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May 22, 2008

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

Re: Assessment Dividends; RIN 3064-AD27

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to offer comments in connection with the FDIC's proposal to implement the assessment dividend requirements under the Federal Deposit Insurance Reform Act of 2005 as amended by the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (together referred to as the "Reform Act").

Summary of ICBA's Position

ICBA's believes that the FDIC proposal is a reasonable compromise between the fund balance method and the payments method that recognizes the contributions that the older institutions made prior to 1997 as well as the contributions that newer institutions have made since 1996. While ICBA does not specifically endorse the FDIC's proposal, we believe that the proposal meets the specifications we suggested in our comments concerning the FDIC's Advanced Notice of Proposed Rulemaking (ANPR) issued last

[1]*The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.*

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing over 282,000 Americans, ICBA members hold more than $982 billion in assets, $788 billion in deposits, and more than $681 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

1615 L Street NW, Suite 900, Washington, DC 20036 ▪ (800)422·8439 ▪ FAX: (202)659·3604 ▪ Email: info@icba.org ▪ www.icba.org

year[2]-- namely, that the method be simple enough for the FDIC to use from year to year, detailed enough so that community banks understand clearly all its attributes, and not subject to sudden or unexpected changes.

However, we would suggest that the 15 year phase out period begin in 2009 rather than 2006 since, during the years 2006-2008, banks were subject to the existing rule governing dividends. The phase out should begin simultaneously with the effective date of the new rule which will be after the temporary final rule sunsets on December 31, 2008. With respect to the definition of an "eligible" premium, ICBA agrees with the FDIC proposal that institutions be credited for premiums charged up to the maximum rate for a Risk Category I institution.

We continue to believe that the FDIC should manage the Deposit Insurance Fund or DIF so that the reserve ratio rarely exceeds 1.35% and dividend payments are avoided. We recommend that the FDIC use the maximum flexibility it has under the Reform Act to keep premiums small and build up DIF reserves to meet the designated reserve ratio steadily and gradually over a three- to five-year period to avoid unnecessarily high assessment rates. By conservatively managing the DIF and gradually increasing its balances, the FDIC can avoid ever having to pay dividends.

Since the DIF stood at 1.22 percent of estimated insured deposits at year-end 2007 and since the FDIC expects the fund to reach the FDIC Board's Designated Reserve Ratio (DRR) of 1.25 percent at the end of 2008 or early in 2009 under the existing rate schedule, we recommend that assessments be lowered for the last three quarters of 2008 from the 5-7 basis points to 2-4 basis points for Risk Category I institutions. We believe that insured deposit growth for the rest of 2008 will be less than the 3-4% growth expected by the FDIC which will mean that the FDIC will have much more flexibility to lower its assessment rates and still meet the DRR later this year or early in 2009.

Background

The Reform Act requires the FDIC to prescribe by regulation the method for the payment of dividends from the DIF. If the DIF reserve ratio rises above 1.35% of insured deposits, the FDIC must dividend out half of the excess and if the DIF reserve ratio rises above 1.5% of insured deposits, the FDIC must pay out the entire excess. For purposes of determining a payment method, the Reform Act directs that the FDIC to take into account (1) an institution's assessment base at the end of 1996 (the last year premiums were assessed until 2007) compared to the total assessment base at the end of 1996, (2) assessments paid since 1996, and (3) amounts paid for higher risk. However, the FDIC has broad discretion in determining the proper balance of these factors.

FDIC Proposal

The FDIC's proposal is a variation of the "payments method" described in the FDIC's ANPR. Under the proposal, any dividend would be divided in two parts. One of the two parts would be allocated based on the ratio of each institution's (including any

[2] 72 FR 53181 (September 18, 2007)

predecessors') 1996 assessment base compared to the total of all existing eligible institutions (an institution's "1996 assessment base share"). The other part of the total dividend would be allocated based on each institution's (including any predecessors') ratio of cumulative eligible premiums over the previous five years to the total of cumulative eligible premiums paid by all existing institutions (or their predecessors) over the previous five years (an institution's "eligible premium share").

The part of any potential dividend that would be allocated based upon 1996 assessment base shares would decline steadily from 100 percent to zero over 15 years; the part of any potential dividend that would be allocated based upon eligible premium shares would increase steadily over the same 15-year period from zero to 100 percent. After the 15-year period, any dividend would be allocated solely based on eligible premium shares. The 15-year period would run from the end of 2006 to the end of 2021 and would govern dividends based upon DIF's reserve ratio at the end of the years 2008 through 2021.

The following chart shows the change in the allocation of potential dividends over time:

TOTAL DIF DIVIDEND DISTRIBUTION TABLE

Based upon the DIF reserve ratio at year-end	Part of total DIF dividend determined by:	
	1996 Assessment base shares	Eligible premium shares
2006	1 (100.0%)	0 (0%)
2007	14/15 (93.3%)	1/15 (6.7%)
2008	13/15 (86.7%)	2/15 (13.3%)
2009	4/5 (80.0%)	1/5 (20.0%)
2010	11/15 (73.3%)	4/15 (26.7%)
2011	2/3 (66.7%)	1/3 (33.3%)
2012	3/5 (60.0%)	2/5 (40.0%)
2013	8/15 (53.3%)	7/15 (46.7%)
2014	7/15 (46.7%)	8/15 (53.3%)
2015	2/5 (40.0%)	3/5 (60%)
2016	1/3 (33.3%)	2/3 (66.7%)
2017	4/15 (26.7%)	11/15 (73.3%)
2018	1/5 (20.0%)	4/5 (80.0%)
2019	2/15 (13.3%)	13/15 (86.7%)
2020	1/15 (6.7%)	14/15 (93.3%)
2021	0 (0%)	1 (100.0%)
Thereafter	0%	100.0%

For example, if a dividend were awarded based upon the Reserve Ratio at the end of year 2018, one-fifth of the total dividend would be allocated based upon 1996 assessment base shares and four-fifths of the total dividend would be allocated based upon eligible premium shares.

The FDIC is also proposing that an eligible premium be defined as the part of any actual assessment that is charged at no more than the maximum rate then applicable to a Risk Category I institution. Under the assessment rate schedule presently in effect, the minimum and maximum rates that can be charged a Risk Category I institution differ by two basis points. At present, the minimum annual rate applicable to a Risk Category I institution is 5 basis points and the maximum rate is 7 basis points. Thus the entire assessment of an institution charged anywhere between 5 and 7 basis points would be an eligible premium. However, Risk Category II institutions that are currently charged 10 basis points would only be able to use 7/10ths of their assessments as eligible premiums.

ICBA's General Comments on Assessments and Managing DIF

ICBA said in connection with the ANPR that industry consensus on a dividend allocation method would be difficult to achieve since most banks would prefer the method that favors their institution depending on whether they are older institutions or newer institutions. **To avoid employing a dividend allocation method that may unfairly favor one set of institutions over another, the FDIC should manage the DIF so that the reserve ratio rarely exceeds 1.35% and dividend payments are avoided.** In our letter to the FDIC concerning the proposal to establish the DRR at 1.25% for 2007[3], we recommended that the FDIC use the maximum flexibility it has under the Reform Act to keep premiums small and build up DIF reserves to meet the designated reserve ratio steadily and gradually over a three- to five-year period to avoid unnecessarily high assessment rates. One advantage of gradually increasing the DIF reserves is that the FDIC can avoid overshooting its goal and significantly exceeding the DRR which has been established for this year as 1.25%. By conservatively managing the DIF and gradually increasing its balances, the FDIC can avoid ever having to pay dividends.

The FDIC staff reported last March that the DIF stood at 1.22 percent of estimated insured deposits at year-end 2007, up from 1.21 percent at the end of 2006. According to FDIC staff, with expected insured deposit growth of between 3 and 4 percent in 2008 and 2009, the fund could reach the FDIC Board's DRR objective of 1.25 percent at the end of 2008 or early in 2009 under the existing rate schedule.

Since the reserve ratio is already at 1.22% and since FDIC staff believes that the DRR objective of 1.25% will be reached very soon, we recommend that assessments be lowered for the second, third and fourth quarters of 2008 so that they would be at or close to the base schedule of assessments which has been established as 2-4 basis points for Risk Category I institutions. We believe that insured deposit growth for the rest of the year will be less than the 3-4% growth expected by the FDIC which will mean that the FDIC will have much more flexibility to lower its assessment rates and still meet the DRR later this year or early in 2009. Even though there is a risk of more bank failures, we still believe that the DIF risk exposure will remain low enough the rest of the year so that losses will not significantly affect the reserve ratio. ICBA also believes that 2008 should be a period of transition to allow banks to gradually use up their one-time assessment credits and to adjust to paying premiums again under the new risk-based assessment system.

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[3] See our letter dated September 22, 2006 concerning the FDIC proposal to establish the DRR at 1.25%.

ICBA's Comments Regarding the Proposal

ICBA stated last year in connection with its comments to the ANPR that the two methods of allocating dividends proposed in the ANPR have advantages and disadvantages for community banks. The fund balance method stresses the contribution that older banks made to the fund prior to 1997 and has the advantage of automatically allocating dividends from year to year without any need for further decision making about the relative importance to assign the 1996 assessment base compared to post-1996 premiums. Absent significant fund losses, each bank's share of the fund would also not change much from year to year so that banks could predict how much a dividend they would receive. The main disadvantage with the fund balance method is that it would take years for newer institutions to catch up with older institutions.

The payments method, on the other hand, would consider more of the contribution that banks have recently made to the DIF and would be relatively easier to administer, particularly if only the most recent payments were considered (e.g., those made in the last three to five years). The payments method would require less data to administer than the fund balance method and dividends would be less affected by fund gains and losses.

ICBA's believes that the FDIC proposal is a reasonable compromise between the fund balance method and the payments method. While ICBA does not go so far as to endorse the FDIC's proposal, we believe that the proposal meets the specifications we suggested in connection with our comments on the ANPR—that (1) the proposed method take into account the importance of contributions that older institutions made to the DIF prior to 1997 as well as the contributions that newer institutions have made to the fund, and (2) that the method be simple enough for the FDIC to use from year to year, detailed enough so that community banks understand clearly all its attributes, and not subject to sudden or unexpected changes.

For instance, the FDIC proposal would from the beginning recognize the importance of the contributions that older institutions made to the fund prior to 1997 when the assessments were often high. These contributions helped to capitalize the deposit insurance fund and the interest earned on this capital continues to help fund the FDIC. On the other hand, a 15-year phase out period does not give these institutions an advantage that could last indefinitely in obtaining dividends, as would occur under the fund balance method. The 5-year look-back period is also long enough to address the problem of a sudden spike in assessments that in retrospect turned out to be too high.

ICBA recommends one change to the proposal. **We suggest that the 15 year phase out period begin in 2009 following the sunset of the temporary final rule rather than 2006 since during the years 2006-2008, banks were subject to the existing rule governing dividends.** The new dividend assessment rule as well as the 15-year phase out period should begin simultaneously in 2009, the first year following December 31, 2008, the sunset date for the current rule.

With respect to the definition of an "eligible" premium, ICBA agrees with the FDIC proposal that institutions be credited for premiums charged up to the maximum rate for a Risk Category I institution. Since approximately 95% of banks are Risk Category I institutions, this option would result in most institutions being credited for the full amount that they pay as a premium. However, this option has the advantage of providing additional incentive as required under the statute to those 5% of institutions that are not Risk Category I institutions to reduce their risk and therefore the amount they are charged for premiums.

Conclusion

ICBA's believes that the FDIC proposal is a reasonable compromise between the fund balance method and the payments method and although ICBA does not specifically endorse the FDIC's proposal, we think that the proposal takes into account the importance of contributions that older institutions made to the DIF prior to 1997 as well as the contributions that newer institutions have made to the fund. We would suggest that the 15 year phase out period begin in 2009 rather than 2006 since, during the years 2006-2008, banks were subject to the existing rule governing dividends and the phase out period should begin simultaneously with the effective date of the new rule. With respect to the definition of an "eligible" premium, ICBA agrees with the FDIC proposal that institutions be credited for premiums charged up to the maximum rate for a Risk Category I institution.

ICBA recommends that the FDIC use the maximum flexibility it has under the Reform Act to keep premiums small and build up DIF reserves to meet the designated reserve ratio steadily and gradually over a three- to five-year period to avoid unnecessarily high assessment rates. By conservatively managing the DIF and gradually increasing its balances, the FDIC can avoid ever having to pay dividends.

Finally, since the reserve ratio is already at 1.22% and since FDIC staff believes that the DRR objective of 1.25% will be reached very soon, we recommend that assessments be lowered for the second, third and fourth quarters of 2008 from the 5-7 basis points for Risk Category I institutions so that they would be at or close to the base schedule of assessments which has been established as 2-4 basis points for Risk Category I institutions.

ICBA appreciates the opportunity to offer comments in connection with the FDIC's proposal to implement the assessment dividend requirements under the Reform Act. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,

/s/ Christopher Cole

Senior Regulatory Counsel