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October 3, 2022

Mr. James P. Sheesley  
Assistant Executive Secretary  
Attention: Comments RIN 3064-ZA33  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, D.C. 20429

Chief Counsel's Office  
Attention: Comment Processing  
Docket ID OCC-2022-0017  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW, Suite 3E-218  
Washington, DC 20219

Re: Proposed Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts (*FDIC RIN 3064-ZA33; Docket ID OCC-2022-0017*)

Ladies and Gentlemen,

The Independent Community Bankers of America<sup>1</sup> ("ICBA") appreciates the opportunity to comment on the proposed policy statement on prudent commercial real estate loan accommodations and workouts<sup>2</sup> ("Proposed Policy Statement" or "Proposal") published by the

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<sup>1</sup> The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 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.

<sup>2</sup> Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, *Policy Statement on Prudent Commercial Real Estate Loan Accommodations and Workouts*, RIN 3064-ZA33, 87 FR 47273 (Aug. 2, 2022) available at: <https://www.govinfo.gov/content/pkg/FR-2022-08-02/pdf/>

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Federal Deposit Insurance Corporation (“FDIC”), the Office of the Comptroller of the Currency (“OCC”) and the National Credit Union Administration (“NCUA”) (collectively “the agencies”). If finalized, the Proposal will update and supersede the agencies’ 2009 policy statement on prudent commercial real estate loan workouts<sup>3</sup> (“2009 Policy Statement”) by incorporating (1) recent policy guidance on short-term loan accommodations; (2) revisions to reflect accounting developments for estimating loan losses; and (3) revised and additional examples of commercial real estate loan workouts and accommodations.

ICBA supports the agencies’ efforts to provide clearer guidance to insured depository institutions and to memorialize current practices. Additionally, we applaud the agencies for proposing practical, tailored updates to the 2009 Policy Statement while encouraging financial institutions to work prudently and constructively with creditworthy borrowers who are experiencing financial difficulty.

As a general matter, the Proposal appropriately recognizes financial institutions face significant challenges when working with distressed borrowers, and the Proposal’s hypothetical examples are a helpful resource for community banks. Nevertheless, we believe there are some areas where the Proposal could be improved. As explained below, we urge the agencies to (1) include more specific language in the Proposal by defining words like “comprehensive” and “reasonable terms,” and by clarifying regulatory expectations for the frequency in which community banks must update financial and collateral information for distressed borrowers; (2) clarify that for purposes of evaluating the repayment capacity for commercial borrowers, “market conditions” should be primarily informed by trends within a community bank’s actual, local market(s), rather than urban, statewide, regional, or national trends; (3) require examiners to supply empirical data if a bank and its experts disagree with regulators about adjustments to collateral valuation to reflect current “market conditions.” During the 2008 economic downturn, there were many disagreements between community banks and examiners concerning collateral valuations and troubled debt restructurings which is why we urge the banking agencies to make their guidance as clear as possible.

**I. The Proposal should clarify what constitutes a “comprehensive review” and “reasonable terms.”**

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2022-16471.pdf.

<sup>3</sup> Board of Governors of the Federal Reserve System, FDIC, OCC, NCUA, Office of Thrift Supervision, and the Federal Financial Institutions Examination Council State Liaison Committee, *Policy Statement on Prudent Commercial Real Estate Loan Workouts*, FIL-61-2009 (Oct. 30, 2009) available at: <https://www.fdic.gov/news/financial-institution-letters/2009/fil09061a1.pdf>.

The Proposal states “financial institutions that implement prudent CRE loan accommodation and workout arrangements after performing a *comprehensive review* of a borrower’s financial condition will not be subject to criticism for engaging in these efforts, even if these arrangements result in modified loans that have weaknesses that result in adverse classification. In addition, modified loans to borrowers who have the ability to repay their debts according to *reasonable terms* will not be subject to adverse classification solely because the value of the underlying collateral has declined to an amount that is less than the outstanding balance.”<sup>4</sup> (emphasis added).

The amount of financial information a community bank must collect from a distressed borrower to perform a “comprehensive review” of a borrower’s financial condition remains subject to a significant degree of supervisory discretion. Many borrowers facing financial duress have difficulty producing sufficient financial information, particularly projected financial information, in a timely manner that satisfies regulatory scrutiny. As such, we urge the agencies to instruct examiners and senior agency staff to be reasonable, measured, and flexible in determining the appropriate amount of financial information a community bank must collect from a distressed borrower to satisfy the agencies’ requirements for a “comprehensive review.” Similarly, the agencies should provide further guidance on what constitutes “reasonable terms,” as well as the criteria the agencies will consult to determine whether a borrower has the ability to repay their debts according to “reasonable terms.” At a minimum, the agencies should include a requirement in the Proposal that an examiner cannot deem terms unreasonable without citing some empirical data to support his/her disagreements with a bank or the bank’s experts.

The proposal also states, “prudent internal controls related to loan accommodations include comprehensive policies and practices, proper management approvals, and timely and accurate reporting and communication.”<sup>5</sup> Because the word “comprehensive” is commonly understood to mean “complete,” this term can be easily misapplied by examiners to require exhaustive documentation, reporting, and communication, resulting in situations where no amount of documentation, regardless of the quality or volume, will be deemed “comprehensive.”<sup>6</sup> To improve clarity, we suggest the agencies replace the term “comprehensive” with the term “descriptive.”

The agencies should also clarify supervisory expectations about the frequency in which examiners expect community banks to update and assess financial and collateral information,

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<sup>4</sup> *Proposal* at 8, 14.

<sup>5</sup> *Id* at 17.

<sup>6</sup> See *Oxford English Dictionary*, defining the word “comprehensive” as “complete; including all or nearly all elements or aspects of something.” OED Online. Oxford University Press, September 2022.

maintain appropriate risk grading, and ensure proper tracking and accounting for loan accommodations. If examiners expect updates on a quarterly, monthly, or more frequent basis, it would be useful for the agencies to explain supervisory expectations about how timing supports prudent risk management practices, and the factors that warrant changes to, or more frequent, updates.

**II. An examiner’s analysis of “market conditions” should be motivated by trends in a community bank’s actual, local market(s).**

The Proposal directs examiners to analyze a commercial borrower’s repayment ability by considering a number of factors, including “[m]arket conditions that may influence repayment prospects and the cash flow potential of the business operations or underlying collateral.”<sup>7</sup> Because market conditions fluctuate drastically within and across markets, particularly during periods of economic stress, it is imperative examiners evaluate “market conditions” by relying primarily on realistic conditions existing within the bank’s actual, local market(s). Community banks have limited footprints, and the economic conditions within their local market(s) may be markedly different than those materializing within other broader markets. While economic conditions emerging or occurring within a state, region, or national market may ultimately help stress test or inform analysis of market conditions, large market trends should not be unnecessarily imported or superficially replace the actual conditions that exist within a community bank’s local market(s). Accordingly, we encourage the agencies to include language in the Proposal to explicitly instruct examiners to give weight to actual market conditions within a community bank’s local market(s).

**III. In the absence of a truly independent supervisory appeals process, the agencies should require examiners to cite empirical data to support examiner-adjusted valuations of collateral to reflect “market conditions.”**

This same, narrow approach to “market conditions” should be applied if weaknesses are noted in supporting documentation, appraisal or evaluation review and examiners adjust the value of collateral to reflect current market conditions and events. In particular, when examiners suggest impairment is needed, but loan values are otherwise supported by a community bank, its local appraisers, or other professionals, examiner-adjusted valuations should be supported by empirical data to best explain the regulators’ analysis of “market conditions.” We urge the agencies to include this requirement in the Proposal to provide more transparency into valuation adjustments, limit examiner discretion, and ensure examiners do not broadly

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<sup>7</sup> Proposal at 21.

interpret the term “market conditions” to artificially impose big bank or large market conditions on the hyper-local markets served by community banks.

Transparency in valuation adjustments and analysis of “market conditions” is especially important in the absence of a truly independent supervisory appeals process. Neither the OCC nor the FDIC supervisory appeals processes occur in forums that are independent from the respective agencies, and these appeals are not decided before an impartial arbiter.<sup>8</sup> Disagreements among examiners and banks are ripe when examiners have discretion to impose requirements upon banks without citing data to support their decisions. **To ensure banks, their experts, and examiners can resolve disagreements swiftly, thereby reducing the need for a supervisory appeal to be filed, the agencies should expressly require that examiners cite empirical data to support analysis of “market conditions,” particularly when examiners suggest impairment is needed.**

#### IV. Conclusion.

ICBA appreciates the agencies’ efforts to provide useful, up-to-date guidance to community bankers for prudently managing commercial loan accommodations and workouts. We agree with the agencies that some of the principles discussed in the Proposal may be appropriate for commercial and industrial lending secured by personal property or other business assets, and the agencies should more explicitly address this type of lending in its revisions to the 2009 Policy Statement. Should you have any questions or wish to discuss these comments in more detail, please contact Jenna Burke at [jenna.burke@icba.org](mailto:jenna.burke@icba.org).

Sincerely,



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Jenna Burke  
Senior Vice President  
Senior Regulatory Counsel  
Independent Community Bankers of America

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<sup>8</sup> See generally comments submitted by the ICBA, ABA, AABD, BPI, CBA, MBCA on June 21, 2022 regarding *FDIC Amendments to Guidelines for Appeals of Material Supervisory Determinations*, FIL-22-2022 (May 17, 2022), available at: <https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/joint-letter-on-fdic-appeals>.