# Bank *of the* West

October 27, 2009

Robert E. Feldman, Executive Secretary

Attention: Comments 550 17th Street, NW

Washington DC 20429

Re: RIN #3064-AD49; Prepaid Assessments

Dear Mr. Feldman:

We at Bank of the West welcome the opportunity to comment on the FDIC's proposal to amend it assessment regulations to require insured institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012.

The FDIC would calculate the institution's prepaid amount by using that institution's base assessment rate in effect on September 30, 2009 and applying that for the fourth quarter of 2009 and for all of 2010. That rate would be increased by 3 basis points for all of 2011 and 2012. For purposes of calculating the prepaid assessment, an institution's third quarter 2009 assessment base would be increased quarterly at an estimated 5% annual growth rate through the end of 2012.

**Banks Should Prepay Assessments For Two Years with an Optional Year at the FDIC's Discretion.**

**The FDIC Should Use Assets Minus Tier 1 Capital for the Assessment Base**

There are several recommendations concerning how the prepayment should be calculated and how it should be refunded. **First and foremost, the assessment base used for the prepayment calculation should be the same assessment base that was used for the second quarter special assessment—that is, an institution's total assets minus its Tier 1 capital.** A broader assessment base such as assets minus Tier 1 capital would result in a fairer assessment system with the larger banks paying a share of the assessments that is proportional to their size rather than their share of domestic deposits.

If the proposal is implemented and only domestic deposits are assessed, banks with less than $10 billion in assets will prepay approximately 30% of the total prepayment assessment although they hold approximately 20% of total bank assets. This would not only be unfair to community banks like Bank of the West, but would not accurately reflect the risk that community banks pose to the Deposit Insurance Fund. The amount of assets that a bank holds is a more accurate gauge of an institution's risk to the DIF than the amount of a bank's deposits. Bad assets, not deposits, cause bank failures, and all forms of liabilities, not just

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deposits, fund a bank's assets. While most community banks are paying based on the average of 89% of their balance sheet is comprised of domestic deposits. The large banks have a significantly different funding mechanism creating more risk.

### A Lower Deposit Growth Rate Should be Used

**For purposes of calculating the prepaid assessment, the FDIC should use a significantly lower estimated annual deposit growth rate for banks located in those parts of the country that historically have had slower deposit growth rates.** Many community banks, particularly those located in small towns and rural areas, have not experienced a 5% annual deposit growth in recent years, especially in a low interest rate environment. In fact, a significant number of community banks have not seen any growth in deposits and don't expect any increase in deposits in the near future until interest rates rebound. It would be an unfair burden on those banks if their prepayments were based on such a high annual growth rate.

### The FDIC Should Establish an Earlier Refund Method

Under the proposal, as of December 31, 2009, each institution would record (1) an expense or a charge to earnings for its estimated regular quarterly assessment for the fourth quarter of 2009 and (2) an offsetting credit to the prepaid assessment asset because the fourth quarter assessment for 2009 would have been prepaid. Each quarter thereafter, an institution would record an expense for its regular quarterly assessment for that quarter and an offsetting credit to the prepaid assessment asset until this asset is exhausted. If the prepaid assessment is not exhausted by December 30, 2014, any remaining amount would be returned to the institution.

**The FDIC should establish an earlier refund method for those banks that have not exhausted their prepaid assessment by December 31, 2012. We** recommend that refunds for the three year period should be made by June 30, 2013 if the institution has not exhausted its prepaid assessment asset by then. Two years is entirely too long for banks to wait before they receive a refund. We also recommend that annual refunds be made soon after the end of any year when a bank has significantly overpaid its prepaid assessment. For instance, if a bank's prepaid assessment for 2010 exceeds by 20% the amount of its actual assessment for that year, then the FDIC should refund the excess by June 30, 2011.

### We Commend the FDIC for its Risk Weight of Prepaid Assessments and For Exemption Procedures

The federal banking agencies' risk-based capital rules permit an institution to apply a zero percent risk weight to claims on U.S. Government agencies. We **commend the FDIC for its conclusion that the prepaid assessment would qualify for a zero risk weight and not a 20% risk weight that has traditionally been applied to assets covered by the FDIC's deposit insurance.** The lower risk weight should be applied since the claim is legitimately

a claim on a U.S. government agency. This decision will also help those community banks that are on the margin of significantly meeting their risk-based capital requirements.

Of additional concern is the procedure for banks to apply for an exemption from the prepaid assessment. Those community banks that are having severe liquidity or cash flow problems should have an opportunity to apply for an exemption and explain to the FDIC why they should be exempted. We would hope that the FDIC establish clear guidelines for determining when a bank can obtain an exemption. There should be some consideration given to banks that do prepay such as a discount or perhaps an additional fee for not prepaying.

Our bank, not unlike many community banks have been burdened this fiscal year with the additional assessments to the fund. We are concerned that the examiners will not take into consideration the impact of such extraordinary and unbudgeted expenses. The assessments come at a time when banks are trying to build their reserves and capital. Additionally, the extra expense that decreases earnings and capital decreases the amount of monies that banks can leverage back into loans and community support projects. The burden of restoring the fund in lump sum creates many negative consequences to Main Street.

While we support the FDIC and recognize the need to fund the DIF, we ask that the board give every consideration to any unintended consequences of further burdening the banks in this environment and would ask that every alternative and supplemental solution be explored.

Sincerely,

Cynthia L. Blankenship
Vice Chairman