CONSUMER BANKERS ASSOCIATION

April 2, 2009

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429

Re: RIN #3064-AD35: Assessments Interim Rule with request for comment

Dear Mr. Feldman:

The Consumer Bankers Association ("CBA") appreciates the opportunity to comment on the Interim Rule on special assessments adopted by the Federal Deposit Insurance Corporation.

The members of the CBA feel strongly that the industry should self-insure the program which provides insurance for depositors in failed banks, and support the FDIC in that objective. They believe, however, that the plan contained in the Interim Rule aggravates an already depressed economic cycle in the United States, and recommend alternative approaches which will reach the same results as those proposed in the Rule with much less adverse economic consequences.

We recommend that the FDIC modify its Interim Rule as follows:

- Reduce the amount assessed in the special assessment to the lowest possible level, consistent with reasonable expectations of losses anticipated by the Corporation; we urge the Corporation to avoid using a worst case analysis in determining what additional amounts might be needed in DIF by the end of the year;
- Weight heavily considerations of the state of the economy in balancing the need for the assessment with the dangers to the solvency of individual institutions and the chilling effect such assessments will have on lending;
- Defer any assessment in excess of 5 basis points to a later period, maintaining the option of imposing additional assessments over time in the future as the economy improves, and consider separating the 5 basis points into two installments of 2.5 basis points spread over two quarters;

- Avoid segregating by size in assessing institutions;
- Use a 10 year period to restore the DIF rather than a 7 year period; and
- Utilize funds received from surcharges on the TLGP to provide additional DIF funds, and consider drawing on the Treasury line of credit temporarily.

<u>Discussion</u>

There is general acceptance that the economy is suffering one of its most serious recessions in decades, and that it is unclear that the bottom of that cycle has yet been reached. A litany of government programs has been instituted to stimulate the economy, and the major focus of these programs is thawing the frozen credit markets.

That of course must rely upon lending by insured depository institutions, so the government, including the FDIC, has been creative in developing and implementing programs to spur bank lending. Those programs have as of yet only been partially successful, and the credit markets are not functioning as they would in a dynamic growing economy.

Care must be taken, therefore, to avoid the imposition of government programs that will hinder the success of the other programs. The imposition of a special assessment on lenders, will withdraw from circulation the funds assessed and the multiplier effect of those funds, and therefore reduce the beneficial effect of other pro-lending stimulus plans.

<u>A special assessment of that magnitude hinders the recovery of the economy</u>

Members of CBA are proud of the fact that the taxpayer has never lost any money as a result of a bank failure, and that the funding of the DIF has always been solely the responsibility of the industry. They continue to support that model, and nothing in this comment is contrary to that.

They believe, however, that the FDIC Act is carefully crafted to give the Board the flexibility to consider many factors as it determines whether or not to impose special assessments and at what level to impose regular assessments. It is explicit in the statute for example, that the Board must take into consideration the economic considerations generally affecting insured institutions and to allow the DRR to increase during more favorable economic conditions and to decrease during less favorable economic conditions even though there might be an increased risk of loss that may exist during such less favorable conditions. Similarly the statute permits the Board to extend beyond 5 years the period during which the restoration of the reserve ratio must occur, and the Board has availed itself of that authority to use a 7 year period rather than a 5 year period to restore the ratio.

We urge the Board to consider extending the period to 10 years, rather than 7, based on the serious nature of the economic downturn and the need to have all possible resources available to spur lending to reverse the cycle.

Surrounding economic conditions, therefore, are a factor, and while the statute has given the Board wide discretion in the establishment of special assessments, it would be consistent with the purposes and structure of the statute to impose upon itself a requirement to consider overriding economic considerations. We are pleased to see that the Board has done this in the sense that it has reviewed the impact upon institutions to see how many and of what size would be in danger of failing following the imposition of the 20 basis point assessment.

We think it should also consider whether institutions would have the ability and inclination to engage in expanded lending following the imposition of such an assessment. It is our judgment that lending would be discouraged by the assessment, and that the assessment would make an adverse difference on the economic well-being of the country and of the depository institutions.

Increasing assessments will result in reduction in deposit flows into banks. Bankers will have to account for the increased cost of assessments by reducing the amounts they pay for deposits or increasing deposit account fees, and heeding the law of supply and demand, some funds will seek better returns elsewhere. Similarly, increased assessments will result in some reduction in capital, just at the time when increasing capital is the primary objective of many government programs. The special assessment runs counter to the purposes of these programs, thereby nullifying them to some extent.

We also recognize that the Board feels that borrowing from the Treasury, even temporarily, will risk losing the confidence of the public with respect to the sanctity of the promise to pay depositors in the case of bank failures. With all respect, we feel that the Board underestimates the public confidence that has been constructed by the FDIC through decades of paying failed depositors in a timely fashion. It also underestimates the confidence the public has in the ability of the FDIC and the Treasury to work together through the Treasury line of credit. We believe there would be no lack of confidence at all should the FDIC temporarily draw upon its line of credit.

While the country at some point might face more difficult economic conditions, and at such time drawing on the line of credit might seem even more reasonable than drawing on it now, the present times are sufficiently difficult that borrowing under that line would seem to be a rational thing to do, when the alternative is to impose assessments that will act contrary to the stimulus that all other government programs are attempting to generate.

There are reasonable alternatives available

We believe the industry could absorb a 5 basis point special assessment in September, or much better, a 2.5 basis point assessment then and an additional 2.5 basis point special assessment in the next quarter, although even one of that magnitude would have some harmful effects on the economy and will retard economic growth generally. We do not believe, however, that there should be a continuing threat of additional new assessments of unknown size, perhaps as much as 10 basis points in the near future, or the tendency will be to be cautious in using capital fully in lending activities. The unpredictability of additional assessments will lead bankers to be conservative and reserve for the possibility of tax levels perhaps higher than would be actually imposed. This in turn would also aggravate the attempts to increase capital and lending.

We would prefer that the Board collect the 5 basis points assessment and reconsider at that time the need for additional assessments.

Even better than a 5 basis point special assessment would be no special assessment and use by the FDIC of the borrowing authority in the statute. We believe that the line of credit is there for just such needs as now exist, and that the use of the line of credit would in no way endanger the confidence of the public in the ability and intention of the FDIC to pay depositors the insured amounts of their deposits in the case of a bank failure.

We have also noted that the FDIC has concluded that it should apply surcharges to use of the TLGP, and that it intends to deposit the fees generated by those surcharges into the DIF. We support that creative thinking by the Board, and believe it responds to the current situation in a favorable way.

Responses to specific questions

The FDIC has asked for comments on specific questions. CBA comments are inserted after each question.

1. Should the June 30, 2009 special assessment be at a rate other than 20 basis points?

    Comment: Yes, for the reasons outlined in the text of this comment. CBA would support the lowest possible rate and believes that a rate in excess of 5 basis points would be particularly harmful to the industry and to the recovery. We also believe that separating the 5 basis point assessment into two collections of 2.5 basis points over two quarters would also be desirable.

2. Should there be a maximum rate that the combination of an institution's regular quarterly assessment rate and a special assessment could not exceed? For example, an institution in Risk Category IV could possibly be charged a regular quarterly assessment at the annual rate of 77.5 basis points beginning in the second quarter of 2009. A 20 basis point special assessment would effectively increase the maximum possible annual rate to nearly 100 basis points. Should the rate be capped at a smaller amount?

   Comment: The CBA takes no position on this question but points out that these are extraordinary times and the economy needs all viable institutions to participate in regenerating a strong economy.

3. Should weaker institutions be exempted, in whole or in part, from the special assessment? For example, should institutions with CAMELS ratings of 4 or 5 be exempted? Should adequately or undercapitalized institutions be exempted? Should institutions that would become undercapitalized (or critically undercapitalized) as the result of the special assessment be exempted?

   Comment: See comment on 2, above

4. Should special assessments be assessed on assets or some other measure, rather than the regular risk-based assessment base?

   Comment: CBA believes they should be assessed on the regular risk-based assessment base.

5. Should there be special assessments of up to 10 basis points? Should some other rate be used? For example, should the rate be the rate needed to maintain the fund reserve ratio at particular value for the reserve ratio?

   Comment: No. CBA believes that the FDIC has the ability to impose special assessments at any time under the Act, and that advance decisions are not necessary for imposition of special assessments. We would rather see the FDIC utilize its many other resources during the time of economic crisis, and once the economy has turned around, then establish a capital restoration plan that will fit the economy and the growth and profitability of the industry at that time. If special assessments, at some constant level that will not impair the economy, are a rational choice at that time, then they should be imposed at that time. It is unnecessary to impose them or to provide itself the authority to impose them in advance.

6. Should FDIC assessments, including emergency special assessments, take into account the assistance being provided to systemically important institutions?

    Comment: No. The CBA believes that the statutory programs established to provide assistance to systemically important institutions should be independent from the capitalization of the DIF. The DIF is for paying insurance for depositors in failed banks and to resolve cases other than those for systemically important institutions in which alternative statutory provisions form the legal support.

CBA appreciates the opportunity to comment on this matter. If you have any questions regarding the foregoing, please feel free to contact the undersigned at (703) 276-3873 or msullivan@cbanet.org.

Very truly yours,

Marcia Z. Sullivan

Marcia Z. Sullivan
Director, Government Relations