SPEECHES

Jelena McWilliams, FDIC Chairman - Community Bank Research Conference

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Introduction

Shortly after I was sworn in as Chairman of the FDIC in June of 2018, one of the first speeches I gave was at this conference. I had followed this conference for years in my former life and have come to understand and appreciate its value. I was just as delighted and honored to be able to speak before you then as I am now.

Three years ago, I spoke to you about my commitment to strengthening the trust between the FDIC, other regulators, the public, and banks through transparency and accountability. Now, three years ago seems in many ways like eons ago. A regulator's years on the job are a bit like dog years – you age seven years for each year of service – especially when in those three years you also respond to a pandemic and the resulting economic shutdowns.

I could not have foreseen these events but had I been able to do so, I would have been even more excited about a new initiative we unveiled in 2018 called "Trust through Transparency." I noted then my belief that maintaining trust in the FDIC through transparency becomes even more important during times of economic stress. And surely, recent events have tested both that trust and our transparency. I am pleased to report that both survived the pandemic intact and, if anything, strengthened our commitment to those very principles.

Last year, the spread of COVID-19 resulted in a public health emergency and ultimately lead to large portions of the global economy being shut down nearly overnight. We did not know when the economy would reopen … how … what businesses would survive … which might fail … and whether consumers would continue to pay their bills.

In order to shore up trust in our government institutions during a time of turmoil, transparency became even more important. We worked around the clock to issue interim final rules and agency statements that clarified the agency's position on regulatory obligations, and that did so in a straightforward manner.[1] Among other things, we issued a statement making clear that prudent modifications to the terms on existing loans for affected customers of FDIC-supervised banks would not be subject to examiner criticism[2] and a statement encouraging institutions to use their capital and liquidity buffers in a safe and sound manner.[3]

We quickly sought to clarify accounting standards by working with the Financial Accounting Standards Board (FASB) to establish that short-term loan modifications made on a good faith basis in response to the pandemic

were generally not troubled debt restructurings (TDRs).[4] This clarification was critical to allowing banks to modify loans to borrowers impacted by the pandemic and lockdowns.[5]

We rapidly increased our use of social media to get out the message that Americans' money was safe with our banks.[6] We used the same channels to caution against pandemic-related fraud and scams.[7] By being transparent, we sought to reinforce trust in our banking system when it needed it most. Since the pandemic started, the deposit base increased from $14.5 trillion to $18.7 trillion, far exceeding any deposit growth the FDIC has seen in the past.[8] These inflows demonstrated confidence in the banking system, as individuals and businesses sought safety during the uncertain economic environment.

Both during the pandemic and as we look forward to our other initiatives, trust underpins the ability of the FDIC to fulfill its mandate to maintain stability and public confidence in the nation's financial system. More fundamentally, as unelected servants of the American people, we must be unfailing in our commitment to transparency to the public. Whether through soliciting feedback on rulemaking and other policy issuances, clearly explaining what we are doing and why, or working to make our rules as clear and understandable as we can, transparency is the foundation for democratic participation in the administrative process and, ultimately, our accountability to the American people.

At the FDIC, we are not just paying lip service to transparency. Instead, we are fostering a deeper culture of openness through direct actions.

Communications

A first step in achieving transparency is communications: we must be accessible, understandable, and responsive. We have transformed the way the FDIC communicates with its external stakeholders in the last three years. First, we have continued to build the new section on our public website called "Trust through Transparency." This webpage provides a one-stop-shop for the agency's own performance metrics for bank applications, bank examinations, and consumer protection and deposit insurance.[9] It seems simple, but it is central to transparency: by sharing quantifiable metrics, including application turnaround times, in a clear and accessible manner, we are holding ourselves publicly accountable.

The pandemic also brought to the fore the issue of technological preparedness for our increasingly virtual way of working. At the beginning of the mandatory telework period, we conceptualized a new Virtual Outreach Center to support the agency's communications and stakeholder engagement efforts. Launched this month, this audiovisual production unit provides the FDIC the necessary technological capacity to use the full slate of modern communication methods to better inform our employees, bankers, and the public.

We have also sought to meet the modern age by making sure we are social-media savvy, such as by leveraging the #GetBanked handle to promote our initiative to get more Americans to initiate and re-establish banking relationships.[10] We have used YouTube to showcase our new FDIC Explains video series, where FDIC staff explain concepts such as credit scores and deposit insurance in short one-or-two minute videos.[11]

Simply put, the FDIC is speaking more often, more clearly, and (some may say) more loudly. These strong communication channels are critical to our ability to work with stakeholders quickly and effectively during a crisis and to build their trust in our operations during normal times.

Continuous Engagement

We are also challenging ourselves with how to enhance financial reporting to make it more timely and more transparent for the agency, regulated parties, and the public alike. We are modernizing the way we make

available to the public Call Report data and other bank data, to provide improved functionality and create a more intuitive user experience.[12] For example, the FDIC's application programming interface (API) lets developers access our publically available bank data without any authorization or API keys to access the data and build applications.

We are also challenging external parties to develop tools for providing more timely and granular financial data to the FDIC on the health of the banking sector than what we get from the current Call Reports, all while making such reporting less burdensome for banks. Although Call Reports provide critical data to the FDIC, they do so with several months' delay, thereby reducing the utility of the reporting to the FDIC.

To engage technology firms to help us solve this problem, we used a "rapid phased prototyping competition," an acquisition process that itself is leaps and bounds more transparent than our traditional procurement process. Instead of having the FDIC review proposed solutions internally and pick a winner, we have made the process public and will let banks and the market place decide which solution is viable for them.

More than 30 technology firms were invited to participate in this competition.[13] Last month, we asked four participants to propose a proof of concept for their technologies.[14] Our goal is to conduct a pilot program with up to nine FDIC-supervised institutions of various sizes and technological maturity to test the reporting technologies and determine their potential to scale. Tools like those developed in this competition will help pave the way for more seamless and timely reporting of more granular data for banks that voluntarily choose to adopt the technology.

Our rapid prototyping competition is the first step in the journey to making my vision of a "continuous engagement" supervisory model a reality. More transparent reporting would reduce regulatory uncertainty for banks: instead of a surprise at an annual examination leading to a supervisory criticism, institutions can benefit from making micro adjustments throughout the year and thereby become more agile in adopting technology and in providing new services and products.

De Novo Applications

Transparency is also important to encouraging bank formation, which has been too low for too long.[15] If the agency's standards and timeframes are not clear or, worse yet, if understanding them requires knowledge of nonpublic oral guidance – the oft-criticized "lore" of the banking agencies[16] – the application process can deter prospective banks from applying or completing an application. We have therefore taken several steps to clarify and publicize the *de novo* application process and our expectations, while also working generally to make the process less burdensome. We sought input through a request for information to gather additional ideas for enhancing the transparency and efficiency of the process.[17] To better understand the perspective of applicants, we hosted multiple roundtables across the country to hear directly from interested parties about what needed improvement in the *de novo* application process.

The FDIC also established a voluntary draft application filing process to allow applicants an opportunity to receive feedback on applications before formally filing, in order to make those formal filings more actionable.[18] Staff developed a Handbook for Organizers and published it on the FDIC website to serve as a resource for interested parties.[19] The FDIC further improved transparency into the applications process by making public the procedural manuals that guide FDIC reviews of applications and updating and publishing performance metrics to enable interested parties to monitor FDIC performance against established timeframes.[20] We continue to challenge ourselves to make the *de novo* application process clearer and more transparent. We are nonetheless encouraged by the progress thus far: since I was sworn in as Chairman on June 5, 2018, the FDIC has approved 45 *de novo* banks, compared to just eight *de novo* banks approved between January 1, 2011 and June 5, 2018.[21]

Administrative Process

Federal agency regulations can often be opaque, byzantine, complex, and hard to understand for regulated entities and the general public. As a former general counsel at a bank and lawyer in private practice, I know this well. Although to some extent this may always be unavoidable, we have tried hard under my Chairmanship to write rules that are as clear as possible and to lay out well-defined rules of the road for people and firms to follow.[22] We have also tried to be more responsive to questions from regulated entities and from the public about our rules and policies. If you have questions or areas you do not understand, or that you believe have not been answered adequately, please let us know.

Since the beginning of my Chairmanship, I have also tasked our staff with conducting a review of our regulations and guidance to identify and remove, modernize, or simplify unnecessary or redundant regulations and financial institutions letters. Since the fall of 2018, we have retired 590 financial institutions letters; much of this removal was routine, but these routine housekeeping practices are important to making the current regulatory landscape more clear. Duplicative or functionally inactive guidance letters or regulations obfuscate our regulatory framework and our expectations, thereby making compliance with the FDIC's rules more difficult.

Conclusion

As we look forward to the future, to the economy and country we want to build following the pandemic, enhancing trust in our public institutions should continue to be a guidepost to the decisions we make. The open, democratic system that underpinned America's place in the 20th Century was built upon an accessible, responsive, and – most important – accountable government.

This summer, I celebrated the 30th anniversary of my arrival in the United States from the former Yugoslavia. I have been thinking a lot about how I can use the position I humbly hold to give back to the country that adopted me. It is difficult to encapsulate in words the hope that America radiated for me and for legions of young people like me on the wrong side of the Iron Curtain. You may have heard me say this before, but from our modest surrounding in the Balkans, the United States truly was a brilliant jewel, a beacon of hope, "a shining city on a hill."

How do we ensure that the 21st Century remains America's century? This is of course a difficult question. But at the FDIC, we are pressing forward with our part: we are thoroughly and rigorously examining where we can increase our transparency to our stakeholders – be they regulated institutions, prospective banks, other government institutions, and the public. By striving to provide clear rules of the road and holding ourselves accountable for our own performance, we hope we are laying the foundation for a financial system that evolves with technological advances, so that the United States can continue to be the place where ideas become concepts and those concepts become the products and services that improve people's lives.

[1] *See, e.g.*, 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; 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; FDIC, FIL-64-2020, *Interagency Examiner Guidance for Assessing Safety and Soundness Considering the Effect of the COVID-19 Pandemic on Financial Institutions* (June 23, 2020), available at https://www.fdic.gov/news/financial-institution-letters/2020/fil20064.html; FIL-108-2020, Interagency Interim Final Rule Provides Regulatory Relief to Institutions Experiencing Temporary Asset Growth in Connection with COVID-19-Related Programs (Nov. 20, 2020), available at https://www.fdic.gov/news/financial-institution-letters/2020/fil20108.html.

[2] *See* FDIC FIL-17-2020 (Mar. 13, 2020), *supra* note 1.

[3] *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.

[4] *See* FDIC, FDIC Chairman Urges FASB to Delay Certain Accounting Rules Amid Pandemic (March 19, 2020), available at https://www.fdic.gov/news/press-releases/2020/pr20036.html.

[5] The CARES Act subsequently expanded the TDR relief beyond short-term loans, and this relief was extended for another year in December.

[6] *See* FDICchannel, The Safest Place for Your Money (March 24, 2020), available at https://www.youtube.com/watch?v=jdjzIaEDTnw; Twitter, @FDIC.gov (March 24, 2020), available at https://twitter.com/FDICgov/status/1242455082551164934?s=20.

[7] *See* Twitter, @FDIC.gov (Apr. 15, 2020), available at https://twitter.com/FDICgov/status/1250550933332930561?s=20.

[8] *See* FDIC, Quarterly Banking Profile, Second Quarter 2020, available at https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2020jun/qbp.pdf#page=1; FDIC, Quarterly Banking Profile, Second Quarter 2021, available at https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2021jun/qbp.pdf#page=1.

[9] *See* FDIC, Trust through Transparency, available at fdic.gov/about/initiatives/trust-through-transparency/ .

[10] *See* FDIC, Get Banked, available at https://www.fdic.gov/getbanked/index.html.

[11] *See* FDICchannel, Youtube.com, available at youtube.com/user/FDICchannel/videos.

[12] *See* FDIC, BankFund Suite, available at https://banks.data.fdic.gov/bankfind-suite/.

[13] *See* FDIC, FDIC Launches Competition to Modernize Bank Financial Reporting (June 30, 2020), available at https://www.fdic.gov/news/press-releases/2020/pr20079.html.

[14] *See* FDIC, FDIC Requests Four Companies to Submit Pilot Proposals in Next Phase of Rapid Phased Prototyping Competition (Aug. 9, 2021), available at https://www.fdic.gov/news/press-releases/2021/pr21070.html.

[15] *Id.*

[16] *See* Margaret E. Tahyar, Legal Interpretation Is Not Like Reading Poetry: How to Let Go of Ordinary Reading and Interpret the Legal Framework of the Regulatory State, Business Law Today (July 24, 2019), available at https://www.americanbar.org/groups/business_law/publications/blt/2019/08/legal-interpretation/.

[17] *See* FDIC, Request for Information on the FDIC's Deposit Insurance Application Process, 83 Fed. Reg. 63,868 (Dec. 12, 2018), available at https://www.govinfo.gov/content/pkg/FR-2018-12-12/pdf/2018-26811.pdf.

[18] *See* FDIC, Review Process for Draft Deposit Insurance Proposals, FIL-82-2018 (Dec. 6, 2018), available at https://www.fdic.gov/news/financial-institution-letters/2018/fil18082.html.

[19] *See* FDIC, "Applying for Deposit Insurance: A Handbook for Organizers of De Novo Institutions," (Dec. 2019), available at https://www.fdic.gov/regulations/applications/depositinsurance/handbook.pdf.

[20] *See* FDIC, Bank Application Resources, available at https://www.fdic.gov/regulations/applications/resources/.

[21] Number of approvals does not include shelf charters (new banks formed to acquire a failed bank or another bank), conversions (which includes credit unions converting into banks, or new banks that are spin-offs of existing banks), or new subsidiaries of a banking organization that already has an affiliated bank.

[22] *See, e.g.*, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 86 Fed. Reg., 6742 (Jan. 22, 2021), available at https://www.fdic.gov/news/board/2020/2020-12-15-notice-dis-a-fr.pdf.

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