

Oversight of Regulators: Does Our Financial System Work For Everyone?

Last Updated: August 3, 2021

Before The Committee On Banking, Housing, And Urban Affairs, U.S. Senate

Chairman Brown, Ranking Member Toomey, and members of the Committee, thank you for the opportunity to testify today about the Federal Deposit Insurance Corporation’s (FDIC’s) efforts, activities, objectives, and plans with respect to consumer protection and the conduct of supervision and regulation of insured depository institutions.

As my testimony will describe in more detail, we have made tremendous strides in these areas under my chairmanship and especially during an unprecedented shock caused by the COVID-19 pandemic and the ensuing economic stress. These efforts include a number of novel initiatives to promote and preserve the nation’s minority depository institutions, provide flexibility to banks to assist their communities during historic economic stress, and encourage responsible use of technology and innovation to reach the “last mile” of unbanked Americans, while maintaining our supervisory activities, regulatory process, and resolution preparedness.

Our nation’s banks withstood the initial economic and financial market volatility of 2020, reflecting their strength going into the pandemic – including strong asset quality and robust capital and liquidity positions. Supervised institutions took steps to help consumers as well as their employees immediately upon the outset of the pandemic and well before government support arrived. These efforts included, among other things: allowing loan modifications with no fees; waiving fees on accounts; offering curbside service and in some cases in-home services to customers; providing online or mobile app options to open accounts and conduct financial transactions; and instituting branch sanitation and employee health check procedures. As the pandemic unfolded, banks became instrumental in supporting individuals and businesses through lending and other financial intermediation and by distributing financial support provided by the federal government.

In contrast to the high number of bank failures during the last financial crisis,¹ only three banks failed during the pandemic, and none due to the pandemic or the ensuing economic stress.

Today, I will provide an update on six areas of focus for the FDIC:

- The state of the banking system and the return to the “new normal;”
- Consumer protection;
- Financial inclusion;
- The supervisory process and regulatory actions;
- Resolution readiness; and
- Diversity, equity, and inclusion.

I. State of the Banking System and the Return to the “New Normal”

A. State of the Banking System

Banking sector income for 2020 declined from its 2019 level, primarily due to higher provision expenses resulting from both the implementation of the Current Expected Credit Losses accounting methodology (CECL) by large banks and economic uncertainty associated with the pandemic. Despite this overall decline in 2020, banking sector income for the first quarter of 2021 was at a record high, primarily due to negative quarterly provision expenses, which reflect both economic improvement and a more optimistic economic outlook. However, net interest margin dropped from the record low level last quarter to a new record low of 2.56 percent. Record-low net interest margin has been driven primarily by the low interest rate environment combined with a decline in total loans driven by low loan demand. However, banks continued to report strong credit quality.² The FDIC is in the process of analyzing call report data for the second quarter of 2021 that appears generally consistent with the first quarter of 2021. The FDIC is scheduled to release that data on September 8.

Despite the challenges of the pandemic, banks increased their capital levels in 2020 and in the first quarter of 2021. Total bank equity rose by 1.2 percent from the fourth quarter of 2020 to \$2.3 trillion. As of the first quarter of 2021, capital ratios remained strong with average core (or leverage) capital at 8.85 percent, average common equity tier one capital at 14.17 percent, and average total risk-based capital at 15.75 percent.³

When I last appeared before the Committee, I reported that the banking system had accommodated a sharp increase in customer demand for deposits that far exceeded any deposit growth the FDIC had seen in the past, due primarily to continued fiscal support for the economy.⁴ Deposit growth continued in the first quarter, reflecting additional fiscal stimulus and persistently high savings rates.⁵

The pace of banking sector consolidation in 2020 was the slowest since 2008. In the first quarter of 2021, this consolidation pace continued.⁶ A slower rate of mergers, very few failures, and a low rate of voluntary closures contributed to the overall trend.

Banks of all sizes have continued to support their customers and communities throughout the pandemic, including by continuing to originate the overwhelming majority of approximately \$800 billion in Small Business Administration-guaranteed Paycheck Protection Program (PPP) loans.⁷ Loans increased over full year 2020 by approximately 3.3 percent,⁸ but total loan and lease balances declined between the fourth quarter of 2020 and the first quarter of 2021 because of PPP loan forgiveness and contraction in other loan portfolios.⁹

The low interest rate environment coupled with economic uncertainty will continue to challenge the banking sector, placing downward pressure on revenue and net interest margin. However, as noted above, the banking sector maintains strong capital and liquidity levels, which can mitigate potential future losses.

B. Return to the “New Normal”

Though we continue to be encouraged by the state of the banking sector as we enter our “new normal,” uncertainty remains, including in industries and markets that have been directly impacted by the pandemic and the related economic shutdowns. Below are several areas the FDIC is monitoring.

Commercial Real Estate

While commercial real estate (CRE) noncurrent loan levels remain manageable and well below previous crisis levels, there is uncertainty in the recovery of the CRE market given long-term leases and other potential lagging changes. In particular, pandemic-related changes in business travel, shopping, and work-from-home practices could challenge the lodging, retail, and downtown office market if those practices become permanent.¹⁰

Housing

After declining at the start of the pandemic, single-family housing activity has more than fully recovered. Strong demand for homes driven by low mortgage rates and increased remote work options combined with a limited supply of homes for sale have led to record high home prices across the nation.¹¹ Despite the rapid growth in home values, housing market fundamentals remain sound.¹² Additionally, government support programs have helped to keep mortgage delinquencies in bank portfolios low.¹³ In contrast with the experience of the 2008 financial crisis, mortgage delinquencies in bank portfolios have remained relatively low.¹⁴

Agricultural Lending

The pandemic initially looked to pose challenges to U.S. farmers. However, record government assistance, a rebound in commodity prices in the second half of 2020, and a resurgence in export demand combined to improve agricultural conditions for borrowers and lenders. Furthermore, strong farmland equity has enabled farmers to restructure loans to manage operating losses and replenish working capital. Despite improving agricultural market fundamentals, net farm income is forecast to decrease in 2021 from 2020 levels because of lower direct government farm payments.¹⁵

Consumer Lending

Consumer borrowing remains below levels of the first quarter of 2020, as it has since the start of the pandemic.¹⁶ Business closures, higher levels of unemployment, changed consumer behavior resulting from the pandemic, and higher income levels resulting from fiscal stimulus all contributed to lower levels of consumer borrowing.¹⁷ After a period of tightening underwriting standards in 2020, banks reported loosening underwriting standards across credit cards, automobile, and other consumer loans in the first quarter of 2021.¹⁸ At the same time, banks are reporting lower credit card balances and greater repayment of existing balances on those cards.¹⁹

Technology Investments

The rapid transformation of the last year has amplified how critical technology is to empowering people's lives amidst a global pandemic. Innovation will continue to play a vital role for banks as they seek to meet consumer expectations for access to financial services and to improve the resilience of their operations. The pandemic has accelerated banks' adoption of digital banking and other new technologies. These advances have the potential to bring more people into the banking system, to provide access to new products and services, and to lower the cost of credit. As the FDIC works to foster these investments, we must also be mindful of the challenges that confront our institutions, particularly community banks that face budget, personnel, and competitive challenges to innovation, as well as growing cybersecurity risks.

Cybersecurity

Banks must also take steps to manage the risk that accompanies new technologies, to protect the sensitive information in their systems, and to ensure resilience in the face of attacks from those that might seek to disrupt bank operations. As the FDIC noted in January 2020, "disruptive and destructive attacks against financial institutions have increased in frequency and severity."²⁰ The pandemic and the related shift to doing an increasing amount of economic activity online have made increased vigilance in the area of cybersecurity all the more important. Technology can also enhance resilience in the face of security challenges, such as cyberattacks, in addition to operational challenges such as the pandemic.

Climate

The FDIC expects financial institutions to consider and appropriately address potential climate risks that could arise in their operating environment. This includes physical risks associated with extreme weather events, such as hurricanes, floods, storms, tornadoes, droughts, and fires.

We also expect institutions to mitigate the risks associated with adverse climate or weather-related events that are common to specific locations or particular areas of the country. Such activities can include ensuring the institution and its borrowers have appropriate insurance coverage, adjusting borrowers' cash flow estimates based on reduced agricultural yields or adverse business conditions, and complying with applicable rules, regulations, and building codes.

The FDIC will continue to monitor the impact of climate and other emerging risks on the financial sector. FDIC economists and financial analysts conduct internal analysis of a range of factors that affect economic and banking conditions, including the potential implications of changing environmental conditions. Several FDIC Regional Risk Committees include environmental factors in their regular analysis, such as drought in the western states.

The FDIC is also engaged with other regulatory bodies, domestic and international, on how best to address such risks, and looks forward to contributing to interagency work in this area.

II. Consumer Protection

A. Consumer Protection During the Pandemic

Depositor and consumer protection is a key component of the FDIC's efforts to maintain public confidence in the nation's financial system. These efforts have been even more critical during the pandemic, which has quickly changed how American families and businesses engage with banks and other financial institutions.

In addition to the FDIC's ongoing consumer protection supervision and regulatory actions described below,²¹ the FDIC undertook a broad array of swift actions upon the onset of the pandemic to ensure that banks could support their communities throughout the pandemic. These actions focused on providing necessary flexibility to both banks and their customers – particularly the most heavily affected individuals and businesses – while maintaining the safety and soundness of the banking system. Throughout this period, the FDIC's supervisory activities and other essential functions have continued.

Support of Affected Customers and Communities

In mid-March of last year, we issued a statement to encourage banks to work with all borrowers, especially borrowers from sectors particularly vulnerable to the existing economic volatility, including airlines; energy companies; travel, tourism, and shipping companies; small businesses; and independent contractors that are reliant on affected industries.²²

Notably, we made clear that prudent modifications to the terms on existing loans for affected customers of FDIC-supervised banks would not be subject to examiner criticism. We also noted that the FDIC would work with affected financial institutions to reduce burdens when scheduling examinations.

Shortly thereafter, we worked with the Financial Accounting Standards Board (FASB) to confirm that short-term loan 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).²³ This clarification was critical to ensuring banks would be able to modify loans to borrowers impacted by the pandemic and lockdowns. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) subsequently expanded TDR relief to a broader set of loan modifications, and this relief was extended for another year in December.

In June, the FDIC and our fellow federal and state banking regulators issued examiner guidance that outlined principles for how examiners would supervise banks in light of the ongoing impact of the pandemic.²⁴ Notably, the guidance stated that examiners would continue to consider the unique, evolving, and potentially long-term nature of the issues confronting institutions and exercise appropriate flexibility in their supervisory response. We also made clear that actions taken in good faith reliance on statements issued by the agencies would not be subject to criticism or other supervisory action down the road, and we still stand by that.

Flexibility for Banks to Meet Consumer Needs

To increase the capacity of banks to meet consumer needs, we worked closely with the other federal agencies to make targeted regulatory changes to facilitate lending and other financial intermediation, including as mandated by the CARES Act.

Soon after the onset of the pandemic, we encouraged institutions to use their capital and liquidity buffers to support customers in a safe and sound manner.²⁵ The FDIC, Board of Governors of the Federal Reserve System (Federal Reserve), and Office of the Comptroller of the Currency (OCC) issued an interim final rule that gave 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.²⁶

The FDIC also took a series of other actions to allow institutions to extend funds expeditiously to creditworthy households in light of the strains in connection with COVID-19, often in conjunction with our fellow regulators. For example, we temporarily reduced the community bank leverage ratio to 8 percent,²⁷ permitted institutions to defer obtaining an appraisal or evaluation for up to 120 days,²⁸ provided a 45-day grace period for submitting annual audit reports,²⁹ and – to address the dramatic increases in banking assets caused by the fiscal and monetary responses to the pandemic – allowed community banks to use their end-of-2019 asset size for determining applicability of several regulations through the end of 2021.³⁰

Taken together, these actions increased flexibility for these institutions to comply with regulatory obligations as they worked to meet consumers' needs.

B. Small-Business Lending

The FDIC also took a number of steps to facilitate the ability of banks to make loans to small businesses under the PPP. Overall, the PPP highlighted the vital role of banks in supporting small businesses. We saw that among the banks participating in the PPP, community banks in particular had an outsized impact on their customers and communities.³¹

Among other things, the FDIC established an FAQ resource for bankers³² and issued a Financial Institution Letter for banks with important information on the PPP, including links to the SBA and U.S. Department of Treasury's webpages regarding the program.³³ The FDIC and the other bank regulatory agencies also issued interim final rules that allowed banking organizations to neutralize the regulatory capital effects³⁴ and the Liquidity Coverage Ratio (LCR) effects³⁵ of participating in the Federal Reserve's PPP lending facility. We later issued a final rule to mitigate the deposit insurance assessment effect of participating in the PPP.³⁶

C. Small-Dollar Lending

At the onset of the pandemic, the FDIC jointly issued a statement with four other federal financial regulatory agencies encouraging banks, savings associations, and credit unions to offer responsible small-dollar loans to consumers and small businesses in response to the pandemic.³⁷ The statement recognized the important role that responsibly offered small-dollar loans can play 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. In order to support the ability of regulated entities to offer small-dollar loans, in May 2020, the FDIC, along with the OCC, Federal Reserve, and National Credit Union Administration, jointly issued principles for offering small-dollar loans in a responsible manner to meet customers' short-term credit needs.³⁸

D. Community Reinvestment Act Reform

The FDIC has engaged in a multi-year, interagency effort to consider changes to Community Reinvestment Act (CRA) regulations that would benefit low- and moderate-income communities and modernize the rules for the first time in a quarter of a century. Although the FDIC issued a joint notice of proposed rulemaking with the OCC in 2019,³⁹ the agency did not finalize the rulemaking in 2020, as banks were focusing significant efforts on supporting their communities during the pandemic.⁴⁰ The FDIC has nonetheless carefully reviewed and considered the extensive input raised by stakeholders and other parties at every stage of the interagency process. In response to the joint FDIC-OCC notice of proposed rulemaking, FDIC staff reviewed about 7,500 comment letters received by the OCC and more than 10,000 letters received by the FDIC, many of which were form letters. Subsequently, the Federal Reserve received approximately 600 comment letters in response to its advanced notice of proposed rulemaking, which letters the FDIC staff is also carefully reviewing.⁴¹

This past month, the FDIC, Federal Reserve, and OCC issued a statement committing to work together jointly to strengthen and modernize regulations implementing the CRA, noting that joint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.⁴² The FDIC is committed to working toward a uniform application of the CRA framework for all banks, to best ensure that banks meet the credit needs of their communities while clarifying the types of activities for which banks can obtain credit under the CRA, the locations for which banks can obtain such credit, and the amount of credit banks will receive.

E. Signage and False Advertising

Given increasing use of online and digital channels by consumers to access banking services, the FDIC has sought to address false or misleading representations of insured accounts and misuse of the FDIC logo. In 2021, the FDIC issued a notice of proposed rulemaking regarding false advertising or misrepresentation of an institution's insured status.⁴³ The proposed rule would describe the FDIC's process for identifying and investigating misuse of the FDIC name or logo; the standards under which such conduct will be evaluated; and the procedures the FDIC will follow in related enforcement actions. The comment period for the proposed rule has closed and we are currently in the process of reviewing the comments.

The FDIC separately issued a request for information (RFI) on the agency's effort to consider how to revise and clarify its official sign and advertising rules related to FDIC deposit insurance.⁴⁴ Among other things, this RFI asked for feedback from stakeholders regarding how technological or other solutions could help consumers better distinguish FDIC-insured banks and savings associations from entities that are not insured by the FDIC, especially across digital

channels. The FDIC is working on a proposed rule that would incorporate the feedback received.

F. Disparities in Appraisals

The FDIC is participating in interagency work to address potential disparities in home appraisals through the recently created Interagency Task Force on Property Appraisal and Valuation Equity (PAVE), led by the U.S. Department of Housing and Urban Development (HUD). PAVE is reviewing and intends to make recommendations to address potential inequities in the appraisal process.⁴⁵ Additionally, the FDIC is a member of the Appraisal Subcommittee (ASC) at the Federal Financial Institutions Examination Council (FFIEC), which is conducting a review of the Uniform Standards of Appraisal Practice that govern real property appraisals and the Real Property Appraiser Qualification Criteria that govern credentialing of appraisers.⁴⁶

G. Risk Management for Third-Party Relationships

The FDIC, Federal Reserve, and OCC recently announced a proposed interagency guidance and request for comment on managing risks associated with third-party relationships.⁴⁷ The use of third parties by banking organizations can offer significant benefits to consumers, but can pose risks if not properly managed. The proposed guidance aims to assist banking organizations in identifying and addressing these risks and in complying with applicable statutes and regulations.

In 2020, the FDIC issued a guide for fintechs and other third parties looking to work with banks.⁴⁸ Using the guide, fintechs that may be new to bank partnerships can gain a better understanding of applicable risk management principles and the due diligence processes banks generally follow to meet them. Both the proposed guidance and the earlier guide support relationships that can increase consumers' choice of products and offerings at a lower cost while providing a roadmap for banks to engage in these partnerships in a responsible manner.

III. Financial Inclusion

The health of the banking sector affects our communities in many ways, not least of all in standing ready to provide access to checking or savings accounts and other critical financial services. As the pandemic continues to disrupt the daily lives of many Americans, we are particularly mindful that minority communities have suffered disproportionately, from both a health and economic perspective.⁴⁹

Creating an inclusive financial system has been one of my priorities as Chairman, and is rooted in my own experiences as an immigrant to this country. As the nation's deposit insurer and primary supervisor of community banks, including minority depository institutions (MDIs), the FDIC plays an important role in ensuring these institutions can meet the needs of their customers and communities – especially minority and low- or moderate-income communities.

A. How America Banks Report

The FDIC has seen meaningful improvements in recent years in reaching the “last mile” of unbanked households in this country. Based on the results of our biennial survey of households, the proportion of U.S. households that were banked in 2019 – 94.6 percent – was the highest since the survey began in 2009.⁵⁰ Notwithstanding these improvements, we know that more work remains to be done. Over 7 million households do not have a banking relationship (with a bank or credit union) to deposit their checks or with which to save for unexpected expenses.⁵¹ The rates for Black and Hispanic households who do not have a checking or savings account at these institutions remain substantially higher than the overall “unbanked” rate.⁵² Similarly, Black and Hispanic households across all income levels are less likely to use forms of bank credit (e.g., a credit card, personal loan, or line of credit from a bank).⁵³ Savings rates remain lower among these households,⁵⁴ which results in greater difficulty dealing with unexpected expenses.⁵⁵ To help address these disparities, the FDIC is using its authorities to support a safer, fairer, and more inclusive banking system through a series of novel initiatives, many of which are described below.

B. Promoting and Preserving Minority Depository Institutions

Shaped by my personal experiences and guided by a commitment to increasing financial inclusion in traditionally underserved communities, one of my priorities as FDIC Chairman has been expanding our engagement and collaboration in support of MDIs. We define an MDI as a federal insured depository institution for which (1) 51 percent or more of the voting stock owned by minority individuals, or (2) a majority of the board of directors is minority and the community that the institution serves is predominantly minority. Many of these institutions serve low- or moderate-income communities with unique needs for accessing financial services, and the FDIC’s oversight must reflect their critical role in our financial system.⁵⁶

An MDI is often the financial lifeblood of the community it serves, enabling individuals and minority-owned small businesses to securely build savings and obtain credit.⁵⁷ Although the number of MDIs is comparatively small relative to the total number of FDIC-insured institutions, these banks have a substantial impact on their communities, including through mortgage and small-business lending.

We have embraced our statutory responsibility to promote and preserve the health of MDIs by seeking new and innovative ways to engage with these institutions and to better understand their needs. The FDIC frequently engages with MDIs by providing technical assistance, banker roundtables, and networking events to connect MDIs and non-MDIs for potential business partnerships.

In 2019, the FDIC published a comprehensive research study analyzing the demographics, structural change, geography, financial performance, and social impact of MDIs over a 17-year period ending December 31, 2018.⁵⁸ Although the study found improvements in MDIs’ financial performance, it also observed that many MDIs face greater economic challenges than non-MDI community banks.

To address some of these challenges, the FDIC has:

- Tripled MDI representation on our Community Bank Advisory Committee (CBAC);⁵⁹
- Established a new MDI subcommittee on the CBAC to highlight the work of MDIs in their communities and to provide a platform for MDIs to exchange best practices;⁶⁰
- Enabled MDIs to review potential purchases of a failing MDI before non-MDI institutions are given this opportunity;⁶¹
- Clarified that non-MDIs can receive CRA credit for their collaboration with MDIs;⁶² and
- Facilitated commitments to support MDIs, including most notably a \$100 million commitment by Microsoft.⁶³

In June, the FDIC approved a final Statement of Policy to update, strengthen, and clarify the agency's policies and procedures related to MDIs.⁶⁴ The new Statement of Policy supports the FDIC's efforts to meet the goals described in Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).⁶⁵ Among other things, the Statement of Policy provides additional outreach opportunities for MDIs, clarifies that technical assistance from the FDIC is not intended to present additional regulatory burdens for MDIs, and establishes a new process for the FDIC to measure the effectiveness of the MDI program by routinely soliciting feedback from MDIs.

Mission-Driven Bank Fund

One way we are supporting MDIs and Community Development Financial Institutions (CDFIs) is a framework that would match these banks with investors interested in the particular challenges and opportunities facing those institutions and their communities. In November 2020, we announced the establishment of a novel investment vehicle, the Mission-Driven Bank Fund, which will channel private sector investments to support MDIs and CDFIs.⁶⁶

MDIs and CDFIs generally provide safe and affordable financial products and services to individuals and businesses and help to stimulate economic and community development in underserved areas and to build wealth in minority, low-income, and rural communities. The Mission-Driven Bank Fund will help these banks raise capital that is necessary to serve their communities more effectively.

The Mission-Driven Bank Fund has two anchor investors and two founding investors. The anchor investors are hiring a fund manager and working towards a first closing in the fourth quarter of 2021 so that the fund can receive pitches from banks early in the first quarter of 2022. The FDIC will retain an advisory role to support the fund's mission focus, but will not contribute capital to, manage, or be involved in investment decisions of the fund.

Support for the Emergency Capital Investment Program

We have also taken steps to facilitate the timely implementation and acceptance of the Emergency Capital Investment Program (ECIP), which was created by the Department of the Treasury pursuant to the Consolidated Appropriations Act, 2021. The ECIP enables the Treasury to make capital investments in certain low- and moderate-income community financial institutions. The FDIC, together with the OCC and Federal Reserve, issued an interim final rule in March 2021 that will facilitate the implementation of the ECIP by providing certainty that the

preferred stock issued under the program qualifies as additional tier 1 capital and that subordinated debt issued under the program qualifies as tier 2 capital under the regulatory capital rule.⁶⁷

C. Promoting Consumer Education and Low-Cost Deposit Accounts

Another component of the FDIC's financial inclusion efforts includes education and outreach. Among other things, the FDIC educates depositors and insured financial institutions on the availability and requirements of federal deposit insurance and provides technical assistance to insured financial institutions to assist them with managing their responsibilities effectively.

Since 2001, the FDIC has regularly updated its financial education program – Money Smart – that aims to help people enhance their financial knowledge and create positive banking relationships.⁶⁸ Money Smart offers non-copyrighted, free financial education training resources aimed at educating consumers of all ages.⁶⁹ The program includes teaching resources in multiple languages that, among other things, provide the basics of personal finance through lesson plans for educators and scripted instructor guides for bankers and others, including a curriculum focused on preventing elder financial exploitation. The FDIC also provides technical assistance to the 1,500-plus organizations in its Money Smart Alliance and helps them share successful approaches.⁷⁰ The FDIC is actively considering ways to improve our consumer education through the use of technology and innovation, including the Money Smart curriculum.

We have also recently concluded a targeted public awareness pilot campaign, #GetBanked, in Atlanta and Houston to inform consumers about the benefits of developing a relationship with a bank.⁷¹ Having a basic checking account can be an important first step to becoming part of the financial fabric of this country and we are pleased that an increasing number of banks are offering low-cost and no-fee accounts that work for people with limited means. We also anticipate engaging in additional efforts to inform consumers of the advantages of establishing a bank account.

We have also been working with the IRS to encourage consumers receiving the Child Tax Credit to get a bank account to enable them to have those funds deposited directly into their account, rather than receiving a paper check or other payment.

D. Encouraging Innovation to Support Financial Inclusion

As the FDIC considers additional ways to facilitate a more inclusive banking system, we recognize the tremendous benefits that financial innovation can deliver to consumers, including in the areas of payments and credit.⁷² We have seen tremendous innovation in banking services by the private sector in recent years, both directly by banks and indirectly through partnerships of banks with nonbanks. Responsibly managed and regulated, new technologies have the potential to bring more people into the banking system, provide access to new products and services, and lower the cost of credit. Moreover, the speed of change required in our lives in the past year has underscored how critical innovation is to enabling banks and communities to meet the challenges

of the pandemic and to ensuring that American banks remain competitive in a rapidly changing world.

The FDIC has been exploring ways to promote further the development of new technologies that improve the way banks operate and offer services to customers. In 2019, we established an office of innovation – FDITECH – and began working on several initiatives to promote innovation and support financial inclusion.

Financial Inclusion Tech Sprint

In June, FDITECH announced a tech sprint that is exploring new technologies and techniques that would help expand the capabilities of community banks to meet the needs of unbanked households.⁷³ This tech sprint is a public challenge to banks, non-profits, private companies, and others to help us reach that “last mile” of unbanked Americans. Specifically, the FDIC has asked participants to answer the following question: “Which data, tools, and other resources could help community banks meet the needs of the unbanked in a cost-effective manner, and how might the impact of this work be measured?” We accepted registrations in July and will bring teams together for a demonstration day in September.

Guidance on Use of Alternative Data

To help facilitate greater access to credit using new technologies, the FDIC and our fellow regulators issued a statement encouraging the responsible use of alternative data in credit underwriting.⁷⁴ Alternative data is information not typically found in the consumer’s credit files of the nationwide consumer reporting agencies or customarily provided as part of applications for credit. Using alternative data can improve the speed and accuracy of credit decisions and help firms evaluate the creditworthiness of consumers who might not otherwise have access to credit in the mainstream credit system.

We have already seen examples of startups creating underwriting technology that can look beyond traditional criteria, for example by using bank deposit account cash-flow data to offer credit to people who otherwise would not qualify for it. Harnessing the use of technology to improve credit assessments can broaden access to credit and improve the predictive capacity of such assessments for lenders.

Guidance on Use of Artificial Intelligence

In March of this year, alongside our fellow regulators, we issued an interagency RFI on financial institutions’ use of artificial intelligence (AI), including machine learning.⁷⁵ AI can offer a range of benefits for banks, consumers, and businesses, such as expanding credit access through innovative use of data and faster underwriting. As we review comments to the RFI, we are particularly assessing how financial institutions use AI, whether AI can provide benefits to banks and their customers, and whether additional regulatory clarity would be helpful.

AI and alternative data can be especially important for small businesses, such as sole proprietorships and smaller companies owned by women and minorities. Such businesses often

do not have a long credit history, which is why novel measures of creditworthiness, like income streams, can help provide critical access to capital, particularly in difficult times.

Voluntary Third-Party Certification Program

Last year, we asked stakeholders to comment on a groundbreaking approach to facilitate technology partnerships. Our RFI proposed a public/private standard-setting partnership and voluntary certification program that would help reduce the cost and uncertainty associated with the introduction of new technology at an institution.⁷⁶

The on-boarding and due diligence process can be costly and time consuming for both banks and their potential technology vendors. These challenges are often amplified at community banks with tight budgets and limited technology expertise. The voluntary certification program described in the RFI would create a standard setting organization (SSO) to establish standards for due diligence of vendors and for the technologies they develop. The FDIC would participate with industry and other stakeholders in the development of these standards. Fintechs could then voluntarily submit their organization and technologies to an independent certifying organization to verify conformance to the applicable standards. In turn, banks could rely on this certification to on-board the vendor and integrate the technology into bank operations. Banks would remain responsible for the products and services they offer, either directly or in partnership with these third parties, including all statutory and regulatory requirements related to consumer protection or anti-discrimination.

Standardizing the due diligence process and removing regulatory and operational uncertainty surrounding technologies could fundamentally improve the ability of banks to safely and confidently partner with technology firms while allowing the FDIC greater ability to engage in a horizontal review of different products, services, business models, and risk management practices of third-party service providers. We hope this program will show a path forward to increasing the competitiveness of our community banks and their ability to meet the needs of consumers in the modern age. The comment period for the RFI ended this past June, and the FDIC continues to pursue the concept actively.

IV. Supervisory Process and Regulatory Actions

A. Supervisory Process

Maintaining our Supervisory and Examination Efforts

The FDIC's supervisory and examination activities and, when appropriate, enforcement actions, are cornerstones of the FDIC's efforts to ensure the safety and soundness of, and public confidence in, the nation's financial system. The agency conducts risk management (safety and soundness) examinations, consumer compliance examinations, and other specialty examinations. Through these examinations, review of examination reports, use of off-site monitoring tools, and participation in examinations conducted by other federal regulators, the FDIC regularly monitors potential risks at all insured institutions, including those for which it is not the primary federal supervisor.

As we responded to the challenges of the pandemic, the FDIC maintained its supervisory programs for both safety and soundness and consumer protection and worked with institutions that were experiencing operational challenges. The majority of institutions have had no difficulty continuing ongoing FDIC supervisory activities, and only a small number have asked for brief delays due to pandemic-related operational challenges or on-site document access limitations. The FDIC has also conducted heightened monitoring of financial institutions whose activities or concentrations may have made them more vulnerable to the economic consequences of the pandemic.

Throughout this period, the FDIC contacted all state banking commissioners, conducted regular meetings with our federal bank regulatory counterparts, spoke to members of Congress, reached out to consumer groups, and maintained regular contact with supervised institutions. These engagements helped us better address the challenges facing banks and communities across the nation.

The agency's Division of Depositor and Consumer Protection has continued to fully engage in supervision of banks to ensure compliance with federal consumer protection, anti-discrimination, and community reinvestment laws. The FDIC conducts risk-based examinations of approximately 3,200 state-chartered banks and thrifts for compliance with over 30 federal consumer protection laws and regulations.⁷⁷ In 2020, the FDIC conducted approximately 1,036 consumer compliance examinations. Thus far in 2021, we have finalized nearly 600 examinations related to consumer compliance or the CRA.

In addition to these examinations, the FDIC conducted CARES Act-specific assessments of institutions it supervises that have significant mortgage servicing portfolios.⁷⁸ The FDIC developed these assessments in order to review more carefully how these institutions were carrying out CARES Act provisions, including those related to forbearance and credit reporting, and to understand challenges facing these institutions related to the pandemic and the implementation of the CARES Act.

Maintaining our Enforcement Efforts

The FDIC uses a variety of informal and formal actions to address violations and weaknesses in institutions' compliance management systems, including recommendations or matters requiring board attention contained within a report of examination, memoranda of understanding, consent orders, civil money penalties, and orders of restitution.⁷⁹ Although the pandemic presented unique challenges in how the agency conducts its examination and enforcement activities, the FDIC continued these activities throughout 2020 and 2021, and also implemented enhanced monitoring procedures to assess pandemic-related impacts on financial institutions.⁸⁰

Creation of Consumer Protection Complex Bank Supervision

In 2020, the Division of Depositor and Consumer Protection implemented a complex bank supervision program for large, complex and certain nontraditional state non-member institutions that may pose unique risks and require enhanced supervision. These institutions often employ

complex business strategies, offer nontraditional products or services, or rely heavily on third-party relationships. The program consists of a three-tier supervisory approach based on an institution's risk profile and includes elements such as ongoing monitoring, risk assessments, supervisory plans, targeted reviews, and dedicated or designated staff. For each tier, examiners create a supervisory strategy tailored to the institution that recognizes the unique characteristics of the business model and product offerings.

Supervisory Engagement Going Forward

As the pandemic struck, the FDIC was forced to move our examination work off-site seemingly overnight, to protect our employees and the staff at banks we supervise. That we were able to transition effectively is a testament to the flexibility of the FDIC workforce and the institutions we supervise. Moreover, it resulted in the growing realization of how much can be accomplished in an examination that takes full advantage of technology.

As we return to the “new normal,” we look forward to returning to on-site exams at banks. These interactions help our examiners understand the institutions we supervise, and they provide useful engagement for bankers. But as our institutions evolve, the way we supervise them is evolving as well. Investments in new technology can help reduce the amount of time that examination teams spend on-site at supervised institutions, contributing to quicker examination turnaround and report processing, while strengthening our ability to monitor risk in a more timely manner. The pandemic, and our ability to adjust to it quickly while still fulfilling the agency’s mission, have demonstrated that technology can enable us to maintain smaller on-site teams with the remote support of larger off-site teams. This change will reduce travel commitments that have exacted a toll on our examiners and their families, especially those with young children, and thereby can improve retention of examiners.

These advances can also facilitate a more fundamental policy objective: the necessary evolution of our supervision and examination processes from static, point-in-time assessments to more routine engagement and timely analyses that will enhance our ability to monitor, identify, and mitigate risk at individual institutions and across the financial system.

Improving Reporting through Rapid Prototyping

As the supervisory and examination processes evolve to a more routine and timely analysis, we are also considering ways in which we can improve regulatory reporting from insured depository institutions. The FDIC is aware of the burdens that the current Call Reports place on institutions. Although these reports provide critical data to the FDIC, they do so with several months’ delay, thereby reducing the utility of the reporting to the FDIC.

Last year, we announced a rapid prototyping competition, a type of tech sprint, to address this issue. Participants were challenged to develop tools for providing more timely and granular data to the FDIC on the health of the banking industry while also making such reporting less burdensome for banks. More than 30 technology firms were invited to participate in this competition,⁸¹ and this spring, we reviewed prototypes from the 11 vendors that made it to phase three of the competition.⁸² The technologies demonstrated by these vendors show great promise,

and we are reviewing the legal, regulatory, and contractual framework needed to successfully encourage the market to adopt technologies like this.

We recently asked four rapid prototyping participants to propose a proof of concept for their technologies – either independently or jointly. Our goal would be 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. Moreover, the associated improvements in data structure, access, and processing may also help support more efficient back-office operations and more effective integration of new technologies.

B. Regulatory Actions

Brokered Deposits

At the end of 2020, the FDIC Board approved a final rule updating our brokered deposits regulations, the first meaningful update to the brokered deposits regulations since the rules were first put in place approximately 30 years ago. As the banking sector transformed over those decades, the FDIC received many questions regarding whether specific deposit arrangements were brokered or not. The agency typically responded on a one-off basis, resulting in a fragmented legal framework. Meanwhile, many types of deposit arrangements that bear little resemblance to the brokered deposits of the 1980s were categorized as brokered under the regulation.

The new rule is intended to encourage innovation in how banks offer services and products to customers by removing regulatory hurdles to certain types of innovative partnerships between banks and fintechs.⁸³ The final rule accomplishes this by tailoring the scope of deposits captured to align more closely with the types of deposits Congress intended to capture when the restrictions were first put in place. The rule also creates a more transparent and consistent regulatory approach by providing a clearer description of the criteria for meeting the “facilitation” prong of the deposit broker definition and establishing a consistent process for application of the primary purpose exception.

The final rule became effective on April 1, with an optional extended compliance date of January 1, 2022. The FDIC created a dedicated webpage that contains information relevant to the regulation, including filing instructions for the notice and application process.⁸⁴

Although the new framework represents an important step forward, the brokered deposits statute will continue to present inevitable implementation challenges. In 2019, I suggested that Congress consider replacing Section 29 of the Federal Deposit Insurance Act, the section imposing restrictions on brokered deposits, with a simple restriction on asset growth for troubled institutions.⁸⁵ This would be a far simpler regime for the FDIC and industry to administer, and would more directly address the problem Congress was trying to tackle in the original legislation. I continue to believe that a simple restriction on asset growth for troubled institutions would be a superior approach in the long run.

Industrial Banks

In December of last year, we finalized a rule to codify and clarify legally enforceable commitments we have generally required historically of insured industrial banks and industrial loan companies (collectively, industrial banks) and their parent companies as a condition of approval.⁸⁶ These commitments include capital and liquidity maintenance agreements (CALMAs), which contractually obligate a parent company to serve as a source of strength for an industrial bank. The rule provides transparency to potential future applicants and the public regarding the FDIC's requirements for parent companies of industrial banks and ensures that all parents of industrial banks approved for deposit insurance going forward are subject to such required commitments.

Computer-Security Incident Notification

Also at the end of 2020, we issued a proposed rule together with the OCC and Federal Reserve to enhance reporting of computer-security incidents by requiring notification within 36 hours of knowledge of covered incidents.⁸⁷ The proposal would enable regulators to understand quickly if regulated banks have been the victim of a serious computer-security incident that may “materially disrupt, degrade, or impair” the bank’s operations or threaten the financial stability of the United States. The proposed rule seeks to provide balance – avoiding unnecessarily difficult or time-consuming reporting obligations while permitting regulatory agencies to be in a position to provide assistance to a bank or the broader financial system when significant computer-security incidents occur. We are in the process of considering the comment letters received in response to that proposal and engaging with our fellow regulatory agencies as we move to issue the final rule.

Suspicious Activity Reports

In January 2021, the FDIC issued a notice of proposed rulemaking to permit the agency to grant case-by-case suspicious activity report (SAR) filing exemptions to FDIC-supervised institutions that develop an innovative approach to suspicious activity reporting requirements.⁸⁸ The other federal banking agencies issued similar notices. The rule would allow for the issuance of SAR exemptions in lockstep with the Financial Crimes Enforcement Network (FinCEN). The FDIC is also working with FinCEN and the other federal banking agencies to implement the requirements of the Anti-Money Laundering Act (AML Act) and the Corporate Transparency Act (CTA).

Supervisory Appeals

This past January, we finalized a proposal to establish a new Office of Supervisory Appeals to hear appeals by banks of material supervisory determinations made by examiners.⁸⁹ Historically, the FDIC’s appeals process was rarely used. From the beginning of 2007 through the end of 2020, only about 50 appeals were filed out of more than 110,000 exams.⁹⁰ Reviewing officials in the new office, which we are currently in the process of setting up, will be devoted solely to hearing appeals, providing time and capacity for the proper attention and diligence. Our new appeals process will help promote consistency among examiners across the country, ensure

accountability at the agency, and ultimately, help maintain stability and public confidence in the nation's financial system.

Supervisory Guidance

This past January, we approved a final rule regarding the role of supervisory guidance.⁹¹ The final rule clarifies the differences between regulations and guidance, and makes clear that supervisory guidance does not create binding, enforceable legal obligations. Guidance can play an important role in providing clarity to supervised institutions, but, unlike a law or regulation, guidance is not an appropriate basis on which to take enforcement action. The rule further clarifies that the FDIC will not issue supervisory criticisms for violations of supervisory guidance. We also affirmed that we do not make supervisory recommendations solely on the basis of reputational risk.

Deposit Insurance Simplification

The FDIC proposed a rule to simplify deposit insurance regulations this past July.⁹² Specifically, the proposed rule would simplify and rationalize the deposit insurance rules for trust accounts, which are the source of the majority of external inquiries related to insurance received by the FDIC.⁹³ The proposal's intent is twofold. First, it seeks to facilitate a quicker and less burdensome resolution in the event a bank with a large number of trust accounts fails, so that depositors can have access to their insured deposits. Second, the proposed rule would make the deposit insurance rules for trust accounts more straightforward and easier to understand for depositors, bankers, and others interested in our trust rules. Additionally, the proposal would adjust the deposit insurance coverage for mortgage servicing accounts by providing that advances of principal and interest paid on behalf of a borrower would be insured up to \$250,000 per borrower, consistent with the coverage for payments of principal and interest collected directly from the borrower.

Digital Assets

In May, the FDIC issued an RFI seeking comment on banks' current and potential activities related to digital assets. Banks have increasingly begun exploring a variety of potential roles in the emerging digital asset ecosystem, such as being custodians, reserve holders, issuers, and exchange or redemption agents; performing node functions; and holding digital asset issuers' money deposits. The FDIC issued the RFI to better understand current and potential use cases involving insured depository institutions and their affiliates. The comment period for the RFI closed on July 16, 2021, and we are in the process of reviewing the comments. In addition, the staffs of the FDIC, the Federal Reserve, and the OCC are currently engaged in an interagency process to share knowledge about and work through a broad set of issues related to digital assets. The FDIC is also participating in work by the President's Working Group on Financial Markets regarding stablecoins.⁹⁴

V. Resolution Readiness

Throughout the pandemic, the FDIC has continued its work on enhancing our resolution readiness, both in the short-term and in the long run. As the FDIC responded to the immediate impact of the pandemic, we established a new approach to closing failed banks 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.

A. Creation of the Division of Complex Institution Supervision and Resolution

Our work in 2019 to form a new division – the Division of Complex Institution Supervision and Resolution (CISR) – centralized our supervision and resolution activities for banks with more than \$100 billion in total assets for which the FDIC is not the primary regulator.⁹⁵ This move was more than just an organizational realignment. Rather, combining these key functions created a stronger, more coherent approach for bank resolution and supervision by enabling us to take a more holistic approach to both. In addition to its supervision activities, CISR is responsible for executing the FDIC’s resolution planning mandates for the banks in its purview. This approach has improved our 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.

B. Cross-Border Resolution of GSIBs

The FDIC has also worked closely with our international counterparts, including the Bank of England and the Single Resolution Board of the European Union, to monitor and prepare for cross-border resolution of global systemically important banks (GSIBs).⁹⁶ The FDIC and Federal Reserve are co-Chairs of the Crisis Management Groups for U.S. GSIBs, where we engage with firms and domestic and foreign authorities to facilitate cross-border resolution planning. We participate in financial regulatory dialogues, such as the U.S.-EU Joint Financial Regulatory Forum⁹⁷ and the U.S.-UK Financial Regulatory Working Group,⁹⁸ which are avenues for enhanced cooperation on cross-border resolution planning. We also remain active in the work on cross-border resolution cooperation that occurs in international fora, such as the Financial Stability Board, by participating in its Resolution Steering Group, among other contributions.

C. Living Wills

The FDIC continues to review resolution plans submitted under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The FDIC and Federal Reserve are currently reviewing the most recent resolution plans submitted on July 1 by the eight GSIBs. In addition, the FDIC recently issued a policy statement describing how the FDIC will implement certain aspects of the agency’s rule requiring submission of resolution plans by insured depository institutions for firms with \$100 billion or more in total assets.⁹⁹

D. Maintaining the Deposit Insurance Fund

The Deposit Insurance Fund (DIF) balance was \$119.4 billion as of March 31, 2021, up \$1.5 billion from the end of the fourth quarter of 2020 and the highest level ever.¹⁰⁰ However, the

reserve ratio declined to 1.25 percent because of strong insured deposit growth fueled by fiscal stimulus efforts, and not as the result of losses to the DIF. In September 2020, the FDIC adopted a Restoration Plan to restore the reserve ratio to at least the statutory minimum of 1.35 percent within eight years, absent extraordinary circumstances, as required by the Federal Deposit Insurance Act.¹⁰¹ In accordance with the Restoration Plan, FDIC staff continues to monitor closely the factors that affect the reserve ratio and will provide semi-annual updates to the FDIC Board regarding its analysis and projections.

VI. Diversity, Equity, and Inclusion

One of my early initiatives as Chairman has been to build and maintain an FDIC workforce that is talented, diverse, and committed to fostering a safe, fair, and inclusive workplace and banking system. We have made our efforts around diversity, equity, and inclusion (DEI) an organizational priority, as demonstrated by our recently released *Diversity, Equity, and Inclusion Strategic Plan*.¹⁰²

The new strategic plan outlines five “C”s – Culture, Career, Communication, Consistency, and Community – designed to help guide us on our journey to support DEI both internally and externally. The plan contains actionable steps that will guide our work over the next few years and help us measure our progress. Internally, the plan further integrates DEI into our hiring, training, and career development programs. It calls on leaders at all levels of the FDIC to develop operational plans reflective of their current DEI performance and business realities. Importantly, the strategic plan holds leaders accountable for advancing their plans and achieving results. Externally, the plan will improve DEI in FDIC contracting opportunities, enhance our ability to assess diversity policies and practices at financial institutions, and provide additional support for MDIs.

The pandemic has brought to the fore how innovation and flexibility can help us tackle persistent DEI issues. Promoting diversity at all levels of the FDIC’s workforce continues to be a key challenge for the agency, especially the ability to attract, retain, and advance minorities and women in our bank examiner workforce.¹⁰³ Because commissioned examiners make up nearly half of the FDIC’s workforce, fostering a diverse examiner workforce is critical to achieving DEI goals throughout the agency.¹⁰⁴ Identifying barriers to such representation involves reconsidering how we think about these positions. A good example of this is our approach to examinations. When I arrived at the FDIC, about 60 percent of our examination work was conducted on-site at banks. I asked staff to study the impact of that examination model on examiners, particularly for our women examiners. On average, examiners spent close to 80 nights a year on the road. For new examiners, their first four years at the FDIC included substantial travel for in-person training. These nights away and travel commitments exacted a toll on our examiners and their families, and made it difficult for us to retain a diverse examiner workforce.¹⁰⁵

We have found during the pandemic that our models for bank supervision and resolution, as well as examiner training, can change. We can use technology to reduce the number of examiners we send to a bank by maintaining smaller on-site team and larger off-site team to support the exam. We have already cut the length of our examiner training program by nearly a year, and we

learned that virtual tools can allow for distance learning and further cut travel requirements. These changes, combined with improvements to our recruitment strategy to build a diverse talent pipeline and increase the number of minority applications, will improve our ability to recruit and retain all employees, including minorities and women. The FDIC has made much progress in DEI over the years, but we know we can do more, and we will.

VII. Conclusion

The FDIC remains vigilant about economic conditions and the uneven impact of the pandemic and its recovery on different populations throughout the United States. As they have throughout this unprecedented time, the FDIC's 5,842 dedicated employees remain committed to the agency's mission and the financial stability of the United States, as well as its role in supporting a financial system that serves all Americans.

¹See Chapter 5: Deposit Insurance: Fund Management and Risk-Based Deposit Insurance Assessments, in Crisis and Response: An FDIC History, 2008–2013, available at <https://www.fdic.gov/bank/historical/crisis/>.

²See FDIC, Quarterly Banking Profile, First Quarter 2021, available at <https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2021mar/qbp.pdf#page=1> (PDF).

³See *id.* at 5-7.

⁴See FDIC, Quarterly Banking Profile, Second Quarter 2020, available at <https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2020jun/>.

⁵See Quarterly Banking Profile, First Quarter 2021, *supra* note 2.

⁶FDIC Call Report Data.

⁷See SBA, Paycheck Protection Program (PPP) Report Approvals through 04/18/2021, available at https://www.sba.gov/sites/default/files/2021-04/PPP_Report_Public_210418-508.pdf (PDF).

⁸See FDIC, Quarterly Banking Profile, Fourth Quarter 2020, available at <https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2020dec/>.

⁹See *id.*; Quarterly Banking Profile, First Quarter 2021, *supra* note 2

¹⁰See FDIC, 2021 Risk Review (May 10, 2021), at 26-28, available at <https://www.fdic.gov/analysis/risk-review/2021-risk-review/2021-risk-review-full.pdf> (PDF).

¹¹See Data from the Mortgage Bankers Association; National Association of Realtors; CoreLogic Case-Shiller Home Price Index.

¹²See 2021 Risk Review, *supra* note 10; see also CoreLogic, Homeowner Equity Insights Report, Fourth Quarter 2020.

¹³See Data from the Mortgage Bankers Association.

¹⁴See 2021 Risk Review, *supra* note 10 ; see also CoreLogic, Homeowner Equity Insights Report, Fourth Quarter 2020.

¹⁵See *id.* at 4; U.S. Department of Agriculture, February 2021 Farm Income Forecast (Feb. 5, 2021), available at <https://www.ers.usda.gov/topics/farm-economy/farm-sector-income-finances/highlights-from-the-farm-income-forecast/>.

¹⁶See Quarterly Banking Profiles, First Quarter 2021, *supra* note 2, through First Quarter 2020, available at <https://www.fdic.gov/analysis/quarterly-banking-profile/index.html>.

¹⁷See 2021 Risk Review, *supra* note 10.

¹⁸See *id.*; Federal Reserve, Senior Loan Officer Opinion Survey on Bank Lending Practices (April 2021), available at <https://www.federalreserve.gov/data/sloos.htm>.

¹⁹See Quarterly Banking Profile, First Quarter 2021, *supra* note 2; 2021 Risk Review, *supra* note 10.

²⁰See FDIC, FIL-03-2020, Heightened Cybersecurity Risk Considerations (Jan. 16, 2020), available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20003.html>.

²¹See Section IV below, Supervisory Process and Regulatory Actions.

²²See FDIC, FIL-17-2020, Regulatory Relief: Working with Customers Affected by the Coronavirus (Mar. 13, 2020), available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20017.html>.

²³See 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/financial-institution-letters/2020/fil20036.html>; FDIC, FIL-22-2020, Inactive: Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus (March 22, 2020), available at <https://www.fdic.gov/news/inactive-financial-institution-letters/2020/fil20022.html>. This March 22 statement was issued prior to the enactment of the CARES Act and was moved to inactive status following issuance of the April 17 statement.

²⁴See 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>.

²⁵See FDIC, Federal Banking Agencies Provide Banks Additional Flexibility to Support Households and Businesses (Mar. 17, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20030.html>.

²⁶See 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> (PDF).

²⁷See 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> (PDF); 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> (PDF).

²⁸See 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> (PDF).

²⁹See 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/financial-institution-letters/2020/fil20030.html>.

³⁰See Applicability of Annual Independent Audits and Reporting Requirements for Fiscal Years Ending in 2021: Federal Deposit Insurance, 85 Fed. Reg. 67428 (Oct. 23, 2020), available at <https://www.fdic.gov/news/board/2020/2020-10-20-notice-dis-c-fr.pdf> (PDF); Temporary Asset Thresholds, 85 Fed. Reg. 77345 (Dec. 2, 2020), available at <https://www.fdic.gov/news/board/2020/2020-11-17-notational-fr-a.pdf> (PDF).

³¹See FDIC, FDIC Quarterly, Quarterly Banking Profile: Third Quarter 2020, Volume 14, No. 4 (2020), at 31, available at <https://www.fdic.gov/bank/analytical/quarterly/2020-vol14-4/fdic-v14n4-3q2020.pdf> (PDF).

³²See 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> (PDF).

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

³⁴See 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> (PDF).

³⁵See Liquidity Coverage Ratio Rule: 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> (PDF).

³⁶See Assessments, Mitigating the Deposit Insurance Assessment Effect of Participating in the Paycheck Protection Program (PPP), the PPP Liquidity Facility, and the Money Market Mutual Fund Liquidity Facility, 85 Fed. Reg. 38282 (June 26, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-06-26/pdf/2020-13751.pdf> (PDF).

³⁷See FDIC, Federal Agencies Encourage Banks, Savings Associations and Credit Unions to Offer Responsible Small-Dollar Loans to Consumers and Small Businesses Affected by COVID-19 (March 26, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20039.html>.

³⁸See FDIC, Federal Agencies Share Principles for Offering Responsible Small-Dollar Loans (May 20, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20061.html>.

³⁹See FDIC, Notice of Proposed Rulemaking on Revisions to the Community Reinvestment Act Regulations, FIL-81-2019 (Dec. 13, 2019), available at <https://www.fdic.gov/news/financial-institution-letters/2019/fil19081.html>.

⁴⁰See FDIC, Statement by FDIC Chairman Jelena McWilliams on the CRA Joint Proposed Rulemaking (May 20, 2020), available at <https://www.fdic.gov/news/speeches/2020/spmay2020.html>.

⁴¹See Community Reinvestment Act, 85 Fed. Reg. 66410 (Oct. 19, 2020), available at <https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act>.

⁴²See Interagency Statement on Community Reinvestment Act Joint Agency Action (July 20, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21067.html>.

⁴³See False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo, 86 Fed. Reg. 24770 (May 10, 2021), available at <https://www.fdic.gov/news/board/2021/2021-04-21-notational-fr-a.pdf> (PDF).

⁴⁴See Request for Information on FDIC Official Sign and Advertising Requirements and Potential Technological Solutions, 86 Fed. Reg. 18528 (Apr. 9, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-04-09/pdf/2021-07356.pdf> (PDF).

⁴⁵See Fact Sheet: Biden Harris Administration Announces New Actions to Build Black Wealth and Narrow the Racial Wealth Gap (June 1, 2021), available at <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/06/01/fact-sheet-biden-harris-administration-announces-new-actions-to-build-black-wealth-and-narrow-the-racial-wealth-gap/>.

⁴⁶See Review of Appraisal Standards and Appraiser Criteria: Focus on Fairness, Equity, Objectivity and Diversity (July 22, 2021), available at Appraisal Subcommittee (PDF). The standards and criteria are issued by boards of the Appraisal Foundation.

⁴⁷See FDIC, Agencies Request Comment on Proposed Risk Management Guidance for Third-Party Relationships (July 13, 2020), available at <https://www.fdic.gov/news/press-releases/2021/pr21061.html>.

⁴⁸See FDIC, Conducting Business with Banks: A Guide For Fintechs And Third Parties (February 2020), available at <https://www.fdic.gov/fditech/>.

⁴⁹See, e.g., Rajashri Chakrabarti and William Nober, “Distribution of COVID-19 Incidence by Geography, Race, and Income,” Federal Reserve Bank of New York Liberty Street Economics (June 15, 2020), available at <https://libertystreeteconomics.newyorkfed.org/2020/06/distribution-of-covid-19-incidence-by-geography-race-and-income.html>; see also Sharon Cornelissen and Alexander Hermann, “A Triple Pandemic? The Economic Impacts of COVID-19 Disproportionately Affect Black and Hispanic Households,” Joint Center for Housing Studies of Harvard University (July 7, 2020), available at <https://www.jchs.harvard.edu/blog/a-triple-pandemic-the-economic-impacts-of-covid-19-disproportionately-affect-black-and-hispanic-households>.

⁵⁰See How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey, available at <https://www.fdic.gov/analysis/household-survey/2019report.pdf> (PDF).

⁵¹See *id.* at 1.

⁵²See *id.* at 2.

⁵³See *id.* at 8.

⁵⁴See *id.* at 52.

⁵⁵See Board of Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020 (May 2020), available at <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf> (PDF).

⁵⁶See FDIC, Minority Depository Institutions: Structure, Performance, and Social Impact (June 25, 2019), available at <https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf> (PDF).

⁵⁷See, e.g. , James Barth, Aron Betru, Matthew Brigida, and Christopher Lee, Minority-Owned Depository Institutions: A Market Overview, Milken Institute (July 2018), available at <https://milkeninstitute.org/sites/default/files/reports-pdf/MDIs-A-Market-Overview.2018.FINAL.pdf> (PDF).

⁵⁸See FDIC, Minority Depository Institutions: Structure, Performance, and Social Impact, *supra* note 56.

⁵⁹See FDIC Advisory Committee on Community Banking, available at <https://www.fdic.gov/communitybanking>.

⁶⁰See MDI Subcommittee to FDIC's Advisory Committee on Community Banking, available at <https://www.fdic.gov/regulations/resources/minority/subcommittee/index.html>.

⁶¹See FDIC, Report to Congress for 2019: Preservation and Promotion of Minority Depository Institutions, available at: <https://www.fdic.gov/regulations/resources/minority/congress/report-2019/complete-report.pdf> (PDF).

⁶²See FDIC, Resource Guide for Collaboration with Minority Depository Institutions, available at <https://www.fdic.gov/regulations/resources/minority/collaboration/resource-guide.pdf> (PDF).

⁶³See Microsoft, "Addressing racial injustice" (June 23, 2020), available at <https://blogs.microsoft.com/blog/2020/06/23/addressing-racial-injustice/>.

⁶⁴See FDIC, FDIC Board Approves New Policy Statement on Minority Depository Institutions (June 15, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21052.html>.

⁶⁵These are: (1) preserving the number of MDIs; (2) preserving their minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new MDIs; and (5) providing for training, technical assistance, and education programs.

⁶⁶See FDIC, FDIC Seeks Financial Advisor to Establish New "Mission-Driven Bank Fund" to Support FDIC-Insured Minority Banks and Community Development Financial Institutions (Nov. 18, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20125.html>.

⁶⁷See Regulatory Capital Rule: Emergency Capital Investment Program, 86 Fed. Reg. 15076 (Mar. 22, 2021), available at <https://www.fdic.gov/news/board/2021/2021-03-05-notational-fr.pdf> (PDF).

⁶⁸See FDIC, Resources: Money Smart (updated April 9, 2021), available at <https://www.fdic.gov/resources/consumers/money-smart/index.html>.

⁶⁹See FDIC, 2020 Annual Report, available at <https://www.fdic.gov/about/financial-reports/reports/2020annualreport/2020ar-final.pdf> (PDF).

⁷⁰See FDIC, Money Smart Alliance (updated April 9, 2021), available at <https://www.fdic.gov/resources/consumers/money-smart/money-smart-alliance/index.html>.

⁷¹See FDIC, #GetBanked (Apr. 5, 2021), available at <https://www.fdic.gov/getbanked/index.html>.

⁷²See, e.g., Bank for International Settlements, “How fintech can promote financial inclusion – a new report on the opportunities and challenges” (April 14, 2020), available at <https://www.bis.org/press/p200414.htm>; see also Ratna Sahay et al., “The Promise of Fintech: Financial Inclusion in the Post COVID-19 Era,” International Monetary Fund (2020), available at <https://www.imf.org/~/media/Files/Publications/DP/2020/English/PFFIEA.ashx>.

⁷³See FDIC, FDITECH Launches Tech Sprint to Reach More Unbanked People, FIL-43-2021 (June 16, 2021), available at <https://www.fdic.gov/news/financial-institution-letters/2021/fil21043.html>.

⁷⁴See Federal Regulators issue joint statement on the use of alternative data in credit underwriting (Dec. 3, 2019), available at <https://www.fdic.gov/news/press-releases/2019/pr19117.html>.

⁷⁵See Request for Information and Comment on Financial Institutions’ Use of Artificial Intelligence, Including Machine Learning, 86 Fed. Reg. 16837 (Mar. 31, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-03-31/pdf/2021-06607.pdf> (PDF).

⁷⁶See Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services, 85 Fed. Reg. 44890 (July 24, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-07-24/pdf/2020-16058.pdf> (PDF).

⁷⁷See FDIC, Consumer Compliance Supervisory Highlights (March 2021), available at <https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2021.pdf> (PDF).

⁷⁸*Id.* at 4.

⁷⁹See, e.g. , Press Release: FDIC Makes Public March Enforcement Actions (April 24, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20053.html>; Press Release: FDIC Makes Public April Enforcement Actions (May 29, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20065.html>; Press Release: FDIC Makes Public May Enforcement Actions (June 26, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20078.html>; Press Release: FDIC Makes Public June Enforcement Actions (July 31, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20089.html>; Press Release: FDIC Makes Public July Enforcement Actions (Aug. 28, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20097.html>; Press Release: FDIC Makes Public August Enforcement Actions (Sept. 25, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20105.html>; Press Release: FDIC Makes Public September Enforcement Actions (Oct. 30, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20121.html>; Press Release: FDIC Makes Public October Enforcement Actions (Nov. 27, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20128.html>; Press Release: FDIC Makes Public November Enforcement Actions (Dec. 28, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20143.html>; Press Release: FDIC Makes

Public December Enforcement Actions (Jan. 29, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21006.html>; Press Release: FDIC Makes Public January Enforcement Actions (Feb. 26, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21014.html>; Press Release: FDIC Makes Public February Enforcement Actions (March 26, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21023.html>; Press Release: FDIC Makes Public March Enforcement Actions (April 30, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21038.html>; Press Release: FDIC Makes Public April Enforcement Actions (May 28, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21049.html>; Press Release: FDIC Makes Public May Enforcement Actions (June 25, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21055.html>; Press Release: FDIC Makes Public June Enforcement Actions (July 30, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21068.html>.

⁸⁰See FDIC, 2020 Annual Report, *supra* note 69.

⁸¹See FDIC, FDIC Launches Competition to Modernize Bank Financial Reporting (June 30, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20079.html>.

⁸²See FDIC, FDIC Selects 11 Companies to Compete in Final Phase of Tech Sprint (Jan. 11, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21004.html>.

⁸³See 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> (PDF).

⁸⁴See FDIC, Banker Resource Center: Brokered Deposits, available at <https://www.fdic.gov/resources/bankers/brokered-deposits/>.

⁸⁵See 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/speeches/2019/spdec1119.html>.

⁸⁶See Parent Companies of Industrial Banks and Industrial Loan Companies, 86 Fed. Reg. 10703 (Feb. 23, 2021), available at <https://www.fdic.gov/news/board/2020/2020-12-15-notice-dis-b-fr.pdf> (PDF).

⁸⁷See Computer-Security Incident Notification Requirements for Banking Organizations and Their Bank Service Providers, 86 Fed. Reg. 2299 (Jan. 12, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-01-12/pdf/2020-28498.pdf> (PDF).

⁸⁸See FDIC, FIL-11-4-2020, Proposed Rulemaking to Permit Additional Exemptions to Suspicious Activity Report Requirements (Dec. 15, 2020), available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20114.html>.

⁸⁹See FDIC, FIL 04-2021, Revised Guidelines for Appeals of Material Supervisory Determinations (Jan. 19, 2021), available at <https://www.fdic.gov/news/financial-institution-letters/2021/fil21004.html>.

⁹⁰Total appeals includes a number of appeals that were not decided upon because the appeal was withdrawn by the institution, the issues were found not to be appealable, or the institution closed. Total exams includes safety and soundness, trust, information technology, Bank Secrecy Act, consumer protection, and CRA examinations conducted by FDIC as primary federal supervisor.

⁹¹See FDIC, FDIC Approves Rule on the Role of Supervisory Guidance (January 19, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21005.html>.

⁹²See FDIC, Notice of Proposed Rulemaking on Simplification of Deposit Insurance Rules for Trust and Mortgage Servicing Accounts FIL-51-2021 (July 20, 2021), available at <https://www.fdic.gov/news/financial-institution-letters/2021/fil21051.html>.

⁹³See Statement from FDIC Chairman Jelena McWilliams on the Notice of Proposed Rulemaking for Deposit Insurance Simplification (July 20, 2021), available at <https://www.fdic.gov/news/speeches/2021/spjul2021.html>.

⁹⁴See U.S. Dept. of the Treasury, Press Release: Readout of the Meeting of the President's Working Group on Financial Markets to Discuss Stablecoins (July 19, 2021), available at <https://home.treasury.gov/news/press-releases/jy0281>.

⁹⁵See FDIC, FDIC to Centralize Key Aspects of Its Large, Complex Financial Institution Activities (June 27, 2019), available at <https://www.fdic.gov/news/press-releases/2019/pr19056.html>.

⁹⁶See, e.g., FDIC Chairman Jelena McWilliams, "Resolution Readiness: Adapting to our Uncertain World," speech before the Single Resolution Board Annual Conference (Oct. 8, 2020), available at <https://www.fdic.gov/news/speeches/2020/spect0820.html>.

⁹⁷See U.S. Department of the Treasury, Joint Statement on the U.S.-EU Joint Financial Regulatory Forum (March 29, 2021), available at <https://home.treasury.gov/news/press-releases/jy0084>.

⁹⁸See U.S. Department of the Treasury, Joint Statement on UK-U.S. Financial Regulatory Working Group Meeting (Oct. 22, 2020), available at <https://home.treasury.gov/news/press-releases/sm1160>.

⁹⁹See FDIC, Statement on Resolution Plans for Insured Depository Institutions (June 25, 2021), available at <https://www.fdic.gov/resauthority/idi-statement-06-25-2021.pdf> (PDF).

¹⁰⁰See FDIC, Restoration Plan Semiannual Update (June 15, 2021), available at <https://www.fdic.gov/news/board/2021/2021-06-15-notice-dis-a-mem.pdf> (PDF).

¹⁰¹See 12 U.S.C. § 1817(b)(3)(E)(ii); FDIC, FIL-90-2020, Restoration Plan for the FDIC Deposit Insurance Fund (Sept. 15, 2020), available at <https://www.fdic.gov/news/financial-institution-letters/2020/fil20090.html>.

¹⁰²See FDIC, FDIC Releases Strategic Plan to Reinforce Diversity, Equity, and Inclusion Within the Agency and Among the Financial Institutions It Supervises (Mar. 3, 2021), available at <https://www.fdic.gov/news/press-releases/2021/pr21016.html>.

¹⁰³See Statement of Nikita Pearson, Acting Director, Office of Minority and Women Inclusion, FDIC, *On Holding Financial Regulators Accountable for Diversity and Inclusion: Perspectives from The Offices of Minority and Women Inclusion* ; before the Subcommittee on Diversity and Inclusion of the Committee on Financial Services, U.S. House of Representatives (Sept. 8, 2020), available at <https://www.fdic.gov/news/speeches/2020/spsep0820.html>.

¹⁰⁴See *id.*

¹⁰⁵See *id.*