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January 3, 2011

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

Re: RIN 3064–AD66; Notice of Proposed Rulemaking Regarding Assessments, the Assessment Base and Rates; 12 CFR Part 327; 75 Federal Register 72582, November 24, 2010

Dear Mr. Feldman:

The American Bankers Association (ABA) welcomes the opportunity to comment on the proposal from the Federal Deposit Insurance Corporation (FDIC) regarding the assessment base and rate schedule. ABA represents banks of all sizes and charters and is the voice for the nation's $13.4 trillion banking industry and its 2 million employees. The majority of ABA's members are banks with less than $165 million in assets. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

The proposal would implement part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) to redefine the FDIC assessment base.[1] It also proposes corresponding changes in the assessment rate schedule for banks under $10 billion in assets and changes in the assessment rate "adjustments" for all banks. In another proposal, which ABA will comment on separately, the FDIC has proposed a new assessment scheme for banks over $10 billion in assets.

ABA recognizes the prescriptive nature of the legislative changes, which significantly constrains the FDIC with regard to implementation; the ABA believes that the proposal is generally consistent with the DFA assessment base requirement. ABA recommends, however, that several elements of the proposed assessment rate-setting process be modified to align assessment rates more closely with the risk exposure for individual banks. The following issues are discussed in more detail below:

- The FDIC should not use the change in the assessment base as a means to raise more assessment revenue than would have been raised under the old base.
- ABA supports using data that banks already report in the Call Report and Thrift Financial Report in the new assessment system.
- The proposed adjustments to the new assessment base for custodial and bankers' banks, as provided for in the DFA, are reasonable with a few modifications.

[1] Public Law 111-203 §331(b), to be codified at 12 U.S.C. 1817.

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- The adjustments for unsecured debt, depository institution debt, and brokered deposits should align with risk exposure to the FDIC and provide incentives for sound banking.
- The spread of assessment rates for Risk Category I banks should be reduced as the reserve ratio rises.
- The FDIC should set rates under the new assessment base so that the insurance fund reserve ratio does ***not*** grow without limit.

I. The FDIC should not use the change in the assessment base as a means to raise more assessment revenue than would have been raised under the old base.

ABA supports the intent of the proposal to be revenue neutral – *i.e.*, to raise ***no more*** in assessment receipts to the FDIC than would have been raised under the old assessment base and schedule. It was not the intent of Congress to raise more assessment revenue with this provision. In fact, Congress extended the time period for recapitalizing the insurance fund, in recognition of the impact that heightened FDIC premiums have on the ability of banks to meet the financial needs of local communities. With many banks regaining profitability and building capital in an economy still recovering from a severe recession, it is essential that premium assessments be maintained at a level that will rebuild the insurance fund on the congressionally mandated schedule.

This proposal, along with the accompanying proposal for a new large bank assessment pricing scheme, will dramatically change the incidence of assessments among banks. Some, particularly larger institutions, will pay significantly more than at present, at least under static estimates that do not assume changes in bank deposit-taking efforts. We appreciate the difficulty in setting rates that result in a revenue-neutral outcome, given the changes in behavior that may be stimulated by these provisions. Nevertheless, ABA feels strongly that ***assessment rates should be set such that the industry would pay no more in total than under the old base.*** The FDIC should regularly back-test the new assessment schedule, including the new risk-based formula for banks with over $10 billion in assets, and lower the assessment rate schedule if more is being raised than would have been the case under the old assessment base and schedule.

Given the slowing pace and costs of bank failures, we believe that recapitalization of the insurance fund will be faster than is currently forecasted by the FDIC. Therefore, we do not believe that setting rates that result in somewhat less revenue than would have been raised under the old assessment base presents a problem for FDIC funding. Simply put, since raising exactly the same revenue as before is practically impossible, it is best to err on the side of collecting less, not more, from the industry. As we have recommended in previous comments, the FDIC should closely monitor the progress toward rebuilding the fund and adjust premiums downward upon evidence that the fund is growing faster than required to reach a 1.35 percent reserve ratio in September 2020, as mandated in the DFA.[2]

[2] ABA letter of November 24, 2010, page 2, www.fdic.gov/regulations/laws/federal/2010/10c02ad63.pdf.

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The FDIC should also reassess its cash needs and return to banks any excesses in prepaid assessments. We note that elimination of the 3 basis point rate hike and the change in the assessment base will mean that many banks prepaid considerably more premiums at the end of 2009 than they can reasonably be expected to use through 2013. We recommend that the FDIC take action by no later than December 31, 2011 (and preferably sooner) to return excess prepayments and free up this non-interest-earning asset on banks' books. Given the actual FDIC loss experience for 2010 and improved prospects for 2011, the FDIC should have the necessary cash required for bank failures next year. The FDIC should not collect any additional prepayments from banks that would be projected to pay more under the new assessment base. These banks will be paying much higher premiums due to the broadened base and will be making cash payments at the time of billing once their prepayment balances are exhausted. To require further prepayments now would put an extra and unnecessary burden on these banks, a burden which no longer appears to be required to meet the FDIC's cash needs.

II. ABA supports using data that banks already report in the Call Report and Thrift Financial Report (TFR) in the new assessment system.

ABA appreciates that the FDIC has been sensitive to the already high reporting burden of banks and has proposed to use data already reported in the Call Report and TFR. We support the use of Tier 1 capital to define tangible equity capital in the assessment base (as provided in the DFA). We also support allowing quarterly average Tier 1 capital to be calculated as the average of month-end figures, with banks under $1 billion being allowed to use the quarter-end figure.

However, ***for "average consolidated total assets" in the assessment base, banks should be allowed to choose between: (1) the average of daily figures over the quarter, and (2) the average of figures from one day a week over the quarter, <u>consistent with current Call Report instructions</u>.***[3]

Use of the current reporting practice is consistent with the proposal's standards that should be met in determining the assessment base: "the reported elements of the new assessment base should be a true reflection of the entire quarter" and "the reporting of the elements of the new assessment base should require minimal changes to the existing reporting requirements."[4] Changing to the proposed approach would require significant additional bookkeeping burdens for many banks to start maintaining daily auditable total consolidated assets balances. Moreover, there is no reason to suspect that using balances from 13 equally-spaced days over a quarter would not provide just as workable a representation of the quarterly average as using each of the 91-days' balances.

[3] As currently reported on line 9 of Schedule RC-K of the Call Report.
[4] 75 <u>Federal Register</u> 72583, November 24, 2010, http://edocket.access.gpo.gov/2010/pdf/2010-29138.pdf.

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We note that the FDIC does not object in principle to allowing some banks to use less than daily balances to calculate their assessment bases:

- Under the former rule, banks under $1 billion of assets were allowed to calculate their assessment bases using end-of-quarter deposits instead of the average of daily balances.
- As proposed, banks under $1 billion can average month-end Tier 1 capital to compute the quarterly average for their assessment bases.

Therefore, we see no reason why the FDIC should not allow a similar provision in the rule under consideration, particularly given the additional reporting burden that would occur under the proposal.

III. The proposed adjustments to the new assessment base, as provided for in the DFA, are reasonable with a few modifications.

The DFA provides that the FDIC establish suitable deductions from the assessment bases of bankers' banks and custodial banks.

"Bankers' banks" are defined by 12 U.S.C. 24. The proposed assessment base adjustment for banker's banks, *i.e.*, subtracting the average of daily reserve balances passed through the Federal Reserve Banks, own-account reserve balances held at the Federal Reserve Banks, and federal funds sold (limited to the average of daily deposits from banks and federal funds purchased), is consistent with the statute.

However, ***ABA is concerned that the adjustment for federal funds sold may have unintended consequences for the federal funds market.*** Institutions that sell federal funds, including bankers' banks, correspondent banks, and others, have indicated to ABA that federal funds are generally sold on thin margins. If non-bankers-banks must pay even a few basis points of FDIC assessments on federal funds sold, then they may not be able to compete with bankers' banks in the market. However, according to the proposal, only about 25 banks currently qualify as bankers' banks, not enough to carry the market at its current size. Therefore, the proposed subtraction for bankers' banks' federal funds sold could potentially lead to considerable contraction of the federal funds market, with detrimental implications for bank liquidity in general.

The simplest solution would be to subtract the average daily balance of federal funds sold from the assessment base for all banks, not just banker's banks, to assure that the federal funds market continues to serve bank liquidity needs. We recognize it may be difficult to interpret the bankers' bank adjustment under DFA so broadly. Therefore, another approach, which would have the same beneficial impact, is to assign a ***zero premium rate*** to federal funds sold for all banks.

Such a treatment would provide the relief that Congress intended for bankers' banks, yet would have the advantage of avoiding the potential unintended consequences for the entire industry. Given the importance of interbank funding, and the problems created should that market become dysfunctional, providing this recommended relief for all banks is appropriate. By the same token,

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not providing any relief is counterproductive and clearly penalizes bankers' banks that facilitate this market.

Regarding "custodial banks," the proposal identifies these as banks with at least $50 billion of custody and safekeeping assets at the end of the previous year or alternately that derived over half of their revenue from custody and safekeeping activities over the previous year. ABA supports this definition as consistent with the statute. The proposed assessment base deduction for custodial banks includes all assets with Basel risk weights of 20 percent or less and stated maturity of 30 or fewer days.[5] ABA recommends that the maturity condition be eliminated, because all of the assets with 20 percent or lower Basel risk weightings are high-quality and liquid custodial assets, regardless of maturity. Moreover, a maturity breakdown for these assets is ***not*** currently collected in the Call Report, so the 30-day provision would add to the reporting burden of banks.

In addition to the bankers' and custodial bank adjustments, ***ABA recommends that deposits, loans, and securities from affiliated banks within a holding company should be deducted from the "average consolidated total assets" calculation to avoid double-counting.*** We recognize that intra-holding company deposits are not deducted in the old assessment base. However, the change of the assessment base provides an opportunity to rethink this issue. The proposal recognizes that if one bank is a subsidiary of another then the assets of the subsidiary are to be deducted from the parent bank's assessment base to avoid double counting.[6] The same reasoning applies to exposures between affiliated banks. Clearly a deposit, loan or security from an affiliated bank, which fund assets in that bank, cannot simultaneously represent an exposure to the FDIC from both banks. Therefore, assessing the equivalent assets in both banks cannot correspond with risk exposure to the insurance fund and should be avoided.

IV. The adjustments for unsecured debt, depository institution debt, and brokered deposits should align with risk exposure to the FDIC and provide incentives for sound banking.

Unsecured Debt Adjustment

ABA supports increasing the Unsecured Debt Adjustment to 40 basis points plus the Initial Base Assessment Rate per dollar of long-term unsecured debt, as per the proposal. The intent is to recognize that claims subordinate to the FDIC reduce insurance fund losses in bank failures.[7]

ABA recommends that the Unsecured Debt Adjustment in the final rule recognize the broader spectrum of funding subordinate to the FDIC's claims. In the event of failure, short-

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5 Bank exposures that receive Basel risk weightings of either zero percent or twenty percent include cash, federal government and central bank debt from a nation participating in the Organization for Economic Cooperation and Development (OECD), non-OECD federal government debt, OECD bank and securities firm debt, non-OECD bank debt under one year maturity, and cash-in-collection.

6 75 Federal Register 72584, November 24, 2010, http://edocket.access.gpo.gov/2010/pdf/2010-29138.pdf.

7 75 Federal Register 72586, November 24, 2010, http://edocket.access.gpo.gov/2010/pdf/2010-29138.pdf.

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term unsecured debt absorbs losses before the FDIC as well as long-term unsecured debt. For liquidity purposes, a bank may use short-term debt on a continuing basis to diversify its sources of liquidity. Therefore, denying short-term unsecured debt in the Unsecured Liability Adjustment neither lowers the risk to the FDIC nor encourages better bank liquidity management. ABA similarly recommends that foreign office deposits should be included in the Unsecured Liability Adjustment, as the Depositor Preference Act (12 U.S.C. §1813) subordinated foreign deposits to the FDIC.

Goodwill and other intangible assets could also be included in the Unsecured Debt Adjustment. Bankers feel that intangible assets should be deducted from the assessment base as they cannot pose any risk exposure to the insurance fund. To be consistent with the DFA, ABA recommends that goodwill be included in the Unsecured Liability Adjustment and treated like unsecured debt.

Considering the broader scope of elements in the new assessment base that pose no risk to the FDIC or that reduce the FDIC's exposure, ***ABA recommends that the Unsecured Debt Adjustment have a higher cap than that proposed*** (*i.e.*, higher than the lesser of 5 basis points or half of the Initial Base Assessment Rate). If claims subordinate to the FDIC reduce its risk exposure then truly risk-based assessments must fully recognize their effect − unless the FDIC can empirically defend the proposed narrow limit to this adjustment. Moreover, it is inequitable that banks with lower Initial Base Assessment Rates – and therefore preliminarily judged to be among the healthiest – would be the most constrained by this overly narrow limit.

Depository Institution Debt Adjustment

The proposal would impose a new assessment rate adjustment in the form of a premium of 50 basis points on the balance of long-term debt issued by other banks. ***ABA objects to the premise, level, and lack of substantiation for this adjustment.***

The proposal claims that unsecured debt reduces the risk to the FDIC on the issuing bank but increases systemic risk for the FDIC.[8] It is curious that the proposal singles out bank-issued debt for systemic risk over debt issued by any other industry or firm. If a major commercial or industrial operation defaults, or several firms in a commercial or industrial business default, and banks hold an excessive share of the debt, does not this represent systemic risk to the FDIC? Supervisors have long recognized that concentration in any single type of exposure represents a risk to a bank, and if that concentration is found in many banks then there is the potential for systemic risk. In contrast, if banks hold diversified portfolios of debt issued by a range of other banks then this diversification reduces the risk to each bank and, therefore, to the FDIC. In this case, failure of any single bank, or even multiple banks, will not by itself seriously threaten any institution. In other words, it is the *concentration* that creates the potential for risk.

Moreover, there is no *de minimis* cutoff under the proposal. This means that even a small holding of another bank's debt would cost extra premiums. This makes no sense from an individual bank risk point of view and certainly from a broader perspective as a minimal holding would not create meaningful systemic risk. Nor is there any cap proposed, similar to the treatment afforded to the

[8] 75 Federal Register 72586, November 24, 2010, http://edocket.access.gpo.gov/2010/pdf/2010-29138.pdf.

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Unsecured Debt Adjustment, Brokered Deposits Adjustment, and (eliminated) Secured Debt Adjustment. At the very least, there should be lower and upper limits for the Depository Institution Debt Adjustment.

Besides these clear flaws, a 50 basis points premium on holding other banks' debt would undermine bank soundness and also increase the FDIC's risk exposure. Every bank could face reduced access to liquidity because other banks would eschew its debt in favor of non-bank debt on which they would not pay the added premium, or else require an interest rate perhaps as much as 50 basis points higher in compensation. Moreover, the discouragement of bank unsecured debt would work in opposition to the aim of the Unsecured Debt Adjustment to encourage such debt to reduce the FDIC's exposure.

There is little justification for the 50 basis point assessment. No quantitative analysis is presented to support the premise or the level of the premium proposed. We note that anecdotal evidence from a handful of bank failures does not constitute solid statistical support, particularly for so high a penalty rate.

The proposed adjustment would also require changes in the Call Report and TFR. Banks do currently report bank deposits and loans – but not by maturity – and do not segregate out bank-issued debt. We note that securities' CUSIP numbers do not identify the industry of the issuer, so manual review would be required to identify whether the issuer is a bank. Collecting and reporting long-term exposures in these categories would represent a new and unreasonable reporting burden.

Therefore, ***ABA recommends that the proposed Depository Institution Debt Adjustment not be included in the final rule.*** Risk concentrations should continue to be addressed by bank supervisors, and, in fact, concentrations are already reflected in factors built into the risk-based assessments system.

Certainly, the final rule should clarify that it does not apply to exposures between affiliated banks in a banking organization, as this would represent double-counting of the risk. Similarly, secured debt arrangements where unsecured debt of banks is pledged to banks (*e.g.*, securities purchased under agreements to resell) should not be assessed this premium. ABA requests that the final rule clarify whether the premium would apply to term certificates of deposit and federal funds sold.

Brokered Deposit Adjustment

ABA understands the FDIC's concerns regarding volatile sources of funding. However, we continue to take issue with the FDIC lumping all brokered deposits together. Not all types of brokered deposits are volatile, out of market, or held by individuals that had no prior relationships with the bank.[9] "Brokered" is not synonymous with "volatile." Treating the two as equivalent will inevitably lead to mispriced risk and create unintended consequences that favor more volatile, non-brokered sources of funds. Therefore, ***ABA recommends that reciprocal deposit programs, sweeps from***

[9] See ABA letters of July 2, 2010, pages 5-6 www.fdic.gov/regulations/laws/federal/2010/10c17ad57.pdf and of December 17, 2008, pages 6-12, www.fdic.gov/regulations/laws/federal/2008/08c410ad35.pdf.

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affiliated broker-dealers, and deposits placed by affiliated banks should <u>not</u> be included in the Brokered Deposit Adjustment; they have characteristics like core deposits and should not be considered in the same category as more volatile forms of brokered deposits.

Deposits raised in reciprocal deposit programs should be viewed as core deposits. The point of reciprocal deposit programs is to enable customers to maintain relationships with their banks. Thus, unlike volatile brokered deposits, reciprocal deposits increase a bank's franchise value and allow a bank to attract and retain more core deposits from loyal customers. These deposits are typically based on established relationships with the bank and the rate paid is typically on par with other core deposits, so these are not unstable funds chasing rates. In fact, the reinvestment rate, for example, for the Certificate of Deposit Account Registry Service (CDARS) is around 81 percent.

Programs that allow banks to sell certificates of deposit of affiliated banks should also be excluded from the calculation of brokered deposits. While not reciprocal deposit programs, these deposits are similar in that the deposits are priced like core deposits and are relationship-based as the customer has a pre-existing business relationship with an affiliated insured depository institution. In addition, the deposits stay within the banking organization's footprint and have a high reinvestment rate.

Deposits raised from sweep accounts at affiliated broker-dealers similarly function as core deposits. Many banks offer such accounts, where excess cash in the customer brokerage accounts are swept daily into interest-bearing or transaction accounts at the broker-dealer's affiliated bank. Characteristics of these accounts resemble core deposits. For example:

- Even though the account relationship is technically with the broker-dealer, the deposit account is functionally the same as if it were the bank's account. In fact, customers may choose the broker-dealer account because of the relationship with the affiliated bank, as the broker-dealer may market this relationship. Thus, these are essentially established accounts among a family of companies. Establishment of the brokerage account reinforces the customer's relationship with the financial institution.

- Broker-dealer-affiliated sweeps are not rate sensitive nor carry high interest rates. These arrangements are designed to manage excess cash and are not established to compete for rates. The interest rates paid are typically below yields on money market mutual funds.

- These are relationship-based deposits that provide stable funding. In the aggregate across all accounts (which total tens, and even hundreds, of thousands of accounts at a given institution), there are daily flows into the deposit account and daily withdrawals made by the customers. Over time these aggregate flows in and out tend to offset. Therefore, these deposits are predictable, stable and behave like term funding.

Furthermore, consideration should be given to sweep deposits collected from unaffiliated brokers where the funds are subject to strict contractual commitments (e.g., a 2-year restriction on withdrawing funds, other than as a result of customer withdrawals). Institutions that have taken such funds have found them to be very stable. Also, bankers have suggested that the seasoning of brokered deposits be considered to evaluate the volatility of brokered deposits.

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Simply put, where deposits from brokers can be shown to be more stable, the Brokered Deposit Adjustment penalty should not apply.

ABA feels strongly that well-capitalized, CAMELS 1&2 banks with over $10 billion in assets should not be subject to the brokered deposit penalty rate. Under the current rules, no penalty rate is applied to Risk Category I institutions (*i.e.*, well-capitalized banks that pose no supervisory concerns) except in the case where the institution has brokered deposits in excess of 10 percent ***and*** has experienced rapid growth (defined as 40 percent over the prior four years). The proposal for large bank assessment pricing makes no distinction based on whether the institution is well-capitalized, rated CAMELS 1 or 2, or has recently grown rapidly. Such disparate treatment unfairly penalizes large banks without any justification by the FDIC.

We acknowledge that while there is an "adjusted brokered deposit ratio" in the assessment calculation for banks under $10 billion, there is not an explicit variable for brokered deposits in the proposed assessments scheme for large banks. However, funding with brokered deposits would factor into a large banks' CAMELS Liquidity rating, its "core deposits-to-total liabilities" ratio, and its "noncore funding-to-total liabilities" measure in the proposed Scorecard. Therefore, applying the full Brokered Deposit Adjustment to the soundest large banks seems inequitable.

Moreover, maintaining the same penalty rate applied to a much larger assessment base only magnifies the financial burden with no justification. The premiums paid for many large banks are already considerably higher due to the broadened assessment base; this higher penalty rate on the larger base would impose an even greater disproportionate cost on these large banks. There is already triple-counting of funding with brokered deposits in the pricing system. The proposal provides no demonstration that the brokered deposits penalty should be increased.

ABA recommends that – for banks not considered equivalent to Risk Category I institutions under small bank model – the Brokered Deposit Adjustment penalty should be capped at 6½ basis points on the new assessment base. This is equivalent to the 10 basis point cap on the current base.

Finally, the DFA (§1506) mandates that, by July 2011, the FDIC review the definitions of brokered and core deposits and the impact of these definitions on assessments and the insurance fund. We believe the clear intent of Congress was for the FDIC to carefully consider the many different types of brokered deposits and the nature and variety of risk that they may pose to the FDIC in order to guide the policy on how each type might be treated for deposit insurance pricing. To fundamentally change the current practice for large banks before this assessment is completed is counter to the intent of Congress to fully understand the risk and fairly price it. Just as the FDIC has deferred consideration of the subjective adjustments until these issues can be fully aired, we strongly suggest the same approach be taken with respect to brokered deposits. Moreover, ABA suggests that the study explicitly consider the role and relative risk of reciprocal deposit programs, sweep programs from affiliated broker-dealers, deposits placed by affiliated banks, and sweep deposits place by non-affiliated parties with strict contractual requirements versus other forms of brokered deposits. We believe that these programs provide demonstrably low cost, stable funding.

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V. The spread of assessment rates for Risk Category I banks should be reduced as the reserve ratio rises.

We note that the proposed assessment rates would effectively ***widen*** the assessment rate spread for Risk Category I banks by maintaining a 4 basis point difference but applied to the broader assessment base.[10] By definition, Risk Category I banks are well-capitalized and pose no supervisory concerns (CAMELS rated 1 and 2 banks). By maintaining the 4 basis point spread, it means that the relative risk within this group has widened. While such a widening may be appropriate for the current economic environment, we believe – as we have stated many times in the past – that there is very little difference in the measurable risk among Risk Category I banks.[11] This suggests that the proposed 4 basis point spread is too large, particularly as the economy stabilizes.

The FDIC proposes that this spread remain constant even after the fund is recapitalized and, more troubling, even after the rate schedule is reduced once the insurance fund's reserve ratio exceeds the Designated Reserve Ratio of 2.00 percent and a reserve ratio of 2.50 percent. For instance, if the reserve ratio were to exceed 2.50 percent, then the Risk Category I range would be 1 basis point to 5 basis points. It does not seem reasonable that banks that are only marginally more risky should pay up to five times the assessment rate of the least-risky banks. We note that the FDIC raised the spread on the old assessment base to 4 basis points from 2 basis points in 2009 because the overall assessment schedule was significantly raised (*e.g.*, the bottom Initial Base Assessment Rate rose from 5 basis points to 12 basis points). ***ABA recommends that the Risk Category I spread should be reduced when the FDIC lowers the overall assessment schedule in the future.***

Maintaining the same spread while widening the assessment base has other implications as well. Under the old system, a Brokered Deposit Adjustment could raise a bank's assessment rate by as much as 10 basis points if the bank had an "excessive" amount of brokered deposits (as defined by the FDIC). The proposal would retain the 10 basis points cap. However, since the proposal will increase the assessment base for every bank, the 10 basis point cap would effectively be much larger under the new base than the old base. To keep this adjustment limit at the same level as before, the cap should be lowered to about 6.2 basis points on the new assessment base. We strongly recommend that this reduction be made.

Moreover, the proposal would allow the FDIC to raise the assessment schedule by up to 3 basis points at one time or cumulatively, without going through the public notice and comment process. A 2 basis point spread on the new, broader assessment base would be equivalent to 3 basis points on the old base. Limitations on the FDIC's authority to act without public comment are important because of the potential financial consequences for insured banks. By maintaining the same basis point trigger under the larger base, it effectively expands FDIC's authority to impose higher costs without airing for public scrutiny the rationale for the increase. Thus, ***ABA believes than any***

[10] On the assessment base and schedule used in 2009, Risk Category I banks paid Initial Base Assessment Rates ranging between 12 basis points and 16 basis points. The proposed schedule on the broadened assessment base would have them pay between 5 basis points and 9 basis points.

[11] ABA argued against a wider spread in 2006 (www.fdic.gov/regulations/laws/federal/2006/06c448ad09.pdf) and 2008 (www.fdic.gov/regulations/laws/federal/2008/08c410ad35.pdf).

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increase in the assessment schedule of more than 2 basis points on the new base, or any cumulative increase from the base schedule of more than 2 basis points, should go through the public notice and comment process.

VI. The FDIC should set rates under the new assessment base such that the insurance fund reserve ratio *does not* grow without limit.

ABA noted in a recent letter that we support the FDIC's goal to assess low, steady, and predictable premiums over the long run.[12] We were critical of the aggressive rate schedules on the old assessment base presented in the FDIC's proposal on setting a longer-term Designated Reserve Ratio. We have the same concerns with the rate schedules set under this proposal. ***We strongly believe that the FDIC should set rates such that the insurance fund reserve ratio does not continue to grow without limit.*** Rather, assessment rates should be set to maintain the reserve ratio of the fund at an adequate but not excessive level, maintained by premium rates at constant, low, reasonable levels. We believe a lower rate schedule could be set sooner that would still allow the insurance fund to grow to a reasonable level.

Moreover, we reiterate our position that an upper limit be set on the size of the FDIC insurance fund. An ever-growing fund is not appropriate and takes resources out of the industry that could be put to productive use in banks' communities.

Conclusion

ABA appreciates this opportunity to comment on the proposed rule. We are prepared to work with the FDIC in resolving remaining issues in the proposal to arrive at a premium program that is accurately sensitive to genuine risk and, thereby, a useful tool in encouraging better risk management.

Sincerely,

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[12] ABA letter of November 24, 2010, page 3, www.fdic.gov/regulations/laws/federal/2010/10c02ad63.pdf.