STATEMENT OF

JELENA MCWILLIAMS
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION

on

OVERSIGHT OF FINANCIAL REGULATORS

before the

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
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Chairman Crapo, Ranking Member Brown, and members of the Committee, thank you for the opportunity to testify before the Senate Committee on Banking, Housing, and Urban Affairs.

Over the past several months, the rapid spread of the novel coronavirus (COVID-19) has resulted in a public health emergency that quickly catalyzed a major economic shock and volatility across global financial markets. As the pandemic led governments across the world to take emergency actions, large portions of the global economy shut down nearly overnight. Both the pandemic and the corresponding shutdown are unprecedented in modern times, as are the public health and economic risks confronting policymakers across the globe.

In response to the current challenges, the Federal Deposit Insurance Corporation (FDIC) has taken swift, decisive actions to maintain stability and public confidence in the nation's financial system. These actions have focused on providing necessary flexibility to both banks and their customers – particularly the most heavily affected individuals and businesses – while maintaining the overall safety and soundness of the banking system. I appreciate the opportunity to share with the Committee the actions we have taken in furtherance of these goals.

At the same time, the FDIC's supervisory activities and other essential functions have continued. Although we have made some adjustments to account for COVID-19, the FDIC remains committed to fulfilling its obligations to protect consumers, ensure the safety and soundness of FDIC-insured institutions, and promote financial stability. As we make decisions related to our operations, we are considering the environment, the health and safety of our employees, and the operating conditions confronting financial institutions. I am incredibly proud of the steps taken by the FDIC workforce to sustain our operations under these circumstances.

Before sharing specific actions the FDIC has taken to address emerging challenges related to COVID-19, I want to emphasize that the economic challenges before us did not originate within the banking system. Rather, they emanated from an exogenous shock that is reverberating throughout the world. Our nation's banks have withstood the initial economic and financial market volatility and are well positioned to support individuals and businesses through lending and other financial intermediation.

The ability of the banking system to act as a shock absorber reflects the industry's strength, including high asset quality and substantial capital and liquidity positions. In the quarter preceding the pandemic, aggregate equity capital rose to over $2.1 trillion, which translated to an average common equity tier 1 capital ratio of 13.21 percent.[1] As banks continue to support their customers, the federal banking agencies have encouraged them to use their capital and liquidity buffers to lend and provide other critical financial services in a safe and sound manner.[2] The FDIC is continuing to work with supervised banks and monitor the impact of COVID-19, and we will take additional actions as necessary to help banks respond to challenges during this difficult time.

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[1] *See* FDIC Quarterly Banking Profile, Fourth Quarter 2019, available at https://www.fdic.gov/bank/analytical/qbp/2019dec/qbp.pdf.

[2] *See* FDIC, Federal Banking Agencies Provide Banks Additional Flexibility to Support Households and Businesses (Mar. 17, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20030.html.

I. Responding to COVID-19

As it became clear that the public health emergency caused by COVID-19 would lead to a significant economic disruption, the FDIC took swift, decisive actions to (1) encourage banks to work with affected customers and communities, (2) increase flexibility for banks to meet the needs of their customers, (3) foster small business lending, (4) protect consumers and increase financial options, and (5) actively monitor the financial system.

A. Encouraging Banks to Work with Affected Customers and Communities

The FDIC recognizes that COVID-19 poses significant business disruptions and challenges. In light of those challenges, the FDIC encouraged financial institutions to work with all borrowers, especially borrowers from industry sectors particularly vulnerable to economic volatility, including airlines; energy companies; travel, tourism, and shipping companies; small businesses; and independent contractors that are reliant on affected industries.[3] The FDIC also encouraged financial institutions to actively work with small businesses that have less financial flexibility to weather the near-term operational challenges, including retail businesses; restaurants; and local entertainment businesses, as well as hourly workers and independent contractors. Notably, we made clear that prudent efforts to modify the terms on existing loans for affected customers of FDIC-supervised banks will not be subject to examiner criticism.

In conjunction with the Board of Governors of the Federal Reserve System (FRB), Office of the Comptroller of the Currency (OCC), Consumer Financial Protection Bureau (CFPB), and National Credit Union Administration (NCUA), we expanded on this statement by providing additional information regarding loan modifications.[4] Among other things, the agencies confirmed with staff of the Financial Accounting Standards Board (FASB) that short-term modifications (e.g., six months) made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief are not troubled debt restructurings (TDRs) under ASC Subtopic 310-40.

Following passage of the Coronavirus Aid, Relief, and Economic Securities (CARES) Act, the agencies clarified that such guidance continues to apply with respect to loan modifications related to COVID-19 that are not addressed by Section 4013 of the CARES Act, which provides full relief from TDR classification for certain loan modifications.[5] Prior to the enactment of the CARES Act, I sent a letter urging the FASB to exclude COVID-19-related

[3] *See* FDIC FIL-17-2020, *Regulatory Relief: Working with Customers Affected by the Coronavirus* (Mar. 13, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20017.html.

[4] *See* FDIC FIL-36-2020, *Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus* (Apr. 7, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20036.html; *see also* FDIC-FIL-22-2020, *Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus* (Mar. 22, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20022.html.

[5] Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020), available at https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

modifications from being considered a concession when determining a TDR classification, and I welcomed the FASB's engagement on this issue.[6]

Recognizing the unique impact of COVID-19 on mortgage borrowers, we encouraged financial institutions to consider prudent arrangements that can ease cash flow pressures on these borrowers, improve their capacity to service debt, increase the potential for financially stressed residential borrowers to keep their homes, and facilitate the institution's ability to collect on its loans. In support of these objectives, the FDIC, FRB, and OCC announced the favorable Community Reinvestment Act (CRA) consideration for retail banking services and retail lending activities in a financial institution's assessment areas that are responsive to the needs of low- and moderate-income (LMI) individuals, small businesses, and small farms affected by COVID-19 and that are consistent with safe and sound banking practices.[7] Also in support of these goals, the FDIC, FRB, OCC, CFPB, NCUA, and Conference of State Bank Supervisors announced a flexible supervisory and enforcement approach during the COVID-19 emergency regarding certain consumer communications required by the mortgage servicing rules.[8] Among other things, the statement clarified that if a mortgage servicer provides a borrower a short-term forbearance payment option, the agencies do not intend to take supervisory or enforcement action for failing to meet certain timing requirements for consumer communications related to incomplete application acknowledgement, loss mitigation and early intervention, and annual escrow statements, provided that the servicer makes good faith efforts to provide these notices within a reasonable time.

The FDIC continues to engage with banks and their customers affected by COVID-19 to address questions and concerns. We issued responses to frequently asked questions (FAQs) from banks[9] and their customers,[10] which we have updated as new questions have emerged. In addition, we hosted webinars to clarify our supervisory expectations regarding loan modifications and discuss regulatory issues. The FDIC is committed to enhancing the transparency of our supervision as we work with supervised institutions during this difficult time.

As part of the FDIC's extensive outreach, we have contacted all 50 state banking commissioners, spoken to numerous members of Congress, reached out to consumer groups, and maintained regular contact with supervised institutions, particularly community banks. These engagements have helped us better understand the challenges facing banks and communities across the nation and will remain a critical component of our response to the pandemic.

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[6] *See* FDIC Chairman Urges FASB to Delay Certain Accounting Rules Amid Pandemic (Mar. 19, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20036.html.
[7] *See* FDIC FIL-19-2020, *Joint Statement on CRA Consideration for Activities in Response to COVID-19* (Mar. 19, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20019.html.
[8] *See* FDIC FIL-40-2020, *Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to COVID-19 and the CARES Act* (Apr. 10, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20040.html.
[9] *See* FDIC, *Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease 2019 (Referred to as COVID-19)*, available at https://www.fdic.gov/Coronavirus/faq-fi.pdf.
[10] *See* FDIC *Frequently Asked Questions for Bank Customers Affected by the Coronavirus Disease 2019 (Referred to as COVID-19)*, available at https://www.fdic.gov/Coronavirus/faq-customer.pdf.

B. Increasing Flexibility for Banks to Meet Customer Needs

In order to increase the flexibility and capacity of banks to meet customer needs, we have worked closely with the other federal agencies to make targeted regulatory changes to facilitate lending and other financial intermediation, including those mandated by the CARES Act. In connection with encouraging institutions to use their capital and liquidity buffers in a safe and sound manner,[11] the FDIC, FRB, and OCC issued an interim final rule to make any automatic limitations on capital distributions that could apply under the agencies' capital rule more gradual, as intended when the buffer requirements were developed.[12]

To address concerns about the potential impact on regulatory capital stemming from implementation of the current expected credit losses (CECL) methodology, the FDIC, FRB, and OCC issued an interim final rule providing institutions implementing CECL in 2020 the option to delay for two years an estimate of its effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, followed by a three-year transition period.[13] Taken together, these measures offer institutions a transition period of up to five years. In addition, the agencies clarified that no banking organization is required to comply with CECL during the statutory relief period established by Section 4014 of the CARES Act, including institutions that otherwise are required to adopt CECL in 2020.[14] Prior to the enactment of the CARES Act, I urged the FASB to allow institutions subject to CECL to postpone implementation and impose a moratorium on the effective date for institutions not yet subject to the methodology.[15] Given my concerns about asking institutions to implement the new standard in the current environment, I welcomed this statutory relief period.

In addition, the FDIC, FRB, and OCC issued two interim final rules[16] to implement Section 4012 of the CARES Act by temporarily modifying the community bank leverage ratio (CBLR). The rules establish a temporary 8 percent CBLR, effective as of the second quarter of 2020, and permit a two-quarter grace period, consistent with the current rule, for a qualifying community banking organization whose leverage ratio falls no more than one percentage point below the applicable CBLR to still be considered well capitalized under section 38 of the Federal Deposit Insurance (FDI) Act. In addition, the rules provide a gradual transition back to the permanent 9 percent CBLR, giving a qualifying community banking organization until the first quarter of 2022 before the requirement returns to 9 percent.

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[11] *See supra* note 2.
[12] *See* Regulatory Capital Rule: Eligible Retained Income, 85 Fed. Reg. 15909 (Mar. 20, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-06051.pdf.
[13] *See* Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances, 85 Fed. Reg. 17723 (Mar. 31, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-03-31/pdf/2020-06770.pdf.
[14] *See* FDIC FIL-32-2-2020, *Joint Statement on the Interaction of the CECL Revised Transition Interim Final Rule with Section 4014 of the Coronavirus Aid, Relief, and Economic Security Act* (Mar. 31, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20032.html.
[15] *See supra* note 6.
[16] *See* Regulatory Capital Rule: Temporary Changes to the Community Bank Leverage Ratio Framework, 85 Fed. Reg. 22924 (Apr. 23, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-04-23/pdf/2020-07449.pdf; *see also* Regulatory Capital Rule: Transition for the Community Bank Leverage Ratio Framework, 85 Fed. Reg. 22930 (Apr. 23, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-04-23/pdf/2020-07448.pdf.

The FDIC, FRB, and OCC also issued an interim final rule that allows institutions to defer obtaining an appraisal or evaluation for up to 120 days after the closing of certain residential and commercial real estate loans.[17] The rule is intended to allow institutions to expeditiously extend funds to creditworthy households in light of the strains in connection with COVID-19. In conjunction with the other members of the Federal Financial Institutions Examination Council (FFIEC), the FDIC announced a 30-day grace period for the Call Report for the first quarter of 2020.[18] The FDIC also provided a 45-day grace period for its Part 363 Annual Report.[19] These actions, which recognize staffing priorities and disruptions at financial institutions, increase flexibility for these institutions to comply with regulatory obligations as they work to meet customer needs.

The FDIC is considering additional regulatory changes to support the ability of banks to meet customer needs. For example, the FDIC is considering temporary changes to the supplementary and tier 1 leverage ratios that would allow banks to expand their balance sheets through deposits at Federal Reserve Banks and acquisitions of U.S. Treasury securities. This change would allow banks experiencing significant inflows of deposits to continue serving these customers in a manner that does not create an incentive for banks to take additional risk.

C. Fostering Small Business Lending

While the FDIC has encouraged banks to support all customers impacted by COVID-19, we are particularly focused on fostering small business lending, including through the Small Business Administration's (SBA) Paycheck Protection Program (PPP). The FDIC has engaged with the SBA and the U.S. Department of the Treasury on the PPP. We have taken a number of steps to provide information and facilitate the ability of banks to make loans to small businesses under the program.

First, we set up a dedicated section on our website to share information on the PPP.[20] Second, we are regularly sharing inquiries from banks with SBA leadership to help ensure that banker questions and concerns are better understood. Third, we established an FAQ resource for bankers[21] and issued a Financial Institution Letter for banks with important information on PPP, including links to the SBA and U.S. Department of Treasury's webpages regarding the program.[22] Fourth, along with the other bank regulatory agencies, the FDIC issued an interim final rule to facilitate loans under the PPP by allowing banking organizations to neutralize the

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[17] *See* Real Estate Appraisals, 85 Fed. Reg. 21312 (Apr. 17, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-04-17/pdf/2020-08216.pdf.

[18] *See* FDIC FIL-28-2020, *The FDIC Announces a 30-Day Grace Period for the Call Report for the First Quarter of 2020* (Mar. 26, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20028.html.

[19] *See* FDIC FIL-30-2020, *Statement on Part 363 Annual Reports in Response to the Coronavirus* (Mar. 27, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20030.html.

[20] *See* FDIC, Coronavirus (COVID-19) Information for Small Business Lenders, available at https://www.fdic.gov/coronavirus/smallbusiness/.

[21] *See* FDIC, Frequently Asked Questions on the Small Business Administration's Paycheck Protection Program (Apr. 5, 2020), available at https://www.fdic.gov/coronavirus/smallbusiness/faq-sb.pdf.

[22] *See* FDIC FIL-33-2020, *New SBA and Treasury Programs Available for Small Business Relief* (Apr. 2, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20033.html.

regulatory capital effects of loans funded through the FRB's PPP lending facility.[23] Fifth, the FDIC and the other bank regulatory agencies also issued an interim final rule to facilitate loans under the PPP by allowing banking organizations to neutralize the Liquidity Coverage Ratio (LCR) effect of loans funded through the FRB's PPP lending facility.[24] Sixth, the FDIC, along with the other regulators, hosted a webinar on April 23, 2020, in which SBA officials answered questions from bankers regarding how to be a PPP lender.[25] Finally, we are providing ongoing resources to our examination teams so they are able to answer questions from institutions.

In addition to these actions, the FDIC will vote prior to the hearing on a proposed rule that would mitigate the deposit insurance assessment effects of participating in the PPP and the PPP lending facility. Among other things, the proposal would remove the effect of participation in the PPP and the PPP lending facility from various measures used to calculate an insured depository institution's assessment rate. We expect to vote on the proposal in the near future.

FDIC-insured banks have played a critical role in the distribution of more than $530 billion in PPP loans to small businesses affected by the pandemic and government containment measures. In numerous outreach meetings with state supervisors, banks, and trade associations, we have received questions about potential liability and unintended consequences that banks may face as a result of their participation in the PPP. The FDIC notes that the SBA in its first interim final rule on the program stated:

> SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule.[26]

Accordingly, the FDIC will not criticize any institution for relying on the certifications of a PPP borrower or for misrepresentations by a borrower, absent evidence of intentional fraud or misconduct by the institution, including in the event a borrower that received funds was subsequently deemed ineligible for the program or ineligible for loan forgiveness.

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[23] *See* Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 20387 (Apr. 13, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-04-13/pdf/2020-07712.pdf.

[24] *See* Liquidity Coverage Ratio: Treatment of Certain Emergency Facilities, 85 Fed. Reg. 26835 (May 6, 2020), available at https://www.fdic.gov/news/board/2020/2020-04-30-notational-fr.pdf. The interim final rule also neutralizes the LCR effect of loans funded through the FRB's Money Market Mutual Fund Liquidity Facility.

[25] *See* FDIC FIL-49-2020, *Banker Webinar: How to Become a Paycheck Protection Program (PPP) Lender* (Apr. 22, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20049.html.

[26] *See* Business Loan Program Temporary Changes; Paycheck Protection Program, 85 Fed. Reg. 20811 (Apr. 15, 2020), available at https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf.

D. Protecting Consumers and Increasing Financial Options

As the FDIC has encouraged banks to support individuals, families, small businesses, and the broader economy, we have emphasized that these actions must comply with all applicable consumer protection laws and regulations. As part of its consumer protection actions, the FDIC is taking steps to identify and prevent fraud, including misinformation regarding the safety of bank deposits and the ability of consumers to access cash.[27]

In addition, the FDIC remains committed to increasing prudent loan options for borrowers. Along with the FRB, OCC, CFPB, and NCUA, the FDIC issued a statement on March 26, 2020, encouraging financial institutions to offer responsible small-dollar loans to both individuals and small businesses.[28] The agencies recognize that responsibly offered small-dollar loans can play an important role in helping customers meet their needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income short-falls during periods of economic stress or disaster recoveries. As with all financial products, such loans should be offered in a manner that is consistent with safe and sound practices, provides fair treatment of consumers, and complies with all applicable laws and regulations, including consumer protection laws.

E. Actively Monitoring the Financial System

During this period of uncertainty, the FDIC continues to actively monitor economic and financial market conditions and is prepared to take actions as necessary to maintain stability. Section 4008 of the CARES Act provides the FDIC with authority to "create a widely available program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies."[29] Such a program may include the guarantee of noninterest-bearing transaction accounts.

Sections 1104 and 1105 of the Dodd-Frank Act lay out further requirements necessary to implement such a program. Among those requirements is a written determination by the FRB and FDIC that "a liquidity event exists that warrants use of the guarantee program," and written consent by the Treasury Secretary. The FDIC is actively monitoring conditions in the banking industry and broader economy to assess whether a liquidity event exists that would warrant such a program. The FDIC stands ready to implement a guarantee program as authorized by Congress if such an event arises.

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[27] *See* FDIC, "FDIC: Insured Bank Deposits are Safe; Beware of Potential Scams Using the Agency's Name" (Mar. 18, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20032.html.
[28] *See* FDIC FIL-26-2020, *Statement Encouraging Responsible Small-Dollar Lending to Consumers and Small Businesses in Response to COVID-19* (Mar. 26, 2020), available at https://www.fdic.gov/news/news/financial/2020/fil20026.html.
[29] Pub. L. 111-203 (July 21, 2010), available at https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

II. Continuing Vital Work

While responding to the economic risks related to COVID-19 remains the FDIC's highest priority, our key supervisory activities and other essential functions remain operational. In addition, we have made significant progress on several rulemakings to improve the efficiency of the financial system.

A. Supervision and Examinations

The FDIC has maintained its supervisory programs for both safety and soundness and consumer protection and is working with institutions that may be experiencing operational challenges, including delaying portions of examinations. The majority of institutions have had no difficulty with the FDIC continuing supervisory activities, and only a small number have asked for brief delays due to pandemic-related operational challenges at the institution or on-site document access limitations. The FDIC also participates in many meetings each week with its counterparts at other regulatory agencies, at both the national and regional levels, to discuss supervisory and policy matters.

B. Resolution Preparedness

Last year, we announced the centralization of our supervision and resolution activities for the largest and most complex banks in a new Division of Complex Institution Supervision and Resolution (CISR).[30] This alignment has improved the FDIC's coordination, consistency, and accountability in this critical area, and it ensures that information, resources, and expertise are shared in advance and readily available in the event of a crisis.

In response to economic risks related to COVID-19, the FDIC established a new approach to closing activities to include appointing a health and safety officer, obtaining and using cleaning supplies and protective personal equipment, establishing a smaller on-site closing team supplemented by a remote team, employing greater use of technology, and modifying travel plans for attending the closing. The FDIC successfully executed on these techniques when an institution in West Virginia recently failed due to enduring financial challenges unrelated to COVID-19.[31] The FDIC is implementing lessons learned from this resolution for future supervisory and resolution activities that may be required on-site at financial institutions.

C. Pending Rulemakings

While the FDIC does not have many open rulemakings at this time, we continue to focus our efforts on modernizing and improving the efficiency and resiliency of the financial system. We are evaluating pending rulemakings for which the FDIC has sole jurisdiction on a case-by-case basis and prioritizing rules that are necessary or appropriate at this time and that will not disrupt or add unnecessary uncertainty to the market. We are actively engaged with our fellow

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[30] *See* FDIC to Centralize Key Aspects of Its Large, Complex Financial Institution Activities (June 27, 2019), available at https://www.fdic.gov/news/news/press/2019/pr19056.html.

[31] *See* MVB Bank, Inc. of Fairmont, West Virginia, Acquires The First State Bank, Barboursville, West Virginia (Apr. 3, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20046.html.

regulators on pending interagency rulemakings as we assess how to proceed on each rulemaking. Set forth below is the status of the three pending rulemakings where the FDIC has sole jurisdiction, as well as one request for comment the agency issued in February.

Brokered Deposits

Late last year, we approved a notice of proposed rulemaking that would modernize our brokered deposit regulations, which were put in place in 1989 (and amended in 1991).[32] Over the past 30 years, the financial services industry has seen significant changes in technology, business models, and practices. This rulemaking is designed to develop a framework that encourages innovation and provides greater clarity and consistency regarding the classification of a deposit as brokered or not.[33] The accessibility of banking services by unbanked populations is a key reason for the proposal. Given the importance of this rulemaking and in order to allow interested parties additional time to analyze the proposal, we recently extended the comment period from April 10, 2020, to June 9, 2020.[34]

Federal Interest Rate Authority

Late last year, we also published a proposed rule for public comment that would clarify the law governing the interest rates state banks may charge.[35] The proposal would address marketplace uncertainty regarding the enforceability of the interest rate terms of loan agreements following a bank's assignment of a loan to a nonbank. In 2015, the United States Court of Appeals for the Second Circuit issued a decision that called into question such enforceability by holding that 12 U.S.C. § 85 – which authorizes national banks to charge interest at the rate permitted by the law of the state in which the bank is located, regardless of other states' interest rate restrictions – does not apply following assignment of a loan to a nonbank.[36] Although this decision concerned a loan made by a national bank, the FDI Act provision governing state banks' authority with respect to interest rates is patterned after and interpreted in the same manner.[37] The comment period closed on February 4, 2020, and the FDIC is in the process of reviewing numerous comments received on the proposal.

Industrial Loan Companies (ILCs)

ILCs and industrial banks (collectively, "ILCs") are state-chartered, FDIC-supervised financial institutions that can be owned by financial or commercial firms.[38] Congress authorized

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[32] *See* Unsafe and Unsound Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7453 (Feb. 10, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-02-10/pdf/2019-28275.pdf.
[33] *See* FDIC Chairman Jelena McWilliams, "Brokered Deposits in the Fintech Age," speech before the Brookings Institution (Dec. 11, 2019), available at https://www.fdic.gov/news/news/speeches/spdec1119.html.
[34] *See* FDIC Extends Comment Period on Modernizing Brokered Deposit Restrictions (Apr. 3, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20045.html.
[35] *See* Federal Interest Rate Authority, 84 Fed. Reg. 66845 (Dec. 6, 2019), available at https://www.govinfo.gov/content/pkg/FR-2019-12-06/pdf/2019-25689.pdf.
[36] *See* Madden v. Midland Funding, LLC, 786 F.3d 246 (2d Cir. 2015), cert. denied, 136 S. Ct. 2505 (2016).
[37] 12 U.S.C. §1831d.
[38] *See* FDIC Supervisory Insights, *Supervision of Industrial Loan Companies* (Summer 2004), available at https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/sisum04.pdf.

federal deposit insurance for ILCs in 1982,[39] and exempted ILCs from the definition of "bank" under the Bank Holding Company Act in 1987.[40] These institutions are subject to the same statutory standards as other insured depository institutions (IDIs) for which the FDIC is the primary supervisor.

In determining whether to grant deposit insurance to an ILC, the FDIC must consider the same statutory factors under section 6 of the FDI Act that it considers for other deposit insurance applications, including traditional banks: (1) the financial history and condition of the depository institution; (2) the adequacy of its capital structure; (3) future earnings prospects; (4) the general character and fitness of management; (5) the risk presented by such depository institution to the DIF; (6) the convenience and needs of the community to be served by the depository institution; and (7) whether the depository institution's corporate powers are consistent with the purposes of the FDI Act.[41] The FDIC must also consider whether the parent company can serve as a source of strength to the IDI, as required by Section 616 of the Dodd-Frank Act.

Although a financial or commercial firm that owns an ILC is not subject to regulation or supervision by the FRB at the parent holding company level solely as a result of such control, the FDIC generally requires ILCs and their parent companies to enter into legally enforceable commitments as a condition of approval. Earlier this year, the FDIC approved a notice of proposed rulemaking that would codify in a rule these required conditions on all future ILC applicants.[42] Comments on the proposal are due by June 1, 2020, and we look forward to receiving public feedback and engaging further with stakeholders on this effort.

FDIC Signage and Advertising Requirements

Earlier this year, the FDIC issued a notice and request for comment seeking input on potential modernization of the agency's signage and advertising requirements to better reflect how banks currently operate and how consumers use banking services.[43] Given the changes in the marketplace since the FDIC last significantly updated these rules in 2006, the request for comment sought input about how the FDIC might revise and clarify its sign and advertising rules to reflect these changes and support the industry's efforts to understand, apply, and comply with the FDIC's rules. The FDIC received very few comments on the request and announced it will temporarily postpone this effort.[44] The FDIC may consider soliciting additional information from the public at a future date.

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[39] *See* Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (1982).
[40] *See* Competitive Equality Banking Act of 1987, Pub. L. No. 100–86, 101 Stat. 552 (Aug. 10, 1987).
[41] 12 U.S.C. § 1816.
[42] *See* Parent Companies of Industrial Banks and Industrial Loan Companies, 85 Fed. Reg. 17771 (Mar. 31, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-03-31/pdf/2020-06153.pdf.
[43] *See* Request for Information on FDIC Sign and Advertising Requirements and Potential Technological Solutions, 85 Fed. Reg. 10997 (Feb. 26, 2020), available at https://www.govinfo.gov/content/pkg/FR-2020-02-26/pdf/2020-03689.pdf.
[44] *See* FDIC to Postpone Effort to Modernize Agency's Signage & Advertising Requirements (Apr. 16, 2020), available at https://www.fdic.gov/news/news/press/2020/pr20052.html.

III. Conclusion

As we respond to the economic risks related to COVID-19, the 6,000 dedicated employees of the FDIC continue to fulfill the agency's critical mission. Our employees work and live in the communities that will bear the brunt of the economic burden brought on by the pandemic and are working tirelessly to maintain stability and public confidence in the financial system. I could not be more proud of their efforts and unwavering commitment to the FDIC's mission.

The FDIC was born out of a crisis, and it has dealt with many crises. We will get through this one together. Since 1933, no depositor has lost a penny of FDIC-insured deposits, and that will not change now.

Thank you again for the opportunity to testify today, and I look forward to answering your questions.