April 2, 2009

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 Seventeenth Street, NW
Washington, DC 20429

Attention: Comments – RIN No. 3064-AD35
Re: Interim Rule With Request for Comments – Assessments

Dear Mr. Feldman:

The Independent Community Bankers of America[1] appreciates the opportunity to offer comments in connection with the FDIC's interim rule to impose a 20 basis point emergency special assessment on June 30, 2009. The interim rule also provides that, after June 30, 2009, if the reserve ratio of the FDIC's Deposit Insurance Fund (DIF) is estimated to fall to a level that the FDIC Board believes would adversely affect public confidence or to a level which shall be close to zero or negative at the end of a calendar quarter, an emergency special assessment of up to 10 basis points may be imposed by a vote of the FDIC Board.

Summary of ICBA's Position

Whether it's a 20 basis point or a 10 basis points assessment, the special assessment, when combined with the high base assessment rates for 2009, is an excessive burden and unfairly penalizes community banks. For community banks, the special assessment is particularly unfair since they did not participate in the risky practices that led to the economic crisis.

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[1] *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.

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The FDIC should explore all alternatives for funding the DIF in lieu of a special assessment or an emergency special assessment. Whether or not legislation is passed that increases the borrowing authority to the FDIC, ICBA believes that the FDIC should seriously consider using its authority to tap its line of credit with the Treasury or borrow from the industry to temporarily fund the DIF in lieu of imposing a 10 or 20 basis point special assessment. Another alternative that the FDIC should consider is using a vehicle similar to the Financing Corporation (FICO) to issue bonds to the public. The proceeds from these bond issuances would then be invested into the DIF. Other types of FDIC borrowings or capital issuances should also be studied. Under these alternatives, the DIF will still be industry-funded as the industry will be required to pay back the amount borrowed plus interest, but the cost to the industry of restoring the DIF would be spread over time, avoiding a procyclical impact on the industry during the economic crisis.

Any special assessment and all future assessments should be based on total assets (minus tangible capital), not total domestic deposits, to more fairly distribute the burden so that banks that caused the problems pay a bigger share of the assessment. Using an asset-based assessment base would make the assessment system fairer, would more accurately reflect an institution's risk to the DIF, and would be consistent with the system that the FDIC uses when it assesses insured institutions for losses that arise when assistance is provided under the systemic risk provisions of the Federal Deposit Insurance Corporation Act.

Too-big-to-fail institutions should pay a systemic risk premium to the DIF that is large enough to pay for the substantial risk of insuring these institutions. FDIC assessments, including emergency special assessments, should take into account the assistance being provided to systemically important institutions. If a special assessment is imposed on the industry, ICBA supports a change in the accounting rules that would allow banks to amortize the costs over a period of five to seven years. The FDIC should also consider a maximum assessment rate for those troubled institutions that could possibly fail as a result of the payment of the special assessment.

ICBA's Position

I. The Special Assessment Unfairly Penalizes Community Banks

ICBA strongly supports our nation's federal deposit insurance system which is critical to depositor confidence in the banking system. A strong FDIC fund is important to maintain public confidence that the FDIC has adequate resources to protect the nation's depositors.

ICBA supported recent changes to the FDIC risk-based assessment system to make it more risk sensitive and commended the FDIC when it recently adopted a seven-year Restoration Plan to recapitalize the DIF. In our comment letter to the FDIC concerning proposed assessments for 2009, we urged the FDIC to adopt more modest base assessment rates in order to keep as much money as possible in local communities for lending at this critical time.

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However, instead of adopting modest base assessment rates for 2009, the FDIC has adopted a final rule that calls for high base assessment rates for 2009 and an interim rule that would impose a 20 point special assessment effective June 30, 2009. On March 5, 2009, FDIC Chairman Sheila Bair announced that the FDIC could reduce the special assessment to as low as 10 basis points if Congress enacted legislation that would increase the FDIC's borrowing authority from Treasury.

Whether it's a 20 basis point or a 10 basis points assessment, the special assessment, when combined with the high base assessment rates for 2009, is onerous and unfairly penalizes community banks. Effective for the second quarter of 2009, the base assessment rates for Risk Category I banks which comprise approximately 90 percent of the nation's banks, will range from 12-16 basis points as compared to 5-7 basis points for 2008. This increase in base assessment rates and the special assessment comes at a time when most community banks have already used up their assessment credits.

For instance, a typical community bank with approximately $300 million in deposits paying the lowest risk-based assessment would likely have paid in 2008 a total of $105,000 assuming it had enough credits to offset 30 percent of its total assessment.[2] For 2009, the total assessment including the 20 basis points special assessment would be $960,000 assuming that bank no longer has any more assessment credits, a whopping 914 percent increase. Moreover, these high assessments hit community banks particularly hard since the economy is experiencing a significant downturn and community bank earnings are beginning to fall.

Another way to look at the burden of the special assessment is to compare it with last year's total bank earnings. The industry's full year 2008 net income was $16 billion. The 20 basis point special assessment would pull out $15 billion from the industry in the second quarter of this year on top of the base quarterly premiums which will be between $3 billion and $4 billion per quarter. Even if the special assessment is at half the cost, it still will impose an enormous burden on community banks at the very time that they are making every effort to lend to their local communities.

The special assessment when combined with the base assessment will have a much more serious impact on community bank earnings and capital than the FDIC estimates. According to the FDIC, for profitable institutions, the special assessment would result in pre-tax income that would be between 10-13 percent lower than if the FDIC did not charge the special assessment. For unprofitable institutions, pre-tax losses would increase by an average of between 3 and 6 percent**. ICBA believes these estimates understate the impact of the special assessment on community banks.** Our recent survey of ICBA member banks show that 32 percent estimate the special assessment will consume 16-25 percent of their 2009 earnings and 17 percent estimate it will consume 26-40 percent. Moreover, the survey revealed that 31 percent of the

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[2] According to the FDIC, during 2008, banks were expected to offset approximately $1.4 billion of the total assessments of $4.4 billion with assessment credits, or about 30 percent of their total assessments for the year. By the end of 2008, very little (about 4%) of the original $4.7 billion of assessment credits that were awarded were expected to remain unused.

respondents expect the special assessment to seriously impact their ability to lend money to their local communities.

For community banks, the special assessment is particularly unfair since they did not participate in the risky practices engaged in by large financial institutions that led to the economic crisis. Very few community banks had anything to do with subprime lending, with structured investment vehicles, or exotic mortgage investments, yet they are being penalized by having to pay this onerous special assessment. For instance, most of the $18 billion in actual losses that the DIF incurred in 2008 did not come from the resolution of community banks but came from the resolution of one bank—IndyMac Bank F.S.B.—a large bank that was engaged in risky lending practices.

Furthermore, large banks have access to Troubled Access Relief Program (TARP) money to pay for their assessment. Community banks initially could not access TARP due to the structure of the term sheet and when they finally received access, they have had to prove their viability to receive TARP funds. In the meantime, hundreds of Subchapter S banks and mutual institutions still do not have access to TARP funds.[3] **It is unfair that so many of the large banks, some of whom are troubled as a result of their risky lending and investment practices, have received tens of billion of dollars of TARP money and will have the ability to use these taxpayer funds to pay this assessment.**

The community banking industry is the bright spot in this current economic storm. The vast majority of community banks are well-capitalized, common-sense lenders that have been and want to continue to help in the economic recovery process in cities and towns throughout America. This special assessment will only hinder their ability to do so.

II. The FDIC Should Explore All Alternatives for Funding the DIF in Lieu of the Special Assessment Including Using its Existing Authority to Borrow from the Treasury

ICBA agrees with the FDIC that it is important that the DIF fund not decline to a level that could undermine public confidence in federal deposit insurance. The DIF balance fell in 2008 primarily because of $40 billion in loss provisions. The balance as of yearend was $19 billion, which is net of loss reserves totaling $22 billion set aside for failures anticipated in 2009. The DIF's reserve ratio equaled 0.40 percent on December 31, 2008, which is 36 basis points lower than the previous quarter.

However, the FDIC has many alternatives to funding the DIF in lieu of imposing a special assessment. It is important to realize first that the DIF's resources are already at a fairly high level--$41 billion when the $22 billion set aside for possible failures in 2009 is counted. If you combine the $41 billion that DIF already has with the $60 billion that the fund will take in over the next five years from base assessments (e.g., $12 billion a year times 5 years), the FDIC should have the resources to cover the estimated $65

[3] The Treasury Department has issued a Subchapter S bank term sheet but since documentation has not been finalized, many Subchapter S banks have been unable to close on their TARP applications and obtain TARP funds. So far, the Treasury Department has not completed a mutual institution term sheet.

billion in losses over the next five years and rebuild the DIF back to its normal operating range without imposing a special assessment.

If additional funding is needed, the first and perhaps the easiest alternative to imposing a special assessment would be to use the FDIC's existing authority to borrow from the Treasury. The FDIC's borrowing line of credit with the Treasury was statutorily set in 1991 at $30 billion and has not been raised since that date. In the meantime, assets in the banking industry have more than tripled, from $4.5 trillion to almost $14 trillion.

ICBA fully supports legislation that would increase the borrowing authority of the FDIC to $100 billion or more. We agree with the FDIC that by expanding the flexibility to access working capital, the FDIC will have less immediate need for cash from the industry as a buffer against unexpected losses and that the FDIC's borrowing authority should keep pace with the growth in industry assets. As mentioned above, the FDIC has suggested that it could cut the special assessment to 10 basis points if such legislation were approved and instead of pulling $15 billion out of the industry, could sufficiently fund the DIF with half that amount.

However, whether or not legislation is passed that increases its borrowing authority, the FDIC should seriously consider tapping its line of credit with the Treasury to temporarily fund the DIF in lieu of imposing a 10 or 20 basis point special assessment or imposing a subsequent special emergency assessment. The FDIC says that it views the Treasury line of credit as available to cover unforeseen losses, not as a source of financing projected losses. However, if projected losses are high, the economy is weak, and the banking industry is already paying high base assessment rates, this is the appropriate time for the FDIC to seriously consider using its line of credit with Treasury. Borrowing from the Treasury would keep needed capital within communities for lending to support economic recovery. The DIF will still be industry-funded and the industry will be required to pay back the amount borrowed plus interest, but the industry would be able to spread the cost of restoring the DIF over time, avoiding a procyclical impact on the industry during the economic crisis.

Another alternative that the FDIC should consider in lieu of imposing a special assessment is using a vehicle similar to the Financing Corporation (FICO) to issue bonds. FICO is a special purpose vehicle set up in 1987 to issue bonds to finance the recapitalization of the now-defunct Federal Savings and Loan Insurance Corporation (FSLIC). From 1987 to 1989, the FICO issued $8.2 billion of 30-year bonds and allowed the savings and loan industry to pay its assessment rates at more reasonable levels over a period of time. The FDIC should consider a structure similar to the existing Financial Corporation to issue bonds to the public and have the proceeds from the bonds invested into the DIF. This would allow the banking industry more time to fund the DIF. ICBA realizes that authorizing the issuance of new FICO bonds may require Congressional action and that the plan raises a number of legal issues but we believe it should be seriously studied.

ICBA fully supports imposing surcharges on entities issuing FDIC-guaranteed debt with a term of a year or more under the Temporary Guaranty Liquidity Program and depositing those surcharges into the DIF rather than setting them aside to cover possible TGL Program losses.[4] These surcharges are likely to be an important source of funding for the DIF during 2009 but alone are not enough to restore the DIF to a sufficient level.

Other types of borrowing should be considered. For instance, the FDIC should consider using its existing statutory authority to borrow from the industry and allow the industry to repay its obligation with interest over a period of time.[5] Another alternative, albeit more cumbersome, would be some sort of capital issuance. **There are a variety of viable options that the FDIC should consider in lieu of imposing a special assessment or an emergency special assessment that would both maintain an adequate level of funding for the DIF while at the same time allow the DIF to be industry funded. The FDIC should thoroughly examine each alternative with community bank input.**

III. The FDIC Should Broaden the Assessment Base to Include Total Assets Minus Tangible Capital

Currently, the FDIC assesses deposit insurance premiums based on total domestic deposits of insured institutions. **ICBA strongly urges the FDIC to base any special assessment, and all future assessments, on total assets (minus tangible capital), not total domestic deposits, to more fairly distribute the burden so that banks that caused the problems pay a bigger share of the assessment.** In the case of a 20-basis-point special assessment, ICBA estimates that if the assessment base were broadened to total assets (minus tangible capital), the same amount of revenue could be generated for the DIF (i.e., approximately $15 billion) by assessing every bank approximately 12 cents per $100 of assets as opposed to 20 cents per $100 of domestic deposits.

The FDIC should change the assessment base to total assets for a number of reasons. **First,** the current assessment base unfairly burdens community banks by requiring them to pay a disproportionately high share of deposit insurance premiums. A broader assessment base **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 total deposits.** Under the current system that assesses only domestic deposits, banks with less than $10 billion in assets pay approximately 30% of total FDIC premiums although they hold approximately 20% of total bank assets. Furthermore, 85-95 percent of the funding for community banks comes from domestic deposits, while for banks with $10 billion or more in assets, the figure is approximately 52 percent. Thus, while community banks pay assessments on nearly their entire balance sheets, large banks pay on only half.

Second, 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 deposits, fund a bank's assets. Most of the $18 billion in actual losses that the DIF incurred in 2008 came from

[4] See the FDIC News Release Dated March 17, 2009 entitled "FDIC Extends the Debt Guarantee Component of Its Temporary Liquidity Guarantee Program."

[5] 12 U.S.C. 1824(d)

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the resolution of IndyMac Bank F.S.B., a bank with $32 billion in assets including many subprime loans and mortgage-backed securities but only $19 billion in deposits. It is banks like IndyMac Bank F.S.B. that pose the greatest risk to the DIF and therefore should pay assessments proportional to their asset size.

Third, using total assets as the assessment base for the special assessment would be consistent with the system that the FDIC uses when it assesses insured institutions for losses arising from assistance provided pursuant to a systemic risk determination. Under the Federal Deposit Insurance Act, the FDIC must recover losses arising from assistance provided under the Act's systemic risk provisions by assessing all insured institutions based on the amount of each insured depository institution's average total assets minus its total tangible equity including subordinated debt.[6] The Federal government exercised the systemic risk authority for the first time in September 2008, and on three more occasions since then. Although in each of these cases, the FDIC took actions to offset its risk exposure, the chances of the FDIC imposing a special assessment arising from a systemic risk determination increases each time a determination is made and assistance is provided. Using the broader assessment base for any special assessment is consistent with the FDIC's findings that systemic risk conditions are present in the current stressed banking environment. These conditions have led to the rapid deterioration in the DIF reserve ratio, the need to restore the DIF, and the FDIC's finding that "extraordinary circumstances" exist to expand the restoration period to seven years.

IV. The FDIC Should Impose a Systemic Risk Premium

ICBA believes that too-big-to-fail institutions should pay a systemic risk premium to the DIF that is large enough to pay for the substantial risk of insuring these institutions. The superior coverage received by depositors, particularly those with deposits over the insured coverage limits, justifies such a premium. These too-big-to-fail institutions pose an enormous risk to the DIF because of their size and their activities. In testimony before Congress, ICBA argued that these firms are too big to regulate and eventually need to be broken up. Congress should also consider repealing a provision in the 2006 deposit insurance reform law that protects these too-big-to-fail banks from being assessed fairly for deposit insurance.

ICBA also believes that FDIC assessments, including emergency special assessments, should take into account the assistance being provided to systemically important institutions. The government has dedicated more than $150 billion in taxpayer and FDIC funds to shore up the nine largest banks. Many of these banks will use this assistance to pay their DIF assessments, including any special assessment. It is only equitable that these systemically important institutions be assessed at higher rates. As discussed above, ICBA believes these institutions should pay a systemic risk premium but if a systemic risk premium is not imposed, at a minimum they should bear a larger portion of any special assessment to take into account the assistance they have received from the government.

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[6] 12 U.S.C. 1823(c)(4)(G)

V. If a Special Assessment is Imposed, Community Banks Should be Able to Amortize the Cost

If a special assessment is imposed on the industry, ICBA supports a change in the accounting rules that would allow banks to amortize the costs over a period of five to seven years. Particularly during a year when the base assessments are high, community banks need to be able to spread the costs of a special assessment over an extended period of time. In a recent survey of our members, 85% said they supported a change in the accounting rules to allow the special assessment to be amortized over a period of time. We urge the FDIC to support such a change in the accounting rules.

VI. The FDIC Should Consider a Maximum Assessment Rate for Troubled Institutions

Since some banks could be charged a regular quarterly assessment at the annual rate of as high as 77.5 basis points beginning in the second quarter of 2009, the FDIC should consider capping the combined regular and special assessment rate if the agency imposes a special assessment this year. A 20 basis point special assessment, for instance, would effectively increase the maximum possible 2009 rate for some institutions to nearly 100 basis points. The FDIC should carefully examine the costs and benefits and assess the impact that these high rates will have on troubled institutions and avoid increasing failure losses to the FDIC and disrupting local communities served by these banks, in exchange for what could be only an incremental increase in premium collected. The FDIC has indicated that three to four institutions could see their equity-to-assets ratio drop below 2 percent because of the special assessment. No bank should have to be closed because of its payment of a special assessment.

Conclusion

The special assessment, when combined with the high base assessment rates for 2009, is an excessive burden and unfairly penalizes community banks. For community banks, the special assessment is particularly unfair since they did not participate in the risky practices that led to the economic crisis.

The FDIC should explore all alternatives for temporarily funding the DIF in lieu of the special assessment including using its existing authority to borrow from the Treasury or the industry. Whether or nor legislation is passed that increases its borrowing authority, the FDIC should seriously consider tapping its line of credit with the FDIC in lieu of imposing a 10 or 20 basis point special assessment. A second alternative for funding the DIF would be using a vehicle similar to the Financing Corporation (FICO) to issue bonds to the public and having the proceeds invested into the DIF. Other types of FDIC borrowings or capital issuances should also be studied. Under these alternatives, the DIF will still be industry-funded as the industry will be required to pay back the amount borrowed plus interest, but the cost to the industry of restoring the DIF would be spread over time, avoiding a procyclical impact on the industry during the economic crisis.

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Any special assessment and all future assessments should be based on total assets (minus tangible capital), not total domestic deposits, to more fairly distribute the burden so that banks that caused the problems pay a bigger share of the assessment. Using an asset-based assessment base would make the assessment system fairer, is a more accurate gauge of an institution's risk to the DIF, and would be consistent with the system that the FDIC uses when it assesses insured institutions for losses that arise when assistance is provided under the systemic risk provisions of the FDI Act.

Too-big-to-fail institutions should pay a systemic risk premium to the DIF that is large enough to pay for the substantial risk of insuring these institutions. If a special assessment is imposed on the industry, ICBA supports a change in the accounting rules that would allow banks to amortize the costs over a period of five to seven years.

ICBA appreciates the opportunity to offer comments in connection with the FDIC's interim rule to impose a 20 basis point emergency special assessment on June 30, 2009. If you have any questions about our position, please do not hesitate to contact the undersigned at Karen.Thomas@icba.org or Chris Cole, ICBA Vice President and Senior Regulatory Counsel at Chris.Cole@icba.org. We can also be reached by phone at 202-659-8111.

Sincerely,

Karen M. Thomas

Executive Vice President

Director, Government Relations Group