Missouri Bankers Association
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October 28, 2009 E-mail: Comments@FDIC.gov.

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 29429

Re: RIN 3064–AD49; Prepaid Assessments; 12 CFR Part 327;
Due October 28, 2009

Mr. Feldman:

The Missouri Bankers Association (MBA) appreciates the opportunity to comment on the 3 year "prepaid assessment" due December 31, 2009. MBA copartners with the ABA and brings together Missouri banks and Savings and Loan Associations. MBA following the lead of the ABA in this area, works to modify excessive drain on bank capital to enhance Missouri's banking industry and strengthen Missouri's economy and communities. MBA's members – the majority of which are banks with less than $50 million in assets – represent over 30,000 employees and roughly 90% of commercial banking in Missouri. Increasing bank capital is the essential ingredient for increasing bank lending…and contributing to better times.

We appreciate the work that the FDIC, starting in February 2009 and involving bankers from around the country, has done to consider options for how best to meet the costs of bank failures and to rebuild the Deposit Insurance Fund to its normal operating range. The banking industry is committed to ensuring the financial stability of the FDIC. Particularly during this time of uncertainty, bankers recognize the importance of maintaining public confidence in the FDIC. Missouri banks have been and continue to be prepared to meet their obligation to the FDIC so that there is no need to use the line of credit at Treasury except for the most exceptional circumstances. How this is accomplished is the critical question.

We believe that the prepaid assessment proposal does strike the right balance at this time to assure that the FDIC has the cash necessary to meet its obligations without impairing banks' ability to meet their obligations to their communities. The financial impact from assessments this year has already been significant, as banks nationwide will pay nearly $18 billion in premiums – including the large $5.6 billion special assessment paid in the second quarter. As another special assessment would do more harm than good as it would directly reduce bank income, hinder capital growth, and make lending much more difficult. At this critical time when the economy is just beginning its recovery, having an

alternative that is less pro-cyclical and spreads the cost over time is the right policy. Thus, the prepaid assessment is far superior to another special assessment.

Prepaying three years of assessments is a very large request for cash and does come at a cost to the industry. It impacts the liquidity of the banks, reduces resources available for lending, and would be a non-earning asset and, therefore, has a cost versus other earning-asset options. Banks are holding higher levels of liquid assets for important reasons. First, bank customers have found that the safest place for their money in a weak economy and with a volatile stock market is in the bank – often in an FDIC-insured account. Some of this money will flow back out to the stock market and other investments. Second, loan demand is down considerably for most banks, but not all, as a consequence of the recession's impact on business's needs for inventories, expansion or mergers financing. We expect this to reverse itself as the economy recovers, and banks will quickly redeploy this liquidity by extending new loans. Thus, most banks, but not all, have the liquidity on hand to meet the prepayment request. However, as markets continue to improve, having fewer liquid assets makes it more difficult to meet new demands for credit. Furthermore, as more interest-earning options materialize, the opportunity cost of holding a non-interest earning asset will increase.

Bankers also recognize that there are considerable unknowns about the timing and costs of bank failures. There are many differences within the banking industry as to what the future will bring; while we hope for the best, many bankers fear the worst. If it is the latter, MBA strongly suggests that all borrowing options be reconsidered and public comment solicited. If economic conditions further deteriorate, many banks believe that it may make sense to use the FDIC's Treasury line of credit options rather than impose further costs through additional prepayments, higher quarterly assessments, or certainly additional special assessments. Because of the large amount of cash requested under the proposal ($45 billion) nationwide, many banks have questioned whether there is a need for the full 3-year prepayment or whether less would suffice. These banks have suggested a shorter timeframe of two years, with an optional third year only if it is necessary. Such a structure would preserve cash within the bank until needed, and any subsequent draw for cash would be based on the current assessment base and risk category of the institution. This may also allow banks to do tax planning for expenses, which we discuss more fully later in this comment letter.

As the primary federal bank regulator for most state chartered banks, the FDIC should use care and training in upgrading banks for the mountain of new federal bank regulations proposed or adopted in 2009 instead of criticism.

With consumer compliance regulation increasing and convenience overdraft checking subject to increased FDIC focus, the primary purpose of the FDIC to insure the safety and soundness of bank assets may be undermined. MBA urges the FDIC to limit extreme compliance criticisms and refunds in the face of enormous cost pressure through the prepayment of deposit insurance premiums.

The FDIC asset pool made up of prepaid premiums should not tip or accelerate FDIC insolvency actions to close banks.

Several Missouri banks have questioned allowing the FDIC to build up a huge pool of perhaps $45 billion; they believe this may tip the balance against a marginal bank that could survive, and/or, allow the FDIC to close banks that could be saved. On one hand, FDIC solvency is extraordinarily important; on the other hand the temptation to fit closing banks into a routine bureaucratic schedule so that FDIC manpower is best utilized and the manpower on hand is busy, may be a slippery slip. **Saving Missouri banks is very important to the Missouri Bankers Association.** Nationally recoveries from liquidated bank assets should be maximized to protect the FDIC insurance fund. Recoveries that are disposed of by auction (improving recoveries Page 5), which is the functional equivalent of a fire sale, should be minimized to rebuild the FDIC asset pool.

Prompt return of excess cash should be made at the end of the program; annual "true-ups" to return excess cash should be considered.

Given the current economic situation, it is very likely that the expected premiums over the next three years will differ from the actual premiums. Institutions that prepaid more than the actual billed amount would not receive any return of excess payments until December 2014. We see absolutely no justification for waiting such a long time to return any excess cash after the last actual premium is assessed (December 2012) under this program. This reconciliation should occur soon after that last billing, perhaps with an option provided to banks either to receive a cash refund or to maintain any remaining cash on account with the FDIC to be credited against any future premium period.

In fact, while minor differences would not have a significant impact on banks, large deviations may. Thus, for cases where the actual payments are substantially less than the prepaid amount, bankers have suggested that there be annual true-ups to reconcile those differences. Such annual adjustments for overpayments may make the final reconciliation less complicated and certainly less large.

Banks chartered after September 30, 2009, and those banks excused from the prepayment, should be required to pay premium surcharges for the benefit received.

As noted above, the prepaid asset does not earn interest (as proposed), which carries with it the obvious opportunity cost of the interest foregone had those funds been invested in other assets. Many bankers believe that some discount would be appropriate to reflect this cost. We appreciate the concern raised by the FDIC that this might constitute a borrowing, which would trigger other statutory requirements that must be met. However, the treatment serves to point out an important disparity between banks that do prepay and those that do not. If a discount were provided, those prepaying would receive a benefit for the sacrifice they are making; those excused from the prepayment do not receive that benefit. Without a discount, the opposite situation occurs: those that are excused from paying (which includes banks chartered after September 30, 2009) are advantaged

relative to those that do pay and hold the non-earning asset. The impact can be sizable over the three-years for which the prepayments are required. Thus, we believe the FDIC should consider an appropriate method to resolve this inherent inequality.

The prepaid premiums assets should receive a zero percent risk weight.

MBA strongly supports the proposal that the prepaid assessments would receive a zero percent risk weight in risk-based capital calculations. We also concur that assets guaranteed by the FDIC under the Temporary Liquidity Guarantee Program (TLGP), including insured deposits of other banks and guaranteed debt should also receive a zero percent risk weight. These assets, like securities issued by the U.S. Treasury, have no chance of default, and therefore pose no credit risk, and therefore should be zero-weighted in computing risk-weighted assets.

Making prepaid assessments transferable helps alleviate the burden of these non-earning assets.

MBA supports the transferability of prepaid assessments. As with any asset, banks should be able to freely buy or sell prepaid assessments if there is an economic reason to do so. It is likely to be a useful tool for some banks to help manage liquidity, particularly if there is significant variation between what is prepaid (the expected premiums) and the actual assessment. We urge the FDIC to welcome these transfers and design the procedural details of the prepaid assessments in a way that facilitates such transfers among banks.

Banks should be allowed to use remaining assessment credits for prepaid assessments.

According to the proposal, "residual one-time assessment credits would not reduce an institution's prepaid assessment" and would be used to cover quarterly premiums before prepaid premiums. For these banks, therefore, the proposed treatment would essentially increase prepaid assessments relative to the actual payments that would be required and thereby increase the burden. This places an unfair burden on these banks. Moreover, while the amount of residual assessment credits is miniscule relative to the nationwide $45 billion of prepaid assessments, it is important to the banks that hold these credits. MBA proposes that a more fair treatment would be to allow the amount of assessments to be prepaid to be reduced by residual assessment credits. Given the amount of remaining assessment credits, the effect on FDIC cash flow would be insignificant.

The 8-year recapitalization proposed provides a reasonable balance for rebuilding the fund.

MBA supports FDIC's recommendation to extend the period to eight years to rebuild the insurance fund to 1.15 percent of insured deposits (with no additional special assessments and no change in the assessment schedule through 2010). This longer-term perspective is

critical to allow banks to rebuild earnings and capital and meet credit needs in their communities.

As part of the recapitalization and prepaid assessment plans, the assessment schedule would be raised by three basis points starting in 2011. We would note that many bankers have questioned why this is an across the board – rather than a risk-adjusted – increase.

TLGP fee income should be transferred to the Deposit Insurance Fund.

MBA has consistently urged a transfer of excess funds from the TLGP into the insurance fund. We supported the creation of the surcharge fees on guaranteed debt and are pleased that these monies have already contributed nearly $600 million in support of the insurance fund. As we have stated many times before, we believe the risk of loss under the debt guarantee program is less than the $9.4 billion in fees already collected, enabling a portion of those monies to be transferred into the insurance fund. We were pleased to learn that discussions are already underway between the FDIC and the Government Accountability Office (GAO) about how to do this, and we urge quick action to make such a transfer a reality.

The FDIC should structure the payments in a way that facilitates tax planning for banks.

In order to avoid unintended negative tax results, a special invoicing and collection process needs to be established for the prepayments. This special structure is intended to allow for the possibility of attaining a matching of the timing of a portion of the payments with the tax deduction associated with the payments.

FDIC should work to improve the recoveries in bank failures.

We note that the need for additional assessments comes against a backdrop of higher costs to resolve institutions that have failed recently. MBA fully appreciates the tremendous amount of work facing the FDIC regarding failed and failing institutions. We also recognize that to the extent that the FDIC learns from these operations and is able to make improvements, the costs to the fund and the need for additional resources are reduced.

We believe that certain steps taken during a resolution can inadvertently and unnecessarily increase those costs. For instance, the prompt post-closing sale of real estate in depressed markets, while understandable from the perspective of wanting to conclude a resolution quickly, results in a lower price paid to the FDIC for the assets. This further depresses the market prices obtained by other banks trying to work through problem assets of their own. Managing the release of these assets into the market for optimal return would likely result in greater returns to the FDIC.

The FDIC's costs also appear to be increased as a result of FDIC contractors rejecting reasonable offers for assets and then sending the assets to be sold at auction where they

often are sold for a fraction of the earlier offer.   While this outcome insulates the contractor from being second-guessed for having sold an asset at a below-market price, it causes the FDIC to receive less for the asset and thereby increases the resolution costs. We urge the FDIC to revisit this issue and clarify as necessary the circumstances in which it is appropriate for a contractor to sell an asset directly without going through an auction.

We have also heard from bankers that the process to acquire a failing bank is much more complicated than necessary, and as a result, discourages healthy banks from bidding. Thus, we encourage efforts to improve methods for resolving failed banks and to make the acquisition process for a failed bank easier and more straightforward.

Finally, MBA appreciates the receptivity of the FDIC to suggestions from bankers on how to improve the resolution practices, and we note that some recommendations that we have supported have already been adopted by the FDIC, such as enabling banks involved in loan participations to work out a purchase agreement before other sales approaches are considered.

Bank examiners should not further penalize banks' liquidity position after the prepaid assessment is made.

Such a large prepayment will have an implication for a bank's liquidity position. We are concerned that bank examiners will criticize banks' liquidity position as a result, which could lead to further downgrades on the institution and higher future quarterly premium costs. We believe that examiners should not penalize banks for this prepayment, just as they were asked not to penalize bank earnings in the second quarter as a result of the large special assessment.

MBA appreciates this opportunity to comment on the proposed rule. We would be happy to discuss further any of the recommendations made above.

Sincerely,

(signed)

Max Cook
President