INDEPENDENT COMMUNITY BANKERS of AMERICA

August 11, 2006

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

Re: Proposal to Implement the Dividend Requirements under the Federal Deposit Insurance Reform Act of 2005

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to offer comments in connection with the FDIC proposal to implement the dividend requirements under the recently enacted Federal Deposit Insurance Reform Act of 2005 ("Reform Act") for an initial two-year period.

Background and Proposal

The Reform Act requires the FDIC to prescribe regulations regarding the method for the calculation, declaration, and payment of dividends. Under the Reform Act, if the reserve ratio for the Deposit Insurance Fund ("DIF") is between 1.35% and 1.5%, the FDIC must declare one-half the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.35% as dividends to be paid to insured depository institutions. If the reserve ratio for DIF exceeds 1.5% at the end of a calendar year, the FDIC must declare a dividend of the amount in the DIF in excess of the amount required to maintain the reserve ratio at 1.5%. The Reform Act also directs the FDIC to consider each depository institution's relative contribution to the DIF when calculating such institution's share of any dividend.

[1] *The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. 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 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than $876 billion in assets $692 billion in deposits, and more than $589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

For a two year period ending on December 31, 2008, the FDIC is proposing that (1) the FDIC Board announce its determination regarding dividends by May 15th of each year, (2) dividends be allocated the same way that the FDIC proposes to allocate the one-time assessment credits—based on an institution's 1996 assessment base ratio, (3) the FDIC notify each institution of a dividend no later than the date of the next assessment invoice following the declaration of the dividend, and (4) there be a 30-day review procedure for those institutions requesting review of the dividend determination.

ICBA's Position

ICBA generally supports the FDIC's proposal of adopting the same system for allocating future dividends that would be used for allocating the one-time assessment credit. Under that system, any dividends that are awarded would be allocated based on an institution's 1996 assessment base ratio--the ratio of the assessment base of the institution on December 31, 1996, to the assessment base of all eligible insured depository institutions on that date. During the two-year lifespan of this proposal, the FDIC intends to undertake further rulemaking, beginning with the issuance of an advance notice of proposed rulemaking, seeking industry comment on more comprehensive alternatives for allocating future dividends.

Definition of "Predecessor." **However, ICBA disagrees with one facet of the proposal--the plan to adopt a definition of "predecessor" that only takes into account institutions that combined through mergers or combinations.** As noted in our comments regarding the one-time assessment credits, ICBA favors using both approaches--"follow the charter" approach for mergers and consolidations and the "follow the deposits" approach for purchases and assumption transactions involving deposit transfers. To use only the "follow the charter" approach would be an injustice to many community banks that have been involved in purchase and assumption agreements and have been acquiring deposits during the past ten years.

Since most purchasers of deposits paid a premium to the seller when they purchased the deposits and agreed to assume the rights and liabilities associated with the purchased deposits, they should reap the benefits of any credits or dividends that are issued or declared with regard to those deposits. Furthermore, since premium assessments follow the deposit, we believe that credits and dividends should also follow the deposit.

While we agree that using the "follow the deposits" significantly complicates the FDIC's job of allocating the credits and dividends, there are methods that the FDIC can employ to make the "follow the deposit" approach operationally viable. We have described in detail in our letter regarding the one-time assessment credit three possible methods for implementing a "follow the deposit" approach. These include (1) allocating the credits between the seller and purchaser with respect to branch sales using the June 30, 1996 Summary of Deposits data, (2) calculating the deposits purchased as a percentage of total deposits disclosed in the seller's quarterly Call Report and using that percentage to adjust the selling and purchasing institutions pre-1997 assessment base, or (3) adjusting the pre-1997 assessment base for both the seller and purchaser by the actual dollar amount of the deposits transferred discounted by the average deposit growth rate (expressed as a percentage) of the selling institution since December 31, 1996.

INDEPENDENT COMMUNITY BANKERS of AMERICA The Nation's Voice for Community Banks℠
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We agree with the FDIC that the definition of "predecessor" should be consistent with the definition of "successor." This will make it easier for institutions to understand how their dividends are computed. If institutions have disagreements concerning their successors, they can resolve those disagreements with the FDIC through the review process for the assessment credits and at the same time, resolve any issues they have about predecessors.

Future Rulemaking on Dividend Allocation. During the two-year period ending on December 31, 2008, ICBA looks forward to the FDIC issuing an advance notice of proposed rulemaking, seeking comment on more comprehensive alternatives for allocating future dividends. We believe that any future dividend regulations must take into consideration an institution's entire contribution to the Deposit Insurance Fund including the institutions most recent deposit assessments and not just contributions prior to December 31, 1996.

Notification and Payment of Dividends. We agree that the FDIC should make its determination regarding dividends by no later than May 15th of each year, and that each institution should be advised of its dividend amount as soon as practicable after the Board's declaration of a dividend. Notification should take place through a special notice of dividend or, at the latest, with the institution's next assessment invoice. ICBA also agrees that individual dividend amounts should be used to offset each institution's assessment for the second calendar quarter beginning after the declaration of the dividend. All dividend settlements should be handled through the Automated Clearing House consistent with existing procedures for underpayment or overpayment of assessments.

Review of Dividend Amounts. ICBA also agrees that the review procedures for dividends should parallel the procedures for reviewing the quarterly assessment payment as shown on the quarterly invoice. Under the proposal, an institution would have 30 days from the date of the dividend notice to request review of the computation. Any institution could request review if (1) it disagrees with the computation of the dividend as stated on the notice or invoice, or (2) it believes that the notice or invoice does not fully or accurately reflect appropriate adjustments to the institution's 1996 assessment base ratio.

Under the proposed rule, any request for review must be submitted to the FDIC's Division of Finance and include documentation to support the change sought by the institution. The Director of Finance would have 60 days to respond and the institution would have 15 days to file an appeal with the FDIC's Assessment Appeals Committee. The AAC's determination would be final and not subject to judicial review.

Conclusion

ICBA generally supports the FDIC's proposal to allocate dividends from the Deposit Insurance Fund in the same way that the FDIC proposes allocating the one-time assessment credits—based on an institution's 1996 assessment base ratio. However, ICBA believes that the definition of "predecessor" should take into account deposit transfers as well as mergers and acquisitions since December 31, 1996. To only use the "follow the charter" approach would penalize those community banks that that have been involved in purchase and assumption agreements and have been acquiring deposits during the past ten years. ICBA looks forward to commenting on the advance notice of proposed rulemaking concerning future dividends that the FDIC expects to issue by December 31, 2008. ICBA supports the FDIC's proposal concerning the notification and payment of dividends and the review of dividend amounts.

ICBA appreciates the opportunity to offer comments on the FDIC's proposal to implement the dividend requirements under the recently enacted Federal Deposit Insurance Reform Act of 2005. If you have any questions about our comments, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,

Christopher Cole

Christopher Cole

Regulatory Counsel