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August 8, 2005

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Attention: Comments/Legal ESS

Re: Interim Final Rule  
Deposit Insurance Coverage of  
Section 529 Accounts  
*70 Federal Register 33689*  
June 9, 2005

Dear Mr. Feldman:

The American Bankers Association is responding to request for comments by the Federal Deposit Insurance Corporation (“FDIC”) on its interim final rule revising its deposit insurance rules for account of “qualified tuition programs” under section 529 of the Internal Revenue Code. The ABA, on behalf of the more than two million men and women who work in the nation’s banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

### **Background**

Section 529 tuition plans, which permit contributions to tax-advantaged accounts established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, have become increasingly popular. Such plans typically offer participants the opportunity to invest in securities products, and the Securities and Exchange Commission (“SEC”) has advised that these programs must be structured so that securities must be sold through a state instrumentality or investment trust. Under section 2(b) of the Investment Company Act of 1940, such state instrumentalities or investment trusts are exempt from registration with the SEC.

Recently, some states have begun offering participants a bank deposit option. However, because it is the state instrumentality or investment trust that owns the securities or deposits invested by participants, these deposit accounts are treated as corporations under FDIC's deposit insurance rules. 12 C.F.R. 330.1(a). Accordingly, bank deposits held by such plans are not eligible for pass-through deposit insurance. As a result, *all* of the deposits in one bank held by any given plan will be insured up to \$100,000, rather than being insured up to \$100,000 per participant in the plan.

### **Discussion**

FDIC's interim rule would treat deposit accounts held in connection with state-sponsored 529 tuition plans as being owned by the individual participants so long as:

- The funds in the account can be traced to the participant; and
- The existence of the trust relationship is disclosed as required by FDIC's deposit insurance rules.

FDIC believes section 529 programs are designed more like brokered deposits as opposed to mutual funds, to which section 330.1(a) was originally addressed. Moreover, the fact that the funds can be traced directly to the individual participants strongly suggests that pass-through insurance is appropriate.

ABA believes that FDIC's treatment of section 529 deposit accounts is entirely appropriate. We believe that this treatment will benefit consumers and is consistent with the treatment of similar types of programs. Accordingly, ABA supports the interim final rule.

If you have any questions, please contact the undersigned.

Sincerely,



Cristeena G. Naser