the financial services marketplace.

In addition, the FDIC sponsors training events for community banks, including regional and national teleconferences on risk management and consumer protection matters, and Directors Colleges to help bank directors better understand new regulations and the supervisory process.

As the primary federal regulator for the vast majority of the community banks, the FDIC is sensitive to their resource constraints and we have taken steps to streamline oversight and strengthen communication with these institutions. In 2011, we instituted an internal process that considers, prior to issuance, the anticipated impact of any new FDIC directive or guidance on small banks. This process helps smaller institutions gauge the effect of new supervisory expectations and provides an internal reasonableness check. We also continue to assess community banks' resource capabilities when updating the Consolidated Reports of Condition and Income (Call Reports) and have made appropriate adjustments. For example, on November 21, 2011, the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System published a Federal Register notice seeking public comment on proposed Call Report changes for 2012.[19] Proposed changes to be effective with the June 30, 2012 Call Report are focused primarily on institutions with total assets of $1 billion or more. We also have initiated the practice that, in connection with the issuance of any new Financial Institution Letters (or FILs), there is a statement near the beginning indicating the impact (if any) on insured institutions with less than $1 billion in assets – enabling smaller institutions to easily identify any FILs that are not relevant to smaller entities.

A focus on community banks will be a major priority for the FDIC over the coming year. The FDIC has developed a set of community banking initiatives to further its dialogue with the industry and better our understanding of the challenges and opportunities for community banks. First, we will host a national conference in February 2012 to kick off this effort that will focus on the future of community banks, their unique role in supporting our nation's economy, and the challenges and opportunities that they face in this difficult economic environment. Following the conference, the FDIC will hold a series of roundtable discussions with community bankers in each of the FDIC's six regional offices around the country in which senior FDIC executives, including the Chairman, will participate.

In addition, we are undertaking a major research initiative to examine a variety of issues related to community banks, including their evolution, characteristics, performance, challenges, and role in supporting local communities. The FDIC's research agenda will cover topics such as changes in community bank size and geographic concentration over time, measuring the performance of community banks, and changes in business models and cost structures. The research also will look at how trends in technology and the small business economy have affected community banks and the lessons for community banks from the current crisis.

Also as part of these initiatives, the FDIC is continuing to look for ways to improve the effectiveness of its examination and rulemaking processes. We are seeking to identify supervisory improvements and efficiencies that can be made while maintaining our supervisory standards. For example, the FDIC is exploring enhancements to our offsite reviews, pre-examination planning processes, information requests, and examination coordination. In addition we are exploring communications strategies to update the industry on upcoming guidance and rulemakings that affect FDIC-supervised community banks in an organized and understandable way so that institutions can more effectively plan to meet their compliance obligations. The FDIC continues to ensure that

[19] *See* http://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_20111121_ifr.pdf

examination guidance takes into account the size, complexity and risk profile of each institution. The FDIC now includes an up-front section in each Financial Institution Letter sent to insured depository institutions that describes its applicability to institutions with total assets of less than $1 billion.

With regard to our efforts to respond to smaller institutions' concerns with the examination process, the FDIC follows an open, two-way communication process. The FDIC considers bankers' comments about our conclusions in the shared interest of accurately assessing an institution's risk profile, understanding its strategic goals, and serving the local community. We conduct, on average, more than 4,350 on-site safety and soundness, compliance, and Community Reinvestment Act (CRA) examinations annually (approximately 54 percent of FDIC-supervised institutions are examined each year for safety and soundness and 40 percent are examined for compliance and CRA), and recognize that questions about and even disagreements with our findings may sometimes arise, especially in difficult economic times. The FDIC has a number of informal and formal outlets for bankers to express their concerns when this occurs. When banks disagree or are uncomfortable with examination findings, they are advised to discuss such concerns with us; however, they also can appeal supervisory determinations through a formal process, which culminates with a review by the Supervision Appeals Review Committee chaired by an FDIC Board member, or seek the impartial assistance of the FDIC's Office of the Ombudsman. In addition, bankers have an opportunity after each examination to submit an anonymous survey (or they can identify themselves and request specific follow-up by FDIC staff) about their experiences to the agency. The FDIC welcomes feedback from the industry and relies on bankers' informed perspectives as we consider refinements to our supervisory process.

Q5: Describe how regulatory interagency coordination has improved since the creation of the Financial Stability Oversight Council established by the Wall Street Reform Act. Provide specifics of how coordination has helped, either formally or informally, in your rulemaking process.

A5: The FDIC has a long history of coordinating with our fellow banking regulators in our rulemaking process by virtue of the makeup of our Board of Directors, which includes heads of other banking agencies, as well as through the FFIEC and other less formal consultative efforts. Moreover, many statutorily-required rulemakings are joint or interagency efforts. The Financial Stability Oversight Council (FSOC) has strengthened and broadened previous coordinating relationships by increasing the scope of activities and regulators who are required to coordinate and consult and by providing a forum and procedures to execute such coordination.

Moreover, the FSOC has provided a useful means for agencies to facilitate communication on rulemakings required by the Dodd-Frank Act. For example, the FSOC facilitated coordination on the joint FDIC/Treasury rule on Maximum Obligation Limitation (MOL) required by the Dodd-Frank Act. In that case, the FDIC and Treasury consulted with the other FSOC-member agencies before issuing the proposed rule.

The FDIC believes that additional interagency communication on significant Dodd-Frank Act rulemakings is useful even when consultation or coordination is not statutorily required. The FDIC intends to work with the other FSOC member agencies to enhance communication and coordination efforts.

Attachment 1

FDIC Law, Regulations, Related Acts

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5000 - Statements of Policy

DEVELOPMENT AND REVIEW OF FDIC REGULATIONS AND POLICIES

Statement of Policy

Purpose and Scope. The Federal Deposit Insurance Corporation is committed to continually improving the quality of its regulations and policies, to minimizing regulatory burdens on the public and the banking industry, and generally to ensuring that its regulations and policies achieve legislative goals effectively and efficiently. The purpose of this statement of policy (Policy) is to establish basic principles which guide the FDIC's promulgation and review of regulations and written statements of policy. The scope of this Policy is limited to regulations and written statements of policy issued by the Board of Directors of the FDIC.

Principles For the Development and Review of Regulations and Statements of Policy. The following principles guide the FDIC in its development of regulations and written policies:

• Burdens imposed on the banking industry and the public should be minimized. Before issuing a regulation or written statement of policy the FDIC gives careful consideration to the need for such an issuance. Frequently a regulation is required by statute. Alternatively, the FDIC may identify a need for a supervisory tool to implement its statutory obligations, or to clarify its policy for the benefit of the banking industry or the public. Once the need for a regulation or statement of policy is determined, the FDIC seeks to minimize to the extent practicable the burdens which such issuance imposes on the banking industry and the public. New reporting and recordkeeping requirements imposed by a regulation are carefully analyzed. The effect of the regulation or statement of policy on competition within the industry is considered. Particular attention is focused on the impact that a regulation will have on small institutions and whether there are alternatives to accomplish the FDIC's goal which would minimize any burden on small institutions. Prior to issuance, the potential benefits associated with the regulation or statement of policy are weighed against the potential costs.

• Regulations and policies should be clearly and understandably written. The Board seeks to make its regulations and statements of policy as clear and as understandable as possible to those persons who are affected by them. In developing or reviewing existing regulations and statements of policy, the Board considers the document's organizational structure as well as the specific language used; both are important components to achieving a clear and useful statement.

• The public should have a meaningful opportunity to participate in the rulemaking process. The Board seeks to improve its regulations and statement of policy during the development phase. Whether a new regulation is being promulgated or an existing one revised, the Board gives careful consideration to the implications of its actions as public policy. Public participation in the rulemaking process is an opportunity for the Board to hear directly from affected members of the public with important experience and thoughtful insights related to the pertinent issues. A person or organization may petition the Board for the issuance, amendment, or repeal of any regulation or policy by submitting a written petition to the Executive Secretary of the FDIC. The petition should include a complete and concise statement of the petitioner's interest in the subject matter and the reasons why the petition should be granted.

All rulemaking is carried out in accordance with the APA, by which the Board provides the public with notices of proposed rulemaking and opportunities to submit comments on the proposals. The Board will often seek public comment on proposed statements of policy as well. All comments and proposed alternatives received during the comment period are considered prior to the issuance of a final rule or statement of policy. The Board takes final action on proposed regulations and policies as promptly as circumstances allow. If a significant period of time elapses following the publication of a proposed rule or policy without final action, the Board will consider withdrawing the proposal or republishing it for comment. If the Board decides to reconsider a proposed regulation or statement of policy that has been withdrawn, it will begin the rulemaking or policy development process anew.

• Common statutory and supervisory requirements should be implemented by the Federal financial institutions regulators in a uniform way. The FDIC has many statutory and supervisory requirements that are common to the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and/or the National Credit Union Administration. The more uniform the Federal financial institutions regulators can be in their regulations, policies and approaches to supervision, the easier it will be for the industry and the public to comply with the regulators' requirements. The FDIC is a member of the Federal Financial Institutions Examination Council (FFIEC) and works with the other federal financial institutions regulators through the FFIEC to make uniform those regulations and policies that implement common statutory or supervisory policies.

• Regulations and statements of policy should be reviewed periodically. To ensure that the FDIC's regulations and written statements of policy are current, effective, efficient and continue to meet the principles set forth in this Policy, the FDIC will periodically undertake a review of each regulation and statement of policy. The Executive Secretary of the FDIC will, consistent with applicable laws and in coordination with other financial institutions regulators, establish a schedule and procedures for the reviews. Factors to be considered in determining whether a regulation or written policy should be revised or eliminated include: the continued need for the regulation or policy; opportunities to simplify or clarify the regulation or policy; the need to eliminate duplicative and inconsistent regulations and policies; and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation or policy. The result of this review will be a specific decision for each regulation and statement of policy to either revise, rescind or retain the issuance in its then-current form. The principles of regulation and statement of policy development, as articulated at the beginning of this Policy, will apply to the periodic reviews as well.

By order of the Board of Directors, April 28, 1998.

[Source: 63 Fed. Reg. 25157, May 7, 1998]

Attachment 2

FDIC's Plans to Review Existing Regulations for Continued Effectiveness

On July 11, 2011, the President issued Executive Order 13579, "Regulation and Independent Regulatory Agencies". The FDIC has a long-standing policy and practice of reviewing its proposed and existing regulations to evaluate their impact. Following is an overview of the FDIC's plans to review existing regulations for effectiveness.

FDIC's Statement of Policy on Rulemaking

The FDIC has a longstanding policy of implementing its regulations in the least-burdensome manner possible, in accordance with the *FDIC Statement of Policy on the Development and Review of FDIC Regulations and Policies*, 63 Fed. Reg. 25,157 (1998). That Statement of Policy recognizes the FDIC's commitment to minimizing regulatory burdens on the public and the banking industry and the need to ensure that FDIC regulations and policies achieve regulatory goals effectively. The Statement of Policy also provides that the FDIC will periodically review its regulations and statements of policy to ensure that they are current, effective, efficient, and continue to meet principles of the Statement of Policy. The FDIC will be undertaking a review of the 1998 Statement of Policy itself to determine how it should be revised to incorporate additional principles regarding cost-benefit analysis, and otherwise to serve the purpose of reducing regulatory burden.

In addition to this longstanding policy, the FDIC will be undertaking a number of initiatives to review its existing rulemaking process.

Review and Update Rules Affected by the Dodd-Frank Act

As part of its implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the FDIC is also engaged in an ongoing review of its rules affected by the Dodd-Frank Act. We are updating, streamlining, or rescinding some of our rules to comply with and conform to the Act. We are also working to establish clear rules that will ensure a stable financial system and impose minimum regulatory burden. In all Dodd-Frank Act rulemakings, we have been coordinating our efforts closely with the other financial regulators to ensure consistency and avoid duplication of efforts. We also invite public participation in each phase of the rulemaking process. The FDIC plans to continue those efforts.

Evaluation of Examinations and Rulemakings Affecting Community Banks

The FDIC is undertaking a community bank initiative in which the FDIC will review both its examination process and rulemaking process to further our understanding of the challenges and opportunities for community banks. We plan to hold a conference early in 2012 on the future of community banking and are tracing the evolution of community banks over the past 20 years, including changes in business models and cost structures, so that we can suggest lessons to be learned. The FDIC is also reviewing key challenges facing community banks, such as raising capital, keeping up with technology, attracting qualified personnel, and meeting regulatory obligations. Additionally, we are evaluating our own risk-management and compliance supervision practices to see if there are ways to make the process more efficient. We will continue to have direct outreach and an open dialogue by holding a series of regional roundtables with community bankers across the country to get their input on these and other matters. The FDIC will further this dialogue through public meetings of our Advisory Committee on

Community Banking, a forum where we hear firsthand from a broad cross-section of community bankers about both the challenges and the opportunities they see in their markets, as well as some of the concerns they have about the regulatory environment. This overall effort in regard to community banks will be a major priority for the FDIC during 2012.

Streamlining and Transparency

The FDIC has already taken steps to reduce burden and increase transparency in rulemaking. In response to input from members of the FDIC's Advisory Committee on Community Banking on ways to reduce regulatory burden, we conducted a review during 2011 of the questionnaires and reports that banks file with us and made changes to streamline the filing process through greater use of technology and automation. Also, to make it easier for smaller institutions to understand the impact of new regulatory changes or guidance, we specifically added a statement up front in our Financial Institution Letters (the vehicle used to alert banks to any regulatory changes or guidance) as to whether the change applies to institutions under $1 billion.

The FDIC has also put in place a number of measures to promote transparency in our rulemaking process, including holding public roundtable discussions on Dodd-Frank implementation issues via webcast; releasing the names and affiliations of private sector individuals who meet with senior FDIC officials to discuss matters subject to rulemaking under the Dodd-Frank Act; establishing a dedicated mailbox to collect and post on the FDIC's website input from the public; and hosting a dedicated webpage that provides information on the Dodd-Frank Act implementation process at the FDIC.

Continued Analysis of the Costs and Benefits of Rulemaking

In its general rulemaking process, the FDIC continually focuses on the potential costs and benefits of the rules that it adopts. A number of statutes help ensure that regulatory agencies consider and minimize regulatory burdens. For example, under the Regulatory Flexibility Act, the Riegle Community Development and Regulatory Improvement Act, and the Small Business Regulatory Enforcement Fairness Act, the FDIC must analyze a proposed rule's impact on depository institutions, customers of depository institutions, small depository institutions, and industry competition. The FDIC considers the effect of its regulations on competition within the industry and specifically analyzes effects on banks and their ability to raise capital. These analyses are an important way in which the FDIC strives to ensure that its rules meet statutory rulewriting requirements in the most efficient manner possible.

Many of the FDIC's regulations are required by statute and/or are aimed at protecting the Deposit Insurance Fund. It is the FDIC's longstanding policy to ensure that the rules it adopts are the least burdensome to achieve those goals. The FDIC's Statement of Policy recognizes our commitment to minimizing regulatory burdens on the public and the banking industry and the need to ensure that our regulations and policies achieve regulatory goals effectively.

A recent Inspector General's report (which can be found online at: http://fdicig.gov/reports11/11-003EV.pdf) (PDF Help) examined three FDIC rulemaking projects. The Inspector General's findings confirmed that the FDIC staff worked with other financial regulatory agencies to ensure a coordinated rulemaking effort; performed quantitative analysis of relevant data; considered alternative approaches to the rules; and, where applicable, included information about the analysis that was conducted and assumptions that were used in the text of the proposed rule. The report also found that each of the proposed rules examined by the Inspector General was considered by the FDIC Board of Directors in open, public meetings.

Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA)

Finally and importantly, the FDIC will be undertaking a comprehensive review of its regulations in order to identify any outdated, unnecessary or unduly burdensome regulations pursuant to the EGRPRA. This well-established process requires the FDIC to conduct a complete review of all its regulations at least every ten years. The FDIC completed its last review under EGRPRA in 2006 and must complete its next comprehensive review by the year 2016. In order to prepare for the upcoming EGRPRA review process, the FDIC will publish for public comment in early 2012 a plan outlining the process for the FDIC's next comprehensive review of its rules.

Last Updated 11/10/2011 legal@fdic.gov

Attachment 3 - Examples of the kinds of analyses the FDIC undertakes

In setting assessments, the FDIC considers specific factors required by statute:

In administering the risk-based deposit insurance assessment system, the FDIC must comply with certain express statutory requirements. For example, Section 7 of the Federal Deposit Insurance Act (the FDI Act) directs the FDIC to create a risk-based assessment system, taking into consideration the probability that the Deposit Insurance Fund (DIF) will incur a loss with respect to an institution, and taking into consideration the institution's categories and concentrations of assets and liabilities, any other relevant factors, the amount of loss, and the revenue needs of the DIF.[1] Section 7 authorizes the FDIC to set assessments in such amounts as it determines to be necessary or appropriate, and in doing so the FDIC must consider enumerated factors, including the estimated case resolution expenses and income of the DIF and the projected effects of assessments on the capital and earnings of insured depository institutions.[2]

With respect to the size of the Deposit Insurance Fund, statutory requirements represent a congressional balancing of benefits and costs:

The FDIC also is subject to requirements contained in the Dodd-Frank Act. Under the Dodd-Frank Act, Congress required that the FDIC take steps to assure that the DIF reserve ratio reaches 1.35 percent by September 30, 2020. This statutory requirement represents a congressional balancing of benefits and costs, ensuring that the DIF will have sufficient resources within a reasonable amount of time without imposing extremely high deposit insurance assessments on a banking industry trying to recover from a severe downturn. Given the actual and projected losses to the DIF resulting from the current financial crisis, this requirement creates specific revenue needs for the DIF that the FDIC must meet.

The Dodd-Frank Act also required the FDIC to amend its regulations to redefine the assessment base used for calculating deposit insurance assessments as average consolidated total assets minus average tangible equity (with some possible exceptions). During the rulemaking process, the FDIC considered costs to the industry and economy.

Quantitative and qualitative analysis undertaken for the assessment rules:

The FDIC conducted economic analysis during the rulemaking process on the assessment base, assessment rates, and large bank pricing consistent with the broad principles guiding economic analysis of the executive orders and OMB Circular A-4. The FDIC determined the most appropriate and effective type of analysis needed to evaluate the impact of the rulemaking on the industry and the public. Specifically, the FDIC undertook extensive analysis consistent with its Policy Statement and statutory requirements to ensure that the revised assessment system would create the necessary revenue stream to meet statutorily mandated goals without imposing unnecessary

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[1] 12 U.S.C. §1817(b)(1)(C).

[2] 12 U.S.C. §1817(b)(2)(B).

additional cost. In addition, the FDIC updates its long-term loss, income, and DIF reserve ratio projections every six months to determine the appropriate assessment rates and revenue needed to comply with the statute and to ensure that it remains on track to restore the DIF reserve ratio within the statutory deadline. By definition, this analysis considered possible future benefits and costs. In the Final Rule on Assessments and Large Bank Pricing, the FDIC sought to maximize the benefits to the industry and the economy relative to potential costs of inappropriately assessing risk or not building the fund balance high enough. Using the loss, income, and DIF reserve ratio projections, the FDIC examined many different alternative assessment rate schedules to determine one that would maintain the revenue needed and meet other statutory requirements (*e.g.*, the FDI Act requirement that the assessment system be risk based), without either materially increasing or decreasing overall assessment costs for the banking industry.

In revising the assessment system, the FDIC also considered the benefits of improved risk pricing for large and highly complex institutions. These benefits are quantified using the regression model available in Appendix 2 of the Final Rule, which estimates how well the revised risk measures would have predicted the expert judgment ranking of institutions when applied from 2005 through 2008. The FDIC also tested other methodologies and the inclusion of other risk measures in the scorecards used to determine the assessment rate for large and highly complex institutions and found that these alternative approaches had weaker predictive ability. The statistical analysis produced quantifiable results that weigh the costs and benefits of alternative approaches. Further, during its analysis the FDIC considered including additional metrics in the scorecard that may have improved the predictive ability of the scorecard; however, these metrics were not included due to the potential burden on the industry. While this analysis did not expressly "monetize" the benefit, it did include a significant cost-benefit analysis that is relevant for the statutory criteria being analyzed.[3]

During the rulemaking process, the FDIC also considered certain costs of revising risk pricing. For example, the FDIC responded to industry comments by implementing modifications to definitions that affect certain items on the scorecard. These modifications reduce the cost to the industry of recurring data collection related to the scorecard items. Following the adoption of the final rule, the FDIC received further comments voicing concern about operational obstacles to implementing other definitions on the scorecard. In light of those comments, the FDIC delayed the implementation of those definitions in order to explore options for addressing those problems.

As required by the FDI Act, the FDIC analyzed the effect of its assessment proposal on the capital and earnings of the industry. While this analysis did not expressly "monetize" the cost, it did include a significant cost analysis that is relevant for the statutory criteria being analyzed.[4]

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[3] The analysis found that all of the measures are statistically significant in explaining the expert judgment ranking of institutions at the 5 percent or 1 percent level in several years. All of the estimated coefficients have a positive sign, which is consistent with expectations since each measure was normalized into a score that increases with risk.

[4] The analysis found that projected decreases in assessments would prevent three institutions from becoming under-capitalized (*i.e.*, from falling below four percent equity to assets) that were projected to do

The FDIC also undertook extensive analysis to ensure that the assessment revenue generated by large banks overall under the Large Bank Pricing rule was proportional to the large banks' overall share of the assessment base to be consistent with congressional intent.

Any additional analysis of the costs and benefits of the rule would have required data and resources beyond those available to the FDIC, particularly given the need for timely action. Congress intended that the change in the assessment base shift the assessment burden from smaller to larger insured financial institutions. Given this intent, delay in adopting the rules necessary to implement the new assessment base would, in the FDIC's view, have been unwarranted.[5] Furthermore, given the statutory directive and intent of Congress, it is not clear how additional cost-benefit analysis would have changed the rule adopted on the assessment base.

OMB guidance recommends "monetizing" the costs and benefits for each of the alternatives considered. In the context of the large bank pricing rule, it is not clear how monetizing benefits would have altered the final rule. Congress has mandated a risk-based system and the FDIC's analysis showed that the proposed system significantly improved risk differentiation. The FDIC evaluated other reasonable alternatives to the structure of the large bank pricing rule, and proposed the approach that was most supported by a comprehensive, statistically based analysis.

Quantitative and qualitative analysis undertaken for the Designated Reserve Ratio rule:

The FDIC conducted economic analysis during the rulemaking process for setting the DRR consistent with the broad principles guiding economic analysis of the executive orders and OMB Circular A-4. When setting the DRR, the FDIC is required by statute to consider past, current and future risk of loss to the DIF, economic conditions affecting insured depository institutions, measures to prevent sharp swings in assessment rates, and other factors the FDIC deems appropriate.[6] The Proposed Rule addressing Assessments, Large Bank Pricing, and the Designated Reserve Ratio contemplated alternative DRRs and their impact on the fund, dividend policy, and premium volatility.

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so otherwise. Lower assessments would also prevent one institution from declining below two percent equity to assets that would have otherwise. No bank facing an increase in assessments would, as a result of the assessment increase, fall below the four percent or two percent thresholds. The analysis also found that approximately 84 percent of profitable institutions (whose assets total nearly $5 billion) were projected to have a decrease in assessments in an amount between zero and ten percent of income, while only one percent of institutions (whose assets total approximately $5.4 billion) would face assessment increases between zero and ten percent of their income.

[5] *See, e.g.*, Statements of Senator Hutchison, 156 Cong. Rec. S3154 (May 5, 2010) (Co- Sponsor of Amendment No. 3749, which contains the new assessment base) and 156 Cong. Rec. S3297 (May 6, 2010). Similar arguments in favor of the amendment were made by co-sponsor Senators Tester, Johanns, and Brown. Statements of Senator Tester, Senator Johanns, and Senator Brown, 156 Cong. Rec. S3296, S3297, S3298 (May 6, 2010).

[6] 12 U.S.C. §1817(b)(3)(C).

Analysis conducted for the rule considered potential benefits and costs to the industry and to the public, including the impact on banks and on financial stability. In particular, the analysis quantified the cost to the banking industry in terms of assessment rates and premium volatility. For example, the analysis showed that under one alternative DRR and dividend policy, banks would have to pay assessment rates nearly five times higher during crisis years than non-crisis years.[7] The analysis also considered the benefits of a DRR that could be accompanied by more stable, predictable assessment rates and could maintain public confidence in the fund, although these benefits probably cannot be quantified.

Any additional analysis of the costs and benefits of the rule would have required data and resources beyond those available to the FDIC, particularly given the statutory deadline that a DRR must be set for each year. It is not apparent to the FDIC that attempts to monetize or quantify benefits would have added materially to the extensive analysis already conducted during the rulemaking or have changed the final rule.

[7] This conclusion, based upon analysis undertaken in connection with the rulemaking, is reflected in *Toward a Long-Term Strategy for Deposit Insurance Fund Management*, FDIC Quarterly, Vol. 4, No. 4, 2010.