



INDEPENDENT COMMUNITY  
BANKERS of AMERICA

September 26, 2008

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429

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Re: Recordkeeping Requirements for Qualified Financial Contracts

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)<sup>1</sup> appreciates the opportunity to offer comments in connection with the FDIC's proposed recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in a "troubled condition." For purposes of proposed rule, "troubled condition" would mean any insured depository institution that (1) has a composite supervisory rating of 3, 4 or 5; (2) is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; (3) is subject to a cease-and-desist order or written agreement issued by a banking agency; (4) is informed in writing by its primary regulator that it is in troubled condition for purposes of 12 U.S.C. 1831i; or (5) is determined by its primary regulator to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress. Under the proposal, QFCs would include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements.

### ICBA's Position

**As suggested by the FDIC in its request for comments, ICBA strongly supports limiting this proposal only to institutions that have (1) total assets of \$5 billion or**

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<sup>1</sup>*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 nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at [www.icba.org](http://www.icba.org).*

**more and (2) on average, more than 10 open QFC positions on any given day.** Otherwise, to impose the recordkeeping requirements on all institutions in troubled condition would be extremely burdensome for those community banks that are experiencing financial or regulatory problems and have only a few open QFCs on any given day.

The proposed Appendix A recordkeeping requirements would require all insured depository institutions to maintain extensive data files on all QFC positions, counterparties, and QFC contracts in an electronic file format acceptable to the FDIC. Institutions would have to establish unique counterparty identifiers on their QFC data systems and track information such as current market values for all positions, current market value of collateral, and the amount of any collateral excess or deficiency. Data files would have to be updated daily. **Community banks would have to make significant and costly changes to their repurchase agreement software programs to maintain all this information in an electronic format acceptable to the FDIC.**

The primary reason the FDIC is proposing these recordkeeping requirements is to make sure that sufficient QFC information is available in a receivership situation so that decisions can be made quickly as to whether to repudiate a QFC, accept it, or assign it to another party. ICBA believes that the FDIC can obtain this information now with respect to most community banks since so few of them have a significant amount of QFCs. **By limiting the proposal to troubled institutions with \$5 billion or more in assets that have on average more than 10 open QFC positions on any given day, only those larger institutions that pose the greatest difficulty to the FDIC in a receivership situation will be required to maintain extensive electronic records concerning QFCs.**

ICBA appreciates the opportunity to offer comments in connection with the FDIC's proposed recordkeeping requirements for qualified financial contracts. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or [Chris.Cole@icba.org](mailto:Chris.Cole@icba.org).

Sincerely,

/s/ Christopher Cole

Senior Regulatory Counsel