February 17, 2010

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

RE: Employee Compensation Risk Assessment

Dear Mr. Feldman:

Pursuant to the *Federal Register* notice of January 19, 2010, the Texas Bankers Association (TBA) takes this opportunity to submit the following comments in opposition to the Advanced Notice of Proposed Rulemaking (ANPR).

As enunciated in the preface to the ANPR, this proposal is based on the "broad consensus that some compensation structures misalign incentives and induce imprudent risk taking within financial organizations." The first study cited in support of this premise is entitled "The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000-2008." These companies, while allowed to operate insured depository institution subsidiaries, did not fail for reasons attributable to their insured deposits. The other documentary support, some of which consists of academic studies published in 2003 and 2004, likewise appears to lack any direct correlation between bank compensation levels (regardless of how derived) and bank failures.

It is axiomatic under the Administrative Procedures Act (APA) that the underlying rationale or factual assertions supporting a rulemaking must be reasonable. The reference to 17 of the 49 Material Loss reviews completed in 2009 citing "employee compensation practices as a contributing factor" is completely inadequate to form the basis for a compensation-specific adjustment to the risk-based deposit insurance assessment structure. These reports show overwhelmingly that bank failures in 2009 were attributable to two principal factors: the marked decline in residential and commercial real estate values and excessive reliance on growth through the use of brokered deposits. Additionally, we think accounting rules, presently in place, that put our members in a position where they have to recognize losses on performing loans are another major contributor to failures. We specifically reference performing securities where the "market" has been diminished and the value temporarily impaired.

In short, it has been excessive risk and growth at individual institutions, rather than inappropriate or misaligned compensation, which caused the high degree of bank failures in recent years. We respectfully suggest that the FDIC's remedial regulatory initiatives should be oriented to these areas rather than indirect efforts sweeping in compensation policies as contemplated by the ANPR.

In addition to our questions as to the requisite factual basis for this ANPR, we have concerns about the achievability of the equally essential APA mandate for fairness and consistency in the application of agency rules. In this case, the formulation of a compensation oriented, risk-based deposit insurance assessment rule would have to pertain to depository institutions varying greatly in terms of size, corporate structure, ownership, and of course, business model.

The TBA represents 589 of the 683 FDIC insured institutions in Texas which hold in excess of 95% of the assets in our state. These institutions provide services to the public at 5,000+ locations and include traditional community and regional banks and branches, bank holding companies, and savings institutions doing business in the State. TBA is the largest and oldest state bankers association in the nation.

We appreciate the opportunity to present these views.

Respectfully,

J. Eric T. Sandberg, Jr.
President & CEO

Kasey Stone
Executive Assistant to Eric Sandberg, President & CEO
Texas Bankers Association
(512) 472-8388 x. 246
Fax: (512) 457-8723
kasey@texasbankers.com