NYBA

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April 2, 2009

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

RE: 12 CFR Part 327; RIN 3064-AD35

Dear Mr. Feldman:

In response to the notice of proposed rulemaking published in the March 3 Federal Register, the New York Bankers Association is submitting these comments on the Corporation's Interim Rule with Request for Comments that would impose a one-time emergency special assessment of 20 basis points as of June 30, 2009 to be collected on September 30, 2009. The proposal would also allow the Corporation's Board of Directors to impose an additional 10 basis point assessment if the reserve ratio of the Deposit Insurance Fund is expected to fall to a level that would adversely affect public confidence or to a level that would be close to zero or negative. Our Association strongly supports maintaining the Deposit Insurance Fund (DIF) at a positive level, but urges that the Corporation seek all viable alternatives that would allow the emergency special assessment to be eliminated or significantly reduced. In addition, we oppose the FDIC adopting the authority to impose an additional 10 basis points special assessment without further notice and the opportunity for comment. The New York Bankers Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. Our members have aggregate assets in excess of $9 trillion and approximately 250,000 New York employees.

The New York Bankers Association strongly supports the federal deposit insurance system and believes that the DIF should be maintained at a positive level. The DIF has always relied exclusively on banker premiums to maintain its health and no insured depositor has ever lost a penny. We therefore support the FDIC's efforts to ensure the continued financial soundness of the DIF. We also support the Corporation's goal of not seeking to draw down its credit line at the U.S. Treasury Department, avoiding the use of taxpayer funds to backstop the DIF. We also support legislation to extend the line to $100 billion.

Nevertheless, the current financial crisis has made clear that the structure of the deposit insurance system actually reinforces downward pressures on insured depository institutions during a recession. As institutions see their earnings erode and their asset quality deteriorate, they are being asked to shoulder heavier burdens in deposit insurance premiums to maintain an artificial deposit insurance reserve ratio. In addition, earnings that are siphoned off to strengthen the DIF are not then available to provide capitalization to support the increased lending the economy needs. In the worst case scenario, a new deposit insurance assessment that reduces the earnings of a hypothetical bank by $100 could reduce the ability of that bank to lend by $700 - $800.

Although no one can predict the length or depth of the current recession, the emergency special assessment appears to be coming at what may be the worst time in the financial cycle. Earnings have been diminished, problem assets are increasing, the flow of some types of credit have been interrupted and credit standards have been tightened virtually across the board. In addition, **new accounting rules** that were not in place during the last serious financial crisis appear to be both increasing the pressure on individual banks and increasing the cost of resolution of failed institutions to the FDIC.

Our Association would therefore urge that the Corporation eliminate or minimize, to any extent feasible, the amount of the emergency special assessment. In this regard, we would suggest that the Corporation review a number of optional scenarios for reducing or perhaps eliminating the emergency special assessment.

First, the Corporation should review its reserving methods to assure that they are not over-reserving for potential failures. During the last serious banking crisis in the early 1990's, the FDIC set aside from its then Bank Insurance Fund significantly more reserves than were actually used. While conservative reserving makes sense when the Corporation's tills are flush, in order to preserve funds for future problems, more realistic reserving may be appropriate when the till is empty.

Second, the Corporation, as it already intends, should use other resources to shore up the DIF, such as the availability of larger working capital lines of credit that will be assured with passage of a higher Treasury line of credit, and the use of excess premiums paid into other FDIC programs where the DIF assumes the ultimate risk. Both the TLGP and the newly announced PPIP fit this profile and should be used to subsidize aggressively the DIF.

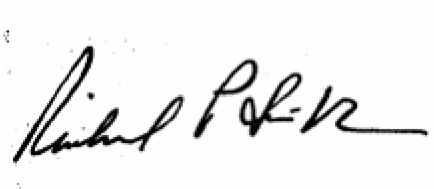
Third, the Corporation should make liberal use of the revisions in accounting standards for other-than-temporary impairments (OTTI) and “Fair Value” accounting being developed by the Financial Accounting Standards Board (FASB). These newly announced standards may allow FDIC to revalue some of the assets already acquired from failed institutions as well as to review the appropriate level of its reserves for anticipated losses. Further, the Corporation should work with FASB to achieve a far more thorough-going review of FASB’s mark to market accounting standards than has thus far been announced. It is conceivable that few additional changes may be warranted, but the fact that the application of current standards has required the write-down of assets that are fully performing according to their terms solely because of difficulties in valuation in illiquid markets suggests otherwise.

Fourth, FDIC should continue the process which it has already begun of exploring other alternatives, such as bank equity-type investments (including preferred stock) in the DIF or a FICO-like public offering to raise additional capital for DIF without using taxpayer funds. At the same time, we believe it critical that, if any borrowing to re-fund the DIF occurs, those institutions who stand ready and willing to pay up-front their prorated share of whatever funds would be raised by borrowing should have the option of doing so and of avoiding the interest charges that might otherwise compound the cost of re-funding the DIF.

One very difficult issue for the industry if a special emergency assessment is finally determined to be necessary is risk-based weighting. Recognizing that some institutions may be driven into liquidation by a fully risk-based assessment, and that increasing the numbers of liquidated institutions will increase the needed level of the assessment, we are not advocating a fully risk-weighted program. In fact, this is a compelling reason to seek all other alternatives. Nevertheless, many insured banks and thrifts believe strongly that institutions that present a greater risk of loss to the DIF should bear a greater share in re-funding it. To some extent, increased risk-weighting may be able to be offset for individual institutions bearing the excess risk-weighted costs by providing for future rebates of excess payments for such institutions that survive the current crisis. It is not inconceivable that proper accounting treatment might allow that potential rebate to be carried as a deferred asset.

For these reasons, the New York Bankers Association urges that the Corporation eliminate or substantially reduce the emergency special assessment on the nation’s banks and thrifts. For these reasons, as well, we oppose providing the Corporation with the authority, without a further notice and comment period, to charge an additional 10 basis point emergency special assessment at some point in the future. We appreciate the enormous work being done by the Corporation during the current financial crisis and we stand ready to support Congressional enactment of legislation necessary to accomplish the reduction or elimination of the emergency special assessment.

Sincerely,



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