May 4, 2020

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Comment Processing
Office of the Comptroller of the Currency
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Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. Robert E. Feldman
Executive Secretary
Comments/RIN 3064-AF40
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Regulatory Capital Rule: Eligible Retained Income

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comments on the interim final rule, Regulatory Capital Rule: Eligible Retained Income.

[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.

The OCC, Federal Reserve, and FDIC are issuing this interim final rule to amend the definition of eligible retained income as a result of the coronavirus pandemic and the associated impact on a banking organization's regulatory capital. As adopted under the Basel III regulatory capital framework for all banks, community banks are required to maintain a capital conservation buffer of 2.5% of risk-weighted assets. If a community bank falls below the 2.5% capital conservation buffer, restrictions are placed on its ability to make capital distributions and certain discretionary bonus payments. When a banking organization's capital ratios fall within the buffer, the maximum amount of capital distributions and discretionary bonus payments it can make is based on its eligible retained income.

Prior to this interim final rule, eligible retained income for community banks and those bank holding companies not subject to the Small Bank Holding Company Policy Statement (i.e., bank holding companies with total consolidated assets of $3 billion or more) was defined as four quarters of net income, net of distributions and associated tax effects not already reflected in net income. With this interim final rule, the definition of eligible retained income is amended to be the greater of (1) a banking organization's net income for the four preceding calendar quarters, net of any distributions and associated tax effects not already reflected in net income, or (2) the average of a banking organization's net income over the preceding four quarters. The agencies believe that absent this interim final rule, community banks that experience a period of sudden stress could experience a period with very little to no eligible retained income. This could happen in situations where their capital ratios only marginally fall below applicable buffer requirements. As a result of this change, community banks will feel less concerned if they need to use their capital conservation buffers during adverse conditions.

The impact of this interim final rule will have an especially profound impact on community banks organized as Subchapter S corporations under the Internal Revenue Code. These community banks are considered pass-through entities, where taxable income is not taxed at the corporate level. Rather, the shareholder's pro rata share of taxable income is taxed once at the shareholder level. ICBA has repeatedly expressed concerns that the Basel III regulatory capital framework, and especially the capital conservation buffer as originally enacted, could create a situation where the shareholder incurs taxable income that requires income taxes to be paid at the shareholder level but the corporation is prevented from making the required distributions needed for the shareholder to meet the tax obligation. The changes to the definition of eligible retained income in this interim final rule will greatly assist those shareholders in meeting tax obligations that would otherwise not be covered by actual bank cash earnings or dividends.

ICBA thanks the banking agencies for taking quick action to increase liquidity in communities all across the country to alleviate stress imposed by the coronavirus emergency. ICBA has

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repeatedly expressed concerns about the potential harm to lending that could be brought about by the capital conservation buffer. Since the 2011 origins of the capital conservation buffer in the Basel III capital framework, community banks have cautioned that the capital conservation buffer would require them to hold additional amounts of regulatory capital to ensure that the capital ratios never fall low enough to reach the buffer level. The reallocation of these additional amounts has reduced available liquidity in local communities.

Regardless of the changes to the definition of eligible retained income, ICBA believes that community banks will continue to take steps to avoid having their regulatory capital levels fall within the 2.5% range of the capital conservation buffer. But with the new definition, community banks will be less likely to take reactionary measures to drastically curb lending with an abrupt drop in regulatory capital based on coronavirus-related credit stress.

ICBA appreciates the opportunity to comment on this interim final rule and request for comment. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 821-4364 or james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting and Capital Policy