May 21, 2009

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

Re: RIN #3064-AD35: Assessments Interim Rule with request for comment - second comment letter

Dear Mr. Feldman:

The Consumer Bankers Association ("CBA") filed its comments on the Interim Rule on special assessments on April 2, 2009. Based on various media reports forecasting certain major changes to be made in the assessment by the Corporation, we file this supplemental comment.

We support the replenishment of the Deposit Insurance Fund. We do believe that care must be taken to avoid exacerbating the fragile revival of lending by imposing too suddenly a major cost on the very banks we are asking to lead the revival, and repeat our request that the FDIC carefully consider the impact of this assessment on the banking system and the economy.

Media reports suggest that the FDIC will change the assessment base from domestic deposits to total assets less Tier I capital, and assess the special assessment against that base. We do not believe that such a dramatic change in well-established FDIC rules should be made without an opportunity for review and comment by the public and ask that the proposal be reissued for a 30 day comment period.

This possible change was not in the Interim Rule however, but rather in a question, one among many. Had the assessment base been changed in the Rule itself, much more intense scrutiny would have been made of the issue. The public would have had a more appropriate notice that such a change was being considered and would have responded accordingly. At this point, the FDIC has not had the opportunity to hear all of the comments and concerns that interested parties and the public may have wished to propose.

Historically, assessments have always been obtained by applying a rate to an assessment base that is fixed in the statute. That base is domestic deposits, and the question of whether or not that should remain the appropriate base has been debated. It has always remained, notwithstanding the efforts of some banks, who believe they will obtain a competitive advantage if the base is changed from domestic deposits to total assets.

The public policy argument, however, has not gone their way. In part it is because, with one exception 25 years ago (Continental Illinois, the failure of which caused a $1 billion loss to the FDIC in 1984, 8 years before FDICIA was passed), the largest banks that will be disadvantaged by this change have not caused any loss to the Deposit Insurance fund for the entire period that the Fund has been in existence

Looking at all failures since the passage of FDICIA, only one institution with assets greater than $5 billion failed between 1992 and the failure of IndyMac Bank, a 16 year period. That bank, a $370 billion institution, and its failure did not cause any loss to the Deposit Insurance Fund. Since then Indy Mac and Downey Savings have failed, one at $37 billion in assets and the other at about $13 billion. Those two caused losses of around $10 and $1 billion respectively.

The damaging losses to the Fund, therefore have not been from failures of the largest banks, and the depleted state of the Deposit Insurance Fund is not attributable to losses the FDIC has suffered from failure of these banks.

Since the FDIC has the responsibility to pay insurance on insured deposits, basing the assessment on deposits is a logical approach, and changing to assets is not. Any reason for adopting a dramatic change in the assessment base, without substantial opportunity for comment, must be found somewhere other than in the risk of loss to the deposit insurance fund.

We respectfully request that the assessment be based upon the statutorily designated base of domestic deposits, and if the FDIC wishes to change that base, we respectfully ask that it publish the proposed change in the Federal Register and provide an opportunity for the public to comment.

As in our first letter, we ask again that the assessment base be as low as possible in recognition of the fragile condition of our economy. We also ask the special assessment be divided and that one portion of it be imposed this year and a second portion be imposed next year for accounting purposes, rather than imposing it all in this one year. Imposing it all now and collecting it over a number of quarters will result in a charge this year for the full amount, regardless of when it is collected.

Please contact me if you have any questions or would like additional information.

Marcia Z. Sullivan
Director, Government Relation
Consumer Bankers Association