Request for Information on FDIC Communication and Transparency

Submitted by mlongacre@csbs.org on Tue, 12/04/2018 - 15:07

VIA E-Mail
December 4, 2018
Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Docket No. RIN 3064-ZA02

Re: Request for Information on FDIC Communication and Transparency

Dear Mr. Feldman,

The Conference of State Bank Supervisors[1] ("CSBS" or "state regulators") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) communication methods and related initiatives to promote efficiency and increase transparency. We support the FDIC's effort to seek input on how best to streamline and improve communication and bring increased transparency to interactions with industry and other regulators.

As the chartering authority and prudential regulator of more than 78 percent of our nation's banks, state regulators have a unique perspective compared to their federal counterparts in terms of the wide variety of financial firms and activities they oversee, and the insight they have into local economies and credit markets. Given their unique role, state regulators are well- positioned to comment on this initiative. In the sections that follow, state regulators offer comments on communications and coordination with state regulators, communications with industry, and transparency within the compliance examination process.

COMMUNICATION AND COORDINATION WITH STATE REGULATORS

State and federal regulators have acknowledged by way of a Nationwide State/Federal Supervisory Agreement signed in 1997[2], the need for enhanced cooperation among federal and state agencies to: (1) provide for a seamless supervisory process; (2) ensure that supervision is flexible and commensurate with the organization's risk; and (3) minimize regulatory burden and cost. Despite being signed over 20 years ago, the Agreement and Protocol continue to serve as the basis for coordinated supervision between the states and federal banking agencies. While the agreements have served us well, additional steps can be taken to improve communication and coordination between federal and state regulators. A continued focus on coordinated supervision and open-communication between state regulators and federal banking agencies will in turn lead to improvements in the supervision of financial institutions we examine together.

There are many examples of recent workstreams that have benefited from close collaboration between the FDIC and state regulators. The development of a work-program on commercial real estate concentrations, the oil and gas work-program, InTREX, and the development of the Examination Tools Suite (ETS) are each examples of projects in which collaboration was positive and productive. The ongoing examination modernization project is another area in which coordination has been effective through both the Federal Financial Institutions Examination Council (FFIEC) and separately between the states and the FDIC. Additionally, regular outreach with Commissioners and Deputies and our quarterly joint meetings on emerging risks are highly valued opportunities to connect on important issues.

It is important that state and federal regulators not only coordinate on supervisory matters, but also on regulatory reform and policy development to the greatest extent possible. Too often, state regulators have been excluded from the policy development process which can result in inconsistent or conflicting regulatory approaches prevailing among state and federal agencies with shared jurisdiction. Both the Interagency Statement Clarifying the Role of Supervisory Guidance and the October 2018 Interagency Statements on Sharing Bank Secrecy Act Resources are examples of work-streams where consultation or advance notice, at a minimum, would have improved coordination. In addition, there have been recent instances in which information regarding upcoming rulemakings is unnecessarily withheld from state regulators until public release.

We believe that federal regulators can and should do a better job of incorporating state regulators in policy deliberations. Again, given that state regulators are the chartering agency and prudential regulator of more than 78 percent of our nation's banks, the states have a significant stake in the substance and specifics of regulatory policy, and thus it is imperative that we have a seat at the table in policy discussions. Accordingly, we encourage the FDIC to incorporate state bank regulators in their policy development process, from the initial stages of policy development to the point of implementation.

COMMUNICATION WITH INDUSTRY

State regulators recognize that the FDIC uses many forms of communication to inform financial institutions about regulations, policies, guidance, industry data, educational materials, and other news and updates. We believe there are several ways communication to the industry could be improved to ensure that institutions are aware of critical information but not overwhelmed by the volume and variety of communications. Specifically, state regulators encourage the FDIC to:

- Provide clarity on communication that is supervisory in nature versus informational communications. Informational communications through FILs often lead to information overload for banks. While we appreciate the FDIC's efforts to review all FILs issued between 1995 and 2017 to remove outdated information, it would be helpful for the remaining and future FILs to be organized either by subject-matter, institution size, or otherwise flagged to identify applicability to a certain sub-set of banks. Further distinguishing which FILs are meant to be informational versus those that articulate important changes in regulations and policy would help to ensure clear communication to the industry going forward.

Provide more clarity regarding the Interagency Statement Clarifying the Role of Supervisory Guidance. State regulators have received multiple questions from field examiners regarding the impact of the Interagency Statement on the exam process. State regulators believe clearly distinguishing between supervisory guidance and laws or regulations is helpful to clarify regulatory requirements. However, the Interagency Statement lacks clarity and does not provide examples that can help examiners or the industry understand the impact of the Statement on exam processes. States have reported that since the release of the Interagency Statement, there have been multiple instances in which state and federal field-examiners agree on findings, but review examiners at the regional level have taken issue with any references to supervisory guidance. Differing practices at the regional level have the potential to increase uncertainty for both examiners and supervised institutions.

The Interagency Statement also fails to address certain areas in which examination processes are directly tied to guidance. For example, most supervisory expectations for assessing an institution’s compliance management system are generally based on guidance. In addition, the assessment of concentrations of credit, expectations for information technology, and the management of third-party risk exists exclusively within guidance. In these areas and others, it may be prudent to consider whether rulemaking is necessary to formalize expectations that currently only exist within guidance. At a minimum, the agencies should clarify how the Interagency Statement impacts supervisory expectations and should also ensure that safety and soundness is not negatively impacted as institutions change their practices based on the Interagency Statement.

Given the importance of joint examinations, state regulators should be involved in discussions regarding the role of supervisory guidance. At a minimum, states regulators request that the federal agencies participate on a call with all-states to answer questions and ensure a common understanding of the Interagency Statement and its impact on coordinated examinations.

- Consider providing small entity compliance guides for more complicated regulations. The amount of information the Agency provides to banks in rulemaking documents can create challenges, particularly for community banks. The FDIC could enhance the understanding of their rules by providing smaller entities with compliance guides for more complicated rules and regulations. The FDIC should look to the Bureau’s Small Entity Compliance Guides on the HMDA and Small Dollar Lending Rule as examples.
- Increase transparency around application process (i.e., branches, mergers, acquisitions, and change of control). Improving communications between federal regulators, state regulators, and institutions can help reduce turnaround times and facilitate more cooperation amongst all interested parties. State regulators encourage this at both the regional level and in Washington, DC.

COMMUNICATIONS ON COMPLIANCE EXAMINATIONS

State regulators encourage the FDIC to continue to increase transparency and timeliness and foster a more corrective approach regarding compliance examinations.

Effective fair lending enforcement is key to ensuring that financial institutions serve the communities in which they operate. State regulators are committed to ensuring that their supervised institutions provide fair access to credit within the communities they serve and are committed to the appropriate enforcement of federal and state fair lending law. However, regulatory expectations that differ by agency or region have in some instances led to an inconsistent application of examination procedures across federal banking regulators.

Particularly, community banks sometimes experience a “zero tolerance” approach to compliance issues that leaves little opportunity to correct practices or for examiners to exercise discretion and provide corrective feedback during the exam process. Even in the case of self- reported issues, state regulators have witnessed situations in which banks are not given enough time to address the issue and regulatory orders can loom over the institutions for years.

Improving the dialogue and providing additional transparency within the compliance examination process would foster a more productive examination experience. Accordingly, state regulators encourage the FDIC along with the other federal banking regulators to:

- Adopt clearer and more stringent expectations regarding the duration of exams. Compliance examinations in which fair lending issues are identified can span multiple years from the start of an examination through completion, often resulting in uncertainty for the institution and an inability to continue normal operations while a compliance issue is further analyzed at the regional office or in Washington D.C.
- Share examination methodologies with financial institutions under review. The models used for fair lending analysis and the description of the models’ construction, data inputs, assumptions, and use of proxies should be released for public review. Providing greater transparency around fair lending models, examination methodologies, and risk scoping procedures will allow institutions to learn more from each examination experience and develop more effective compliance programs.
- Define what constitutes a pattern or practice when determining if compliance-related violations exist in a dataset. This is a critical determination for when an agency refers fair lending matters to the Department of Justice. Too often, state regulators have witnessed instances in which federal banking regulators have used a single occurrence, or a very small subset of loans, to assert that a pattern or practice of compliance violations exists at an institution.
- Issue more communications or guidance regarding regulatory expectations for market pricing variations. Uncertainty exists regarding what federal regulators determine to be unique markets for a financial institution and whether the markets or geographic locations are distinct enough to allow for differences in the pricing of

loans. In some cases, banks have been cited for having outliers in their loan pricing between branches that were hundreds of miles apart in different regions because the bank did not use the same loan pricing structure in both locations. The provision of guidance regarding regulators' expectations for pricing variations by market would increase transparency for the industry. Pricing reviews should be commensurate with the size and complexity of a financial institution. Small community banks depend substantially more on the business of their individual branches than their larger counterparts, and thus should not be subjected to the same type of scrutiny on pricing as large, global institutions.

Overall, the supervisory expectations associated with regional pricing disparities on consumer credit should be clarified and shared with the public.

COMMUNICATIONS ON THE INTERNAL APPEALS PROCESS

State regulators appreciate the updated Guidelines for Appeals of Material Supervisory Decision FIL issued in September 2017 to better clarify the types of determinations that are eligible for review and the process by which appeals will be considered and decided. We believe that continued communication and transparency regarding the internal appeals process will allow institutions, regulators, and the public to learn from decisions and evaluate the functionality of the appeals process.

CSBS encourages the FDIC to continue its coordination efforts with state regulators. The positive relationship between the states and the FDIC continues to enhance the supervisory process and reduce duplicative efforts. State regulators firmly believe that further coordination and communication between state and federal regulators will enhance safety and soundness and consumer protection. Furthermore, streamlining and improving communications with industry will help in performing their roles. CSBS appreciates the opportunity to comment on this important initiative and looks forward to continued engagement with the FDIC.

Sincerely,

John Ryan
President & CEO

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1 CSBS is the nationwide organization of state regulators from all 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. CSBS supports the state banking agencies by serving as a forum for policy and supervisory *process development, by facilitating regulatory coordination on a state-to-state and state-to-federal basis, and by facilitating state implementation of policy through training, educational programs, and examination resource development.*

2 See Nationwide State/Federal Supervisory Agreement (Revised December 9, 1997) available here.

Image

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