AMERICAN
BANKERS
ASSOCIATION ®

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World Class Solutions,
Leadership & Advocacy
Since 1875*

Brian D. Lanigan
Chairman,
ABA Mutual Institutions Council and EVP & COO, Middlesex Savings Bank, Natick, MA

Stanley D. Jenks, Vice Chairman
ABA Mutual Institutions Council and CEO, Security Bancorp MHC, Monmouth, IL

Members of the ABA Mutual Institutions Council Administrative Committee

Steven A. Closson, President & CEO, Androscoggin Bancorp, Lewiston, Maine

Peter F. Crosby, President & CEO, Passumpsic Bancorp, Saint Johnsbury, VT

Robert V. Macklin, President & CEO, The Milford Bank, Milford, CT

John R. Malanowski, President, First Fed. Savings & Loan Ass'n, Lorain, OH

John P. Marvin, President & CEO, Raymond Federal Bank, Raymond, WA

Richard McGinnis, Chairman, President & CEO, Home Fed. Savings & Loan Ass'n of Nebraska, Lexington, NE

Margaret R. Smith, President, First Fed. Savings of Middletown, NY

Dana L. Stonestreet, President & COO, HomeTrust Bank, Asheville, NC

Ronald A Wilbur, Chairman & CEO, Merrimack Bancorp, MHC Concord, NH

February 17, 2010

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 Seventeenth Street, N.W.
Washington, D.C. 29429

Re: RIN 3064_AD56; "Incorporating Employee Compensation Criteria Into the Risk Assessment System"; 75 Federal Register 2823, January 19, 2010.

Dear Mr. Feldman:

The American Bankers Association Mutual Institutions Council, a group of 100 active, federally-insured mutual bankers located throughout the United States ("MIC") welcomes this opportunity to comment on the Advance Notice of Proposed Rulemaking ("ANPR") from the Federal Deposit Insurance Corporation ("FDIC") regarding "incorporating employee compensation criteria into the risk assessment system" for the payment of deposit insurance premiums.

We appreciate and thank the FDIC for using the ANPR approach to seek industry comment at the concept stage of rulemaking. We believe a dialogue using the ANPR furthers everyone's objectives and allows all interested parties an opportunity to raise issues before regulatory language is crafted and proposed.

MIC represents the mutual industry whose membership includes more than 689 mutual, community-based institutions, including 167 mutual holding companies that held more than $269 billion in assets as of September 30, 2009. The median asset size of our mutual members was $175 million; however, there are more than 220 mutuals with assets under $100 million. Our mutual members as a group are well-managed, conservatively run institutions that are strongly capitalized and profitable.

The MIC fully supports the comments filed by the ABA and urges the FDIC to seriously consider and follow the suggestions contained in that comment letter. Because of charter issues unique to mutual institutions with the concepts raised by the ANPR, it is the MIC's collective conclusion that the FDIC's deliberations in this area would benefit from a separate comment letter filed by the MIC.

Setting aside the 167 mutual holding companies, mutual institutions are by definition, nonstock entities. It is this very basic corporate structure that gives MIC concern when reviewing the FDIC's ANPR. Mutuals are not alone in their structural impediments to using a stock-focused solution to risk incentives in executive compensation. Subchapter S banks, smaller or thinly traded institutions or others without the infrastructure or corporate structure that permits a stock-focused approach to executive compensation also have fundamental, structural impediments to the ANPR's approach. Indeed, it is disappointing that the FDIC, as insurer of all types of charters representing the diversity of communities and approaches throughout the nation, should reflect so little of this diversity in this ANPR.

At the outset, the MIC questions the statutory and practical basis for this ANPR. As noted in the ANPR, "Section 7 of the FDI Act requires the FDIC to establish a risk-based assessment system that incorporates statutory and other factors determined to be relevant in assessing the probability that the Deposit Insurance Fund will incur a loss from the failure of an insured depository institution." (75 Fed. Reg. 2823, 2824 (Jan. 19, 2010)). Given that out of the 197 institutions that have failed between October 2000 and January 15, 2010, seven of them have been mutually chartered, it is improbable to believe that those seven institutions provide sufficient basis for any court to find that the ANPR is justified vis-à-vis mutually chartered institutions.[1]

There are a number of practical problems with the ANPR including that it ignores the significant tools at the FDIC's disposal currently for addressing executive compensation issues. While the FDIC is not a chartering agency, it does have backup enforcement authority (12 U.S.C. 1818), and safety and soundness rulemaking authority (Appendix A to Part 364 – Interagency Guidelines Establishing Standards for Safety and Soundness). Indeed, the guidance, which is applicable to the FDIC, articulates seven specific factors (including the complexity of the institution) to be considered in determining prohibited compensation that constitutes an unsafe and unsound practice.

Second, every institution has its management evaluated by its primary regulator and the FDIC may join that review if the FDIC determines it necessary. The importance of management is so significant to the safety and soundness of the bank that it is scored as a separate factor in the CAMELS rating. This supports continuing to use the safety and soundness examination process as a means of addressing compensation issues. Because the FDIC does have a number of tools at its disposal to more than adequately address its concerns, the MIC respectfully suggests that using deposit insurance premiums to effect changes in compensation practices is simply the wrong approach.

---

[1] The statistic on the 7 mutual institutions was compiled by aggregating the failure data from the FDIC's Failed Bank List (http://www.fdic.gov/bank/individual/failed/banklist.html) and the ownership data pulled from the FDIC's Statistics on Depository Institutions database (http://www2.fdic.gov/sdi/index.asp).

Indeed, given the breath of the FDIC's concerns, issues surrounding incentive compensation may be more appropriately addressed by the FFIEC so that a consistent review and approach may be considered that reflects the variety of charters, plans, and communities. Including the chartering authorities in this process may provide greater understanding and clarity.

Turning to the ANPR itself, the stated goal of the rulemaking is to provide incentives for institutions to achieve higher standards. Compensation programs that would meet the FDIC's risk goals would –

1. Have a significant portion of the compensation received as restricted, non-discounted company stock available to the employee (including all of the bank's senior management) over a period of years;
2. Provide that significant awards of company stock would only become vested over a multi-year period and would be subject to clawback if the risk rewarded with the stock later goes sour; and
3. Have the compensation program administered by a board of directors committee composed of independent members with input from independent compensation professionals.

For mutually chartered institutions, the very corporate structure of being a mutual makes it impossible to answer in the affirmative the first two items listed. In the vast majority of the cases for mutuals or other smaller institutions, stock is simply not available for issuance. And, while many mutual institutions do have either their board or a board committee review compensation, often the review is of a "program" of compensation with only the very senior officers (usually the President and perhaps a few others) directly reviewed by the board. When compensation professionals are consulted, their efforts are directed to assessing "competitive" pay rates to augment the many surveys of compensation (including the compensation surveys conducted by trade associations such as the American Bankers Association). Compensation consulting firms have not historically evaluated risk and the cost to develop this level of expertise may be significant for many banks that simply do not need an additional expense item.

Again it is important to remember that many institutions, including many mutually chartered institutions, simply do not have thousands of employees and that the structure for compensation is simple – each group from tellers to loan officers have their rate and the only significant compensation question is whether the CEO and senior managers receive a bonus and its amount. And for the vast number of recipients, payment is in cash with possibly portions of the bonus deferred in payment over some number of years. Even with phantom stock plans, the reality behind them is a cache of cash that either grows with positive bank performance or shrinks to reflect the reality of the market.

It is a definitional given that mutuals will not be able to attest to the three criteria listed above particularly as the first two items require the use of "company stock."

That means that simply being mutual puts the mutually chartered institution at a disadvantage with higher FDIC deposit insurance premiums. This results in a definitional penalty with no basis in law or fact.

The ANPR goes on to list a number of questions that seek to provide greater understanding into compensation practices. Many of these questions may be answered as part of the supervisory process and examination or from other agencies (the IRS has a definition of compensation that is widely used). It is simply too simplistic to expect to define for all institutions the level of bonuses that is "greatly disproportionate" to regular salary. That is why the supervisory tools are better designed to address the compensation issues raised by the ANPR. Finally, the ANPR raises questions about the potential applicability of the compensation structure to holding companies. The FDIC does not regulate holding companies, nor does it insure them. Yet the ANPR raises the role of the holding company, its compensation practices, and other holding company issues as potentially factoring into deposit premiums charged the insured depository subsidiary. If there is nothing else in the ANPR that demonstrates the need for an interagency approach to the issue of compensation, the raising of the holding company issue, clearly makes the case for FFIEC involvement. This is not an area where risk or compliance is better addressed by one agency acting alone.

The MIC respectfully urges the FDIC to direct its concerns with incentive compensation to the FFIEC and work cooperatively with the other banking regulators. Acting through deposit insurance premiums is the wrong approach and the MIC urges the FDIC to take a different path.

Thank you for considering our concerns with the issues raised by the ANPR. If you have any questions concerning our comments, please do not hesitate to contact Bob Davis at rdavis@aba.com, (202) 663-5588 or Dawn Causey at dcausey@aba.com, 202-663-5434.

Sincerely,

Brian D. Lanigan