



October 22, 2009

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
Comments@FDIC.gov

Re: RIN 3064-AD49

Dear Mr. Feldman:

Thank you for the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") proposed prepaid assessment rule, which is being considered as 12 CFR § 327.12. ARCUS Bank ("ARCUS") is an industrial loan company chartered in the State of Utah and is a "new" bank under the FDIC's assessment regulation, as it has been an FDIC-insured institution for less than five years. ARCUS is concerned that the proposed rule does not address the unique situations that are applicable to "new" institutions, which are generally subject to detailed business plans and capital maintenance agreements with the FDIC.

These plans and agreements could be violated or severely hampered by requiring an upfront payment of estimated assessments, calculated using a base amount that could fluctuate significantly, higher or lower, over the next three years as these institutions work toward growing their assets and deposits. Further, such a prepayment could cause liquidity problems for these institutions, which were not contemplated in their business plans.

In addition, certain institutions are required to maintain deposits for capital maintenance or "source of strength" purposes. These deposits are largely not insured by the FDIC due to their size, but are being included in the calculation base for the institutions' insurance assessments. These deposits clearly alter the true deposit base of these institutions and unfairly increase the amount of the prepaid assessment that will be charged under the proposed rule. Requiring a large prepaid assessment based upon these uninsured deposits can actually reduce the value of those deposits as a source of strength for the affected institutions.

ARCUS notes that the proposed rule contains a provision that certain institutions will be automatically exempted from the prepayment provisions. However, the proposal is silent on what types of institutions are included or what factors will be considered. We believe that "new" institutions are the most appropriate candidates for the automatic exemption and ARCUS would request that the proposed rule specifically provide for this exemption, or at least provide that all new institutions will be evaluated for the exemption based upon the impact the prepaid assessment may have on their business plans, capital maintenance or other agreements and any applicable FDIC orders. Further, we believe that any deposit ordered to be held by the FDIC should not be included in the calculation for the prepaid assessment as long as the institution is required to hold the deposit.

ARCUS recognizes the FDIC's need to have funds available to deal with possible failures of insured institutions. However, it would be unfortunate if this rule actually resulted in more bank failures. ARCUS believes that the proposed rule should be adjusted to avoid unfairly affecting new institutions which may be negatively impacted by the prepayment requirement.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Rowan", with a long horizontal flourish extending to the right.

James W. Rowan, President
ARCUS Bank