To: Comments
From. W. Louie, Los Angeles, CA

The members of the FDIC board have a fiduciary duty to the FDIC and a quasi-fiduciary duty to each and every insured depositor in a FDIC insured depository institution. The FDIC is mandated to maintain an insurance fund for insured deposits, and based on the FDIC Staff memorandum ("Staff Memo") to the Board dated September 28, 2009 there is an expected negative balance in the insurance fund and the reserve ratio as of September 30, 2009.

The proposed action by the FDIC is for insured depository institutions to prepay three years of regular assessments in the fourth quarter of 2009. While the aggregate prepayment according to the Staff Memo amounts to approximately $45 billion, the Staff Memo indicates that approximately most of another $75 billion in losses to the insurance fund will occur during the rest of 2009 and 2010. So the first comment is that the prepayment alone is insufficient to maintain the insurance fund at an adequate level as early as some time in 2010. In that the insurance fund likely has a negative balance as of September 30, 2009, the FDIC needs to be more transparent as to why earlier action was not taken. A regulated insurance company would have been shut down and put into receivership prior to reaching that stage. So while the appearance of the FDIC to the public is important, it is also of equal importance that the FDIC be more transparent as to its financial condition, including disclosure under GAAP of contingent losses associated with loss sharing agreements between the FDIC and various successor banks of certain assets of failed banks.

The second comment is that the FDIC has the legal authority to borrow on a line of credit from the U. S. Treasury or the Federal Financing Bank and needs to consider those more seriously as viable options. The public announcements by the Chairman of the Board are clear that she wants no taxpayer funds to be used to maintain the insurance fund. The FDIC borrowing on a line of credit is not the same as using taxpayer funds for direct injection into the insurance fund without compensation to taxpayers. Again, the FDIC has legal authority to borrow on the line of credit from the U. S. Treasury or Federal Financing Bank, and banks are already tainted with the "bailout" brush because of TARP and CPP.

It has also been reported in the media that the Chairman and the Secretary of the U. S. Treasury have disagreements over the proposal for a single super regulator and that the Secretary made it clear with less than civil language about dissent from the other banking regulators. A clash of egos is not a good reason to not consider the option of the FDIC borrowing on the line of credit from the U. S. Treasury or the Federal Financing Bank. In view of the fact that the Federal Reserve has announced that it intends to keep interest rates low for now, the servicing costs on the line of credit should be reasonable. Bank assessments are already high enough that banks are passing banking costs (including assessments) to their customers through various fees and increased fees. The bankers should not be given another reason for offering a negative interest insured deposit account, or people will consider depositing money in their mattresses.

The next comment is on the idea of voluntary prepayment of the three year assessment. The FDIC should not consider a voluntary and involuntary prepayment assessment as a viable option because of the conflict of interest potential. The possible idea that bankers or FDIC staff could be able to use that choice as leverage for more lenient or more stringent examinations or other supervisory decisions should be nipped in the bud.

As the members of the Board know the FDIC did not cause the credit bubble or the related credit meltdown last September. But unlike investors who were like the "boiling frogs" until the bubble burst, the FDIC could have done much more to protect the insured deposits of depositors by providing better supervision of its subject banks and related maintenance of the insurance fund.

During a good part of the last twenty years, the economy has been fueled by a prolonged period of consumers borrowing and spending allowing credit to balloon to the point that interest rate spreads between junk bonds and equivalent Treasury securities narrowed to irrational levels before the credit bubble burst. The advent of synthetic securities, including trust preferred securities and a shadow market allowed the credit bubble to further balloon. Also during this period, bankers and investment bankers urged for legislation to allow for the movement away from traditional safe and sound banking standards in part to facilitate this credit bubble. One example is the repeal of the Glass-Steagall Act allowing bankers and investment bankers to work under a financial holding company. Its repeal was rationalized as necessary to modernize banking. Banks also moved away from investments in fed funds sold to much riskier investments including trust preferred securities, GSE's, CDO's, and CMO's that were not appropriate bank investments despite their then high investment ratings.

Banks also got involved in derivatives and guaranteed credit default swaps to earn additional revenues. In terms of risk management of loans, banks used computerized risk assessment models with faulty and untested assumptions to make multitudes of loans without the detailed traditional underwriting analysis and documentation. Banks also let high executive compensation drive management decisions of the bank to reinforce the bank's engaging in high risk high return investments and activities. The recent bank failures include those with extraordinary high net loss to total assets ratios including Community Bank of Nevada. The point of this is that the while the FDIC has implemented much on a reactive basis to stem the damages of the credit meltdown, the FDIC needs to (i) exercise better risk management as related to the safety of insured deposits by being more conscientious and proactive about enforcing bank safety and soundness standards and (ii) be an activist champion for the insured depositors to take battle against these so called "bank modernization" activities, even if it means taking on Congress, the Federal Reserve Board, and others members in the Executive Branch. So the final comment is that regardless of the insurance fund restoration option decided by the Board, the members of the Board on a collective basis need to establish a framework and a detailed policy for a better system of supervising insured depository institutions for the primary purpose of safeguarding the public's insured deposits.