ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA

October 27, 2009

Robert E. Feldman, Executive Secretary
Attention: Comments
550 17th Street, NW
Washington DC 20429

Re: RIN #3064-AD49; Prepaid Assessments

Dear Mr. Feldman:

The Independent Community Bankers of America1 (ICBA) welcomes the opportunity to comment on the FDIC's proposal to amend it assessment regulations to require insured institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012.

The FDIC is proposing a prepaid assessment since the Deposit Insurance Fund (DIF) is facing a potential liquidity crisis next year if no action is taken. As of June 30, 2008, total assets held by the DIF were approximately $55 billion and consisted almost entirely of cash and marketable securities (i.e., liquid assets). As of June 30, 2009, while total assets increased to almost $65 billion, cash and marketable securities had fallen to about $22 billion and the pace of bank resolutions continues to put downward pressure on cash balances. If the FDIC took no action under its existing authority to increase liquidity, the FDIC project liquidity needs would exceed its liquid assets on hand beginning in the first quarter of 2010.

To meet the FDIC's liquidity needs, the FDIC proposes to require all institutions to prepay, on December 30, 2009, their estimated risk-based assessments for the fourth quarter of 2009 and for all of 2010, 2011, and 2012, at the same time that institutions pay their regular quarterly deposit insurance assessment for the third quarter of 2009. An institution would initially account for the prepaid assessment as a prepaid expense- an asset. An institution's quarterly risk-based deposit insurance assessments thereafter

[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.

would be offset by the amount prepaid until that amount is exhausted or until December 30, 2014, when any amount remaining would be returned to the institution. The FDIC estimates that total prepaid assessments would amount to approximately $45 billion.

The FDIC would calculate the institution's prepaid amount by using that institution's base assessment rate in effect on September 30, 2009 and applying that for the fourth quarter of 2009 and for all of 2010. That rate would be increased by 3 basis points for all of 2011 and 2012. For purposes of calculating the prepaid assessment, an institution's third quarter 2009 assessment base would be increased quarterly at an estimated 5% annual growth rate through the end of 2012.

ICBA's Comments

ICBA Generally Supports Prepaying Assessments

Subject to those changes recommended below, ICBA generally supports the prepaid assessment proposal as a way to address the liquidity needs of the Deposit Insurance Fund. We agree with the FDIC that prepaying assessments is preferable to imposing one or more special assessments at a time when the industry is under severe stress. As pointed out in the explanation of the proposal, to acquire enough cash to meet future liquidity needs, the FDIC would have had to impose special assessments in a much great amount than the two special assessments provided for in the May 2009 final rule. These special assessments would have required insured depository institutions to expense immediately the amount of the assessment at the time imposed, severely reducing industry earnings and capital at a time when many community banks are experiencing lower earnings and under regulatory pressure to raise their capital levels.

ICBA also agrees that prepaying assessments is also preferable to borrowing from the U.S. Treasury**.** A mandatory prepayment of assessments ensures that the deposit insurance system remains directly industry-funded. If the DIF borrows from the U.S. Treasury, ICBA is concerned that the government would impose TARP-like restrictions on the entire industry. Furthermore, collecting prepaid assessments is the least costly option to the DIF for raising liquidity, as there are no interest costs. The prepaid assessment proposal is very similar to borrowing from the industry at no interest rate and without the transaction and administrative costs that would be associated with a debt offering.

Banks Should Prepay Assessments For Two Years with an Optional Year at the FDIC's Discretion.

ICBA recommends that the prepayment period be shortened to two years instead of three, and that authority be given to the FDIC to impose a third year of prepaid assessments at the end of the first year (i.e., end of 2010) if the DIF's liquidity needs have not been met. The advantage of a two year prepayment with the option to require an additional year is that it gives the FDIC an opportunity to reevaluate the industry and the economy at the end of 2010 and make another determination of future DIF losses and liquidity needs. If, by the end of 2010, the economy and industry has improved sufficiently, then there may be no need for another prepayment. However, if the economy and the industry has deteriorated further and the DIF liquidity needs have not improved, then the FDIC would have option to raise another $15 billion in prepaid assessments.

A two year prepayment with an optional third year would also allow the FDIC to raise approximately $30 billion and avoid a liquidity crisis in 2010 while at the same time alleviating some of the liquidity pressure associated with a three-year prepayment. ICBA's survey of a group of community banks indicated that approximately 17% of community banks would have to sell or liquidate some part of their securities portfolio to pay for a three-year assessment. The same percentage of bankers—approximately 17%--also indicated that they would have to curtail their lending activities. Most of these bankers said that they would lose over $50,000 in income over the next three years from having to purchase a nonearning asset in the form of a prepaid assessment. A two-year prepayment would alleviate some liquidity pressure and reduce the number of banks that would have to sell assets. It would also mitigate the impact of the prepayment on industry earnings and capital as well as on lending activities.

The FDIC Should Use Assets Minus Tier 1 Capital for the Assessment Base

ICBA has several recommendations concerning how the prepayment should be calculated and how it should be refunded. **First and foremost, the assessment base used for the prepayment calculation should be the same assessment base that was used for the second quarter special assessment—that is, an institution's total assets minus its Tier 1 capital.** A broader assessment base such as assets minus Tier 1 capital 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 domestic deposits.

If the proposal is implemented and only domestic deposits are assessed, banks with less than $10 billion in assets will prepay approximately 30% of the total prepayment assessment although they hold approximately 20% of total bank assets. This would not only be unfair to community banks, but would not accurately reflect the risk that community banks pose to the Deposit Insurance Fund. 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.

A Lower Deposit Growth Rate Should be Used

For purposes of calculating the prepaid assessment, the FDIC should use a significantly lower estimated annual deposit growth rate for banks located in those parts of the country that historically have had slower deposit growth rates. Many community banks, particularly those located in small towns and rural areas, have not experienced a 5% annual deposit growth in recent years, especially in a low interest rate environment. In fact, a significant number of community banks have not seen any growth in deposits and don't expect any increase in deposits in the near future until

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interest rates rebound. It would be an unfair burden on those banks if their prepayments were based on such a high annual growth rate.

The FDIC Should Establish an Earlier Refund Method

Under the proposal, as of December 31, 2009, each institution would record (1) an expense or a charge to earnings for its estimated regular quarterly assessment for the fourth quarter of 2009 and (2) an offsetting credit to the prepaid assessment asset because the fourth quarter assessment for 2009 would have been prepaid. Each quarter thereafter, an institution would record an expense for its regular quarterly assessment for that quarter and an offsetting credit to the prepaid assessment asset until this asset is exhausted. If the prepaid assessment is not exhausted by December 30, 2014, any remaining amount would be returned to the institution.

The FDIC should establish an earlier refund method for those banks that have not exhausted their prepaid assessment by December 31, 2012. ICBA recommends that refunds for the three year period should be made by June 30, 2013 if the institution has not exhausted its prepaid assessment asset by then. Two years is entirely too long for banks to wait before they receive a refund. We also recommend that annual refunds be made soon after the end of any year when a bank has significantly overpaid its prepaid assessment. For instance, if a bank's prepaid assessment for 2010 exceeds by 20% the amount of its actual assessment for that year, then the FDIC should refund the excess by June 30, 2011.

ICBA Commends the FDIC for its Risk Weight of Prepaid Assessments and For Exemption Procedures

The federal banking agencies' risk-based capital rules permit an institution to apply a zero percent risk weight to claims on U.S. Government agencies. **ICBA commends the FDIC for its conclusion that the prepaid assessment would qualify for a zero risk weight and not a 20% risk weight that has traditionally been applied to assets covered by the FDIC's deposit insurance.** The lower risk weight should be applied since the claim is legitimately a claim on a U.S. government agency. This decision will also help those community banks that are on the margin of significantly meeting their risk-based capital requirements.

ICBA also commends the FDIC for establishing a procedure for banks to apply for an exemption from the prepaid assessment. Those community banks that are having severe liquidity or cash flow problems should have an opportunity to apply for an exemption and explain to the FDIC why they should be exempted. ICBA recommends that the FDIC establish clear guidelines for determining when a bank can obtain an exemption.

Conclusion

ICBA generally supports the prepaid assessment proposal as a way to address the liquidity needs of the Deposit Insurance Fund. We agree with the FDIC that prepaying assessments is preferable to imposing one or more special assessments at a time when the industry is under severe stress. However, ICBA recommends that the prepayment period be shortened to two years instead of three, and that authority be given to the FDIC to impose a third year of prepaid assessments at the end of the first year if the DIF's liquidity needs have not been met. The advantage of a two year prepayment with the option to require an additional year of prepaid assessments is that it gives the FDIC an opportunity to reevaluate the industry and the economy at the end of 2010 and make another determination of future DIF losses and liquidity needs.

With respect to calculating the prepaid assessment, ICBA strongly believes that the assessment base used for the prepayment calculation should be the same assessment base that was used for the second quarter special assessment—that is, an institution's total assets minus its Tier 1 capital. A broader assessment base such as assets minus Tier 1 capital 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 domestic deposits.

For purposes of calculating the prepaid assessment, the FDIC should use a significantly lower estimated annual deposit growth rate than 5% for banks located in those parts of the country that historically have had slower deposit growth rates. The FDIC should also establish an earlier refund method for those banks that have not exhausted their prepaid assessment by December 31, 2012. ICBA recommends that refunds for the three year period should be made by June 30, 2013 if the institution has not exhausted its prepaid assessment asset by then. We also recommend that annual refunds be made soon after the end of any year when a bank has significantly overpaid its prepaid assessment.

Finally, ICBA commends the FDIC for its conclusion that the prepaid assessment would qualify for a zero risk weight and for establishing an application procedure that will allow banks that are having severe liquidity problems to apply for an exemption from the prepaid assessment.

ICBA appreciates the opportunity to comment on the FDIC's prepaid assessment proposal. If you have any questions or need additional information, please do not hesitate to contact me at my email address (Chris.Cole@icba.org) or at 202-659-8111.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Vice President and Senior Regulatory Counsel