February 18, 2010

Robert E Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429
Comments@FDIC.gov

RE: Incorporating Employee Compensation Criteria Into the Risk Assessment System
RIN 3064-AD56

Dear Secretary Feldman;

The Ohio Bankers League ["OBL"] is a non-profit trade association that represents the interests of Ohio's commercial banks, savings banks, savings associations and their holding companies. The OBL has over 200 members that include the full spectrum of the financial services industry, from small locally owned and operated community banks to large multistate holding companies that have several affiliates and do business from coast to coast. Throughout our history we have been the only voice for all segments of the banking industry in Ohio. This remains true today.

We are writing to you today on behalf of our 43 members that are organized as mutual savings associations or mutual savings banks.[1] As mutuals, these institutions are owned by their depositors, and do not issue stock. The OBL is very concerned that the proposed rule does not seem to contemplate compensation programs available for the officers and employees of mutual thrifts and savings banks. Worse, read literally, it appears that mutual institutions will be penalized through higher deposit insurance premiums if compensation programs are not based on restricted, non-discounted company stock.[2]

[1] The fact that this letter addresses the difficulties that mutual institutions and community banks will have complying with this proposal should not be taken as an OBL endorsement of the concept that compensation plans should be reviewed as a part of the risk assessment system. That is not the case. The OBL questions the need or the wisdom for the FDIC to incorporate an analysis of compensation plans into the deposit insurance risk assessment system. We would note that even in the FDIC's own analysis, compensation practices were a contributing factor in only a minority of bank failures in 2009.

[2] This comment focuses on the impact that this proposal would have on mutual savings associations and mutual savings banks because they do not have stock. The rule would also have a similar adverse impact on Subchapter S banks that are limited by Federal tax law in the type of stock they can issue or the number of shareholders permitted.

In Part II of the proposal as it appeared in the Federal Register, you define compensation programs that meet the FDIC goals as including the following features:

"1. A significant portion of compensation for employees whose business activities can present significant risk to the institution and who also receive a portion of their compensation according to formulas based on meeting performance goals should be comprised of restricted, non-discounted company stock. Such employees would include the institution's senior management, among others. Restricted, non-discounted company stock would be stock that becomes available to the employee at intervals over a period of years. Additionally, the stock would initially be awarded at the closing price in effect on the day of the award.

2. Significant awards of company stock should only become vested over a multi-year period and should be subject to a look-back mechanism (e.g., clawback) designed to account for the outcome of risks assumed in earlier periods.

3. The compensation program should be administered by a committee of the Board composed of independent directors with input from independent compensation professionals.

Under the approach contemplated above, the FDIC could conclude that firms that are able to attest that their compensation programs include <u>each of the features listed above</u> *(emphasis added)* present a decreased risk to the DIF, and therefore would face a lower risk-based assessment rate than those firms that could not make such attestation. Alternatively, the FDIC could conclude that firms that cannot attest that their compensation programs include each of these features present an increased risk to the DIF, and therefore would face a higher risk-based assessment rate than those firms that do make such attestation."

Obviously, since mutual savings associations and mutual savings banks do not issue stock, it would be impossible for any bonus plans to be comprised of restricted, non-discounted company stock subject to future clawback to account for unanticipated losses.[3] If management could not verify that its compensation plan met all three tests, the proposal indicates that the institution would be subject to a risk adjustment. This leaves management at mutual institutions in an untenable position: either don't offer management incentive compensation programs and risk losing valuable officers and employees to competitors, or face the risk of higher deposit insurance premiums, <u>*merely because they are mutual institutions.*</u>

At the very least, the Board of the FDIC should clarify that if an institution does not have stock because it is organized as a mutual, it is not penalized just because it has a variable compensation program. Alternatively, the final rule could include a separate section for mutual thrifts and mutual savings banks that required cash bonuses to be paid out in installments, and subject to future adjustments based on actual longer term performance.

The OBL is also concerned about the complexity and the cost of implementation of the restricted stock award programs required by the proposed rule. This is an issue for all community banks, whether they are organized in mutual or stock form. Complying with the rule as proposed will be both burdensome and expensive. Many community banks do not have the personnel or systems necessary to implement restricted stock award programs.

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[3] Some mutual savings associations and mutual savings banks have designed compensation programs that include phantom stock, however these complex arrangements will not be appropriate for all mutual institutions. Additionally, these tend to be expensive to administer and counterproductive for smaller institutions that are trying to manage expenses carefully.

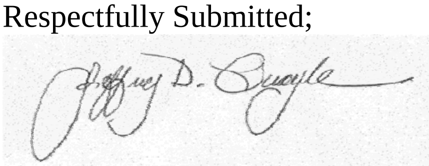
Specifically, the third criterion quoted above includes the requirement that these compensation programs be administered by independent members of the Board of Directors and this independent committee must have input from independent compensation professionals. While outside consultants can provide useful advice these professionals can be very expensive, and would not add value in many instances. Requiring the expenditure of these funds merely to be able to check a box on a compliance form is inconsistent with running a community bank efficiently, and is a waste of bank resources. This is the shortcoming of using a one side fits all approach. The Ohio Bankers League would urge you to be more flexible on how to provide the committee of independent directors with meaningful data and other information to assist in the design of bonus plans and variable compensation plans. For example, many of our community bankers in Ohio currently use a widely circulated survey of bank compensation practices to establish wages and benefits throughout the institution. The goal ought to be to provide the committee of independent directors with helpful information on bonus plans. That doesn't always need to come from expensive third party advisors. As long as the resources are current and generally accepted in the industry, that should be sufficient to qualify for the lowest risk weighted category.

Conclusion

The Ohio Bankers League questions the need for the FDIC to incorporate an analysis of compensation plans into the deposit insurance risk assessment system. A far better approach would be to work cooperatively with the other banking regulators to develop and issue uniform guidelines to ensure that incentive compensation plans at banks and thrifts do not encourage excessive risk taking.

If the FDIC insists on pursuing this rulemaking process however, the proposal needs to be rewritten to incorporate more flexibility as recommend in this letter. Any final rule should take into account the structure of mutual thrifts, as well as the practical limitations for community banks in general.

Respectfully Submitted;



Jeffrey D Quayle
Senior Vice President & General Counsel