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January 3, 2011

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

Re: Notice of Proposed Rulemaking Regarding Assessments, Assessment Base and Rates (RIN 3064-AD66)

Dear Mr. Feldman:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the FDIC's proposal to amend its assessment regulations to implement the revisions to the Federal Deposit Insurance Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act. These amendments would change the definition of an institution's deposit insurance assessment base, alter the unsecured debt adjustment in light of the changes to the assessment base, add an adjustment for long-term debt held by an insured depository institution where the debt is issued by another insured depository institution, eliminate the secured liability adjustment, change the brokered deposit adjustment, revise the deposit insurance assessment rate schedules, and institute an adjustment for bankers' banks.

ICBA Comments

ICBA generally applauds the FDIC for its proposal and for taking the initial steps to strengthen and impose parity in the deposit insurance system. Updating the nation's deposit insurance system will bolster the Deposit Insurance Fund and enhance community banks' ability to lend in their communities. It will save community banks billions of dollars and help to level the playing field between the large banks and the community banks.

[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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Definition of Assessment Base

The FDIC's proposal implements the Dodd-Frank Act mandate by defining the new assessment base as average consolidated total assets minus tangible equity. Under the proposal, beginning in the second quarter of 2011, banks would have to report average daily consolidated total assets in conformance with the valuation methodology established for Line 9 of Schedule RC-K of the call report, that is, the methodology established by Schedule RC-K regarding when to use amortized cost, historical cost, or fair value. Tangible equity would be defined as Tier 1 capital, and banks with less than $1 billion in assets would only have to report the end-of-quarter amount of Tier 1 capital as a proxy for average tangible equity. All other banks would report average monthly balances of Tier 1 capital.

Subject to our comments below concerning bankers' banks, the FDIC's proposed methodology for calculating "average consolidated total assets" should work well for most community banks. Requiring all insured institutions to report "average consolidated total assets" using daily averaging will result in a truer measure of the assessment base during the entire quarter. Further, this requirement is consistent with the actions taken by the FDIC in 2006 when it determined that using quarter-end deposit data as a proxy for balances over an entire quarter did not accurately reflect a bank's typical deposit level.

ICBA also agrees with the FDIC that defining tangible equity as Tier 1 capital is a better solution than developing a new definition for assessment base purposes. Using Tier 1 capital will minimize reporting requirements and avoids an increase in regulatory burden that a new definition of capital could cause. At the same time, it also provides a clearly understood capital buffer for the DIF in the event of the institution's failure.

ICBA commends the FDIC for not requiring the reporting of daily average balances of tangible equity. We agree that the components of tangible equity are subject to much less fluctuation within a quarter than consolidated total assets. **ICBA also commends the FDIC for proposing that institutions with less than $1 billion in quarter-end total consolidated assets use end-of-quarter balances for average tangible equity. However, we recommend that the threshold be raised to $10 billion from $1 billion.** Most community banks with assets less than $10 billion experience few fluctuations on a monthly basis in their Tier 1 capital and saving them the time to compute their monthly average tangible equity will reduce their overall regulatory burden.

Bankers' Bank Adjustment

The Dodd-Frank Act also requires the FDIC to determine whether, and to what extent, adjustments to the assessment base are appropriate for a bankers' bank in order to establish assessments consistent with the risk-based assessment system under the Federal Deposit Insurance Act. ICBA appreciates the FDIC's outreach efforts to understand the unique business model of bankers' banks as it proceeded to draft rules implementing an appropriate assessment base adjustment for bankers' banks.

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Bankers' Bank Definition
Under the proposed rule, a bankers' bank must self-certify on its Call Report or TFR that it meets the definition of bankers' bank set forth in 12 U.S.C. 24. **For purposes of the self-certification, ICBA strongly recommends the FDIC recognize that bankers' banks may have funds from federal capital infusion programs, stock owned by the FDIC resulting from shareholder bank seizures, as well as equity compensation programs, to afford all bankers' banks the ability to use the statutory assessment adjustment.** Bankers' banks should not be precluded from meeting the definition under Section 12 U.S.C. 24 due to their participation in federal government capital infusion programs such as TARP and the newly-approved Small Business Lending Fund, FDIC ownership through shareholder bank seizures, as well as, equity compensation programs for depository institution directors and employees intended to align long-term compensation with long-term company performance. These equity compensation programs include stock options, stock grants and/or restricted stock and are consistent with recently-issued regulatory compensation guidelines.

12 U.S.C. 24 permits national associations to purchase stock of a bank . . . "if the stock of such bank or company is owned exclusively by depository institutions or depository institution holding companies and such bank or company and all subsidiaries thereof are engaged exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a bankers' bank)."

Our recommendation would address instances where less than 100 percent of a bankers' bank capital is owned by depository institutions. These instances include federal capital infusion initiatives such as TARP, the new Small Business Lending Fund, any future federal capital initiatives, as well as FDIC ownership through shareholder bank seizures. Additionally, our recommendation would allow bankers' banks to continue their equity compensation programs for depository institution directors and employees intended to align long-term compensation with long-term bank performance.

Moreover, if the FDIC does not allow for these market developments in the self-certification process, some bankers' banks would be precluded from taking advantage of the assessment adjustment as they would not be able to self-certify that they meet the definition of a "bankers' bank" as set forth in 12 U.S.C. 24.

Assessment Adjustment

Under the proposal, a bankers' bank meeting the definition of a bankers' bank would exclude from its assessment base the daily average amount of reserve balances "passed through" to the Federal Reserve, the daily average amount of reserve balances held at the Federal Reserve for its own account, and the daily average amount of its federal funds sold. However, the collective amount of this exclusion could not exceed the sum of the bank's daily average amount of total deposits of commercial banks and other depository intuitions in the United States and the daily average amount of its federal funds

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purchased. Federal funds purchased and sold on an agency basis would not be included in these calculations since they are not reported on the bankers' bank balance sheet.

ICBA fully supports the FDIC's proposal to exclude the cited balance sheet holdings from the deposit insurance assessment base for bankers' banks. ICBA further recommends the FDIC also exclude the daily average amount of excess reserve balances held at the Federal Reserve, the daily average amount of clearing balances held at the Federal Reserve, the daily average amount of term deposit balances held at the Federal Reserve, and balances Due From (Other) Banks. Excess reserve balances, clearing balances, and term deposit balances, all held at the Federal Reserve, do not pose risk to the Deposit Insurance Fund just as reserve and pass-through reserve balances do not.

Additionally, excess reserve balances are the functional equivalent to federal funds sold which are exempt under the proposal. Bankers' banks have the option of placing excess funds in excess reserve accounts at the Federal Reserve or in the national federal funds market. The investment decision is interest-rate dependent. In today's interest rate environment, excess reserves pay a higher interest rate than the federal funds market so excess funds are kept at the Federal Reserve. When the federal funds rate is greater than the excess reserve rate, excess funds will be invested in federal funds. As such, exempting excess reserve balances would not be a departure from the intent and purpose of the original proposal.

Bankers' banks, due to the nature of their business model of providing banking services to their community bank respondents, require the maintenance of a higher percentage of total assets kept on deposit at other financial institutions. These balances also do not subject the Deposit Insurance Fund to additional risk as most of the funds in these accounts represent items in the process of collection, and in the case of a failed bank, these items would be paid to the receiver the next business day.

Optional Use of the Assessment Adjustment

ICBA also recommends that the FDIC provide bankers' banks with the option on a semi-annual basis of using either the bankers' bank adjustment or the standard assessment formula. This option would provide bankers' banks the flexibility to respond to changing economic, marketplace and regulatory dynamics.

Assessment Rate Adjustments for Banks Generally

ICBA also strongly favors the FDIC proposal to discontinue the secured liability adjustment which adjusts a bank's assessment rate based upon its ratio of secured liabilities to domestic deposits. We agree that with the change in the assessment base, the relative cost advantage of funding with secured liabilities as opposed to deposits (due to assessing domestic deposits, but not secured liabilities) will no longer be affected by deposit insurance premiums, thus eliminating the reason for the adjustment. Retaining the secured liability adjustment with the new assessment base would have been an injustice

to banks that have a high percentage of secured liabilities, such as those with large amounts of FHLB advances.

ICBA also agrees with the FDIC's proposed changes to the unsecured debt adjustment and the brokered deposit adjustment. We agree that unless the unsecured debt adjustment is revised, the cost of issuing long-term unsecured liabilities will rise as there will no longer be a distinction in terms of the cost of deposit insurance, among the types of liabilities funding the new assessment base. Furthermore, we agree that the definition of what is included in long-term, unsecured liabilities needs to be changed, to eliminate Tier 1 capital. Since the new assessment base excludes Tier 1 capital, defining long-term, unsecured liabilities to include Tier 1 capital would have the effect of providing a double deduction for this capital.

Currently, the brokered deposit adjustment only applies to institutions in risk categories II, III and IV, when their ratio of brokered deposits to domestic deposits exceeds 10 percent. The FDIC is proposing to amend the brokered deposit adjustment to apply to all large institutions (i.e., those institutions with $10 billion or more in total assets) while for small institutions, the adjustment would continue to apply only to those in risk categories II, III, and IV. **ICBA agrees with this distinction since if the FDIC proposal for assessing large banks is adopted, large institutions would no longer be segregated into four risk categories and instead will be assessed using a scorecard method.** Furthermore, brokered deposits will remain a factor in the financial ratios method used to determine the initial base rate for small risk category I institutions experiencing high growth rates.

ICBA still believes that the definition of brokered deposits should be revised to exclude reciprocal deposits such as CDARS (or Certificate of Deposit Account Registry Service). In fact, ICBA believes that reciprocal deposits should be permanently excluded from the definition of Section 29 of the Federal Deposit Insurance Act for the following reasons: (1) they display many of the characteristics of core deposits such as a high reinvestment rate, (2) they are overwhelmingly gathered within each bank's geographic footprint through established customer relationships and (3) they are a stable source of funding for community banks that do not present the same types of risks as other types of traditional brokered deposits. ICBA believes that it would be easy enough for banks to report CDARS reciprocal deposits separately from other brokered deposits on their Call Reports.

Assessment Rate Schedule

ICBA also commends the FDIC for the proposed new base assessment rate schedule. Because the new assessment base under the Dodd-Frank Act is larger than the current assessment base, the assessment rates proposed are significantly lower than current rates and will save community banks billions of dollars in assessments. While the proposed changes to the assessment rates will result in the collection of assessment revenue that is approximately revenue neutral, the new rate schedule will impose parity in the assessment system and help level the playing field between community banks and the largest, too-big-to-fail banks.

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In our previous letter to the FDIC on the FDIC's proposed long-term plan for DIF, we agreed with the FDIC that the plan of permanently foregoing the possibility of a DIF dividend and in lieu thereof, having a system of progressively lower assessment rates was much more likely to ensure steady, predictable assessment rates over an extended period of time. The FDIC's long-term plan for DIF is a more countercyclical approach to funding the DIF that will benefit commercial banks during times of economic distress and should reduce the likelihood of special assessments in the future.

For instance, under the FDIC's proposed base rate schedule as well as under its long-term plan for DIF, base assessment rates for risk category I institutions would fall from 5-9 basis points to 3-7 basis points when the DIF reserve ratio reaches 1.15 percent, 2-6 basis points when it reaches 2.0 percent and 1-5 basis points when it reaches 2.5 percent. No dividends would be paid after the reserve ratio reached 1.5 percent, which the FDIC currently has the discretion to do under the Dodd-Frank Act. In effect, the lower assessment rate schedules would serve much the same function as dividends in preventing the DIF from growing unnecessarily large, but at the same time providing more stable and predictable effective assessment rates.

While the FDIC should never completely rule out the possibility of paying a dividend from the DIF, we believe that at least until the DIF reserve ratio reaches 2.5 percent, it is prudent to forego a dividend in favor of steady, predictable assessment rates. In addition, we strongly favor having assessments rates automatically decline when the reserve ratios reach 1.15 percent, 2.0 percent and 2.5 percent respectively.

Effective Date and Rebates of Unused Prepaid Assessments

In a previous letter to FDIC Chairman Bair dated September 10, 2010, ICBA requested that the change in the assessment base and to the rate schedule be made retroactive to the effective date of the Dodd-Frank Act, or on July 21, 2010. The FDIC responded to ICBA and affirmed in its assessment rate proposal that because of the proposed changes to the Call Report and the TFR, that retroactively applying such changes would not only be operationally infeasible but would "introduce significant legal complexity and unacceptable levels of litigation risk**." Since the FDIC is committed to implementing the Dodd-Frank Act in the most expeditious manner possible and is contemporaneously pursuing changes to the Call Report and the TFR that would be necessary if the proposal is adopted, ICBA hopes that there will be no delay in the proposed effective date and that the rate schedule and other revisions to the assessment rules will take effect for the quarter beginning April 1, 2011, and would be reflected in invoices for assessments due September 30, 2011.** Community banks need the benefit of assessment base changes as soon as possible to bolster their capital and liquidity positions.

We also recommended in our letter to Chairman Bair that since many community banks will be expensing lower quarterly assessments once the assessment base is changed, and therefore will likely have sizable "credits" remaining from unused assessments that were prepaid in the fourth quarter of 2009, **the FDIC should consider returning all unused prepaid assessment amounts prior to June 30, 2013**. We suggest that there be two

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"refund" periods—one soon after next year or by March 31, 2012, and the other soon after the following year or by June 30, 2013. Refunding these credits earlier will provide additional capital and liquidity to many community banks, some of whom are struggling to rebuild capital reserves and find the necessary funding to make loans to their communities. Provided that the liquidity needs of the Deposit Insurance Fund decrease next year as the economy improves and there are fewer bank resolutions, ICBA believes the FDIC should be able to make its first refund of these unused credits by March 31, 2012. This additional refund could play an important part in improving the economic condition of many community banks and the communities they serve.

Conclusion

ICBA generally applauds the FDIC for its proposed new rate schedule and for taking the steps to strengthen and impose parity in the deposit-insurance system. The proposal will save community banks billions of dollars and help to level the playing field between the large banks and the community banks.

ICBA also generally supports the proposed methodology for determining a bank's assessment base using average consolidated total assets and average tangible equity. Defining tangible equity as Tier 1 capital is a better solution than developing a new definition for assessment base purposes. While we commend the FDIC for proposing that institutions with less than $1 billion in quarter-end total consolidated assets use end-of-quarter balances for average tangible equity, we recommend that the threshold be raised to $10 billion from $1 billion since most community banks with assets less than $10 billion experience few fluctuations on a monthly basis in their Tier 1 capital.

For purposes of the bankers' bank self-certification, ICBA strongly recommends the FDIC to recognize that bankers' banks may have funds from federal capital infusion programs, stock owned by the FDIC resulting from shareholder bank seizures, as well as equity compensation programs, and to afford all bankers' banks the ability to use the statutory assessment adjustment.

ICBA fully supports the FDIC's proposal to exclude the cited balance sheet holdings from the deposit insurance assessment base for bankers' banks. ICBA recommends the FDIC also exclude the daily average amount of excess reserve balances held at the Federal Reserve, the daily average amount of clearing balances held at the Federal Reserve, the daily average amount of term deposit balances held at the Federal Reserve, and balances Due From (Other) Banks. ICBA also recommends the FDIC provide bankers' banks with the semi-annual option of using the bankers' bank adjustment or the standard assessment formula.

ICBA also strongly favors the FDIC proposal to discontinue the secured liability adjustment which adjusts a bank's assessment rate based upon its ratio of secured liabilities to domestic deposits. ICBA also agrees with the FDIC's proposed changes to the unsecured debt adjustment and the brokered deposit adjustment and that the brokered deposit adjustment continue to apply, in the case of small institutions, only to risk category II, III and IV banks. ICBA still believes that the definition of brokered deposits

should be revised to exclude CDARS reciprocal deposits since they are a stable source of funding for community banks that do not present the same types of risks as other types of traditional brokered deposits.

ICBA hopes that there will be no delay in the proposed effective date and that the rate schedule and other revisions to the assessment rules will take effect for the quarter beginning April 1, 2011. Since many community banks will be expensing lower quarterly assessments once the assessment base is changed, the FDIC should consider returning all unused prepaid assessment amounts prior to June 30, 2013. We suggest that there be two "refund" periods—one soon after next year or by March 31, 2012, and the other soon after the following year or by June 30, 2013, to help community banks build their capital and their liquidity.

ICBA appreciates the opportunity to comment on the FDIC's proposal to amend its assessment regulations to implement the revisions to the Federal Deposit Insurance Act made by the Dodd-Frank Wall Street Reform and Consumer Protection Act. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org or Viveca Ware at viveca.ware@icba.org regarding the bankers' bank adjustment.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel