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September 11, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Jerome H. Powell
Chair
Federal Reserve Board of Governors
20th Street and Constitution Ave. NW
Washington, DC 20551

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

RE: EXCLUSION OF PPP LOANS FROM THE CALCULATION OF BANK ASSETS

Dear Secretary Mnuchin, Chair Powell, Chairman McWilliams, Acting Comptroller Brooks and Director Kraninger,

The Independent Community Bankers of America (“ICBA”)¹ sincerely thanks you for your agencies’ work in ensuring that the country’s financial system is equipped to handle the unprecedented health and economic crisis of COVID-19. We request that your agencies **amend as soon as possible any banking regulations that include asset thresholds for community banks and bank holding companies so that those calculations would exclude SBA Paycheck Protection Program (PPP) loans as part of an institution’s total assets or total consolidated assets.**

In a separate letter, ICBA has asked the Senate Banking and House Financial Services Committees to pass legislation directing your agencies to exclude PPP loans from asset threshold calculations. However, I believe that **your agencies already possess the necessary authority to**

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s Ibsite at www.icba.org.

amend most of the community bank and bank holding company asset thresholds to exclude PPP loans from these calculations. I urge you to do this in order to prevent community banks from incurring significant, unexpected compliance costs at a critical moment of uncertainty for the entire banking system.

Community banks have played a key role in the nation's financial response to the pandemic through their outsized participation in the Paycheck Protection Program. According to SBA statistics, **lenders with less than \$10 billion in assets made \$233.7 billion in PPP loans, which protected the paychecks of more than 26 million American workers.**² Despite the rapid rollout and complexity of the program, banks under \$10 billion in assets originated 2,745,204 PPP loans or more than 52.6% of the loans originated under the program.³ This ratio far exceeds the market share of community banks as a percentage of total bank assets and shows their outsized commitment to America's small businesses.

Community bankers are deeply committed to the small businesses in the communities they serve and offered PPP loans to provide emergency liquidity to small businesses and non-profit organizations in desperate need. However, because of the overwhelming demand for PPP loans, the balance sheets of community banks have swelled, in some cases by 25% or more. This is a concern for community banks because the level of supervision and the regulations that a bank is subject to depends on its asset size. Some banks are concerned that the asset size growth that they have experienced due to the PPP will push them over a threshold that subjects them to additional supervision and regulation.

According to the FDIC's Quarterly Banking Profile (QBP) for the second quarter of 2020, the growth of loan balances in the quarter was driven by the implementation of the PPP, with "\$482.2 billion in PPP loans on banks' balance sheets at the end of the quarter."⁴ This is a major increase in lending for community banks, and has pushed many close to important regulatory thresholds far sooner than they were prepared for. Many community bankers expected that PPP loans would be forgiven and off their books by the third quarter of this year. However, due to the longer covered period and deferral period created by the PPP Flexibility Act and subsequent rule changes, they will now be held much longer.

PPP loans were intended to be short-term assets. If the loan proceeds are used for covered expenses, the loans will be forgiven up to 100% – effectively turning them into grants from the federal government. **PPP loans are not traditional bank loans** that may remain on bank balance sheets for much greater lengths of time. Because of this, **including them in a calculation of bank assets is not a true reflection of a bank's size or the level of supervision or regulation that is appropriate.** Therefore, it would be an appropriate use of the agencies' discretion to exclude PPP loans from asset threshold calculations.

² U.S. Small Business Administration, "Paycheck Protection Program (PPP) Report: Approvals through 08/08/2020," available at: <https://home.treasury.gov/system/files/136/SBA-Paycheck-Protection-Program-Loan-Report-Round2.pdf>.

³ *Id.*

⁴ FDIC, "Quarterly Banking Profile: Second Quarter 2020" (June 30, 2020), available at: <https://www.fdic.gov/bank/analytical/qbp/2020jun/qbp.pdf#page=1>.

ICBA is concerned about all the major community bank regulatory asset thresholds but particularly the \$500 million and \$1 billion dollar thresholds under 12 CFR Part 363 which trigger additional accounting requirements, the \$3 billion threshold for the 12-month safety and soundness examination cycle and for the Small Bank Holding Company Policy Statement, the asset thresholds under the Community Reinvestment Act, and the \$10 billion asset threshold which triggers certain Dodd Frank Act requirements. With regard to the latter threshold, banks become subject to supervision by the Consumer Financial Protection Bureau when they exceed \$10 billion in assets.⁵ Furthermore, banks crossing the \$10 billion asset threshold lose their exemption from the requirements of the Volcker Rule.⁶ Finally, banks crossing the \$10 billion threshold can see dramatic drops in debit card interchange fees due to the Durbin Amendment.⁷

These are just a few examples of the impact of crossing regulatory thresholds. Under normal circumstances, banks have significant advanced notice that they are close to crossing an asset threshold and invest in a strategic plan to prepare to comply with additional regulations. Each threshold is a significant milestone that requires diligent preparation and the potential addition of new compliance staff. A bank that crosses an asset threshold normally has no intention of dropping below it in the future. As explained above, PPP assets have caused a temporary balance sheet inflation. This is an exceptional circumstance and bank regulation must be flexible enough to account for it and ensure that PPP lenders are not punished for their participation in an emergency program.

The agencies can address this issue using their existing rulemaking authority and should not require a statutory mandate. Furthermore, the need to move quickly justifies a finding under Section 4 of the Administrative Procedure Act that the full public notice and comment procedure would be “impracticable, unnecessary, or contrary to the public interest.”⁸ Such a finding would allow the agencies to apply a technical fix to this issue without upsetting the substance of federal banking regulations.

Thank you for your attention to this pressing concern. Providing regulatory relief in this exceptional circumstance will ensure that community banks can continue to play a critical role in our nation’s economic response to this unprecedented pandemic.

Sincerely,

/s/

Rebeca Romero Rainey
President and CEO

⁵ 12 U.S.C. 5515(a).

⁶ 12 C.F.R. 248.2(r).

⁷ 15 U.S.C. 1693o-2.

⁸ 5 U.S.C. 553 (b)(B).