Sterling Bank

James W. Goolsby, Jr.
Executive Vice President and
General Counsel

August 16, 2006

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

Re: FIN: 3064—FDIC Notice of Proposed Rulemaking to Implement the One-Time Assessment Credit under the Federal Deposit Insurance Reform Act of 2005

Dear Mr. Feldman:

Sterling Bank appreciates the opportunity to comment on the proposed rulemaking to implement the one-time assessment credit (the "Assessment Credit") mandated by the Federal Deposit Insurance Reform Act of 2005 (the "Reform Act"). Under the proposed rule, financial institutions in existence on December 31, 1996 would be eligible for an Assessment Credit. The Assessment Credit otherwise payable to a financial institution in existence on December 1996 but no longer in existence as of the date of payment (a "Former Institution") would be paid to such institution's successor.

The FDIC's Board of Directors was specifically given the authority to define "successor" and determined that a successor of a Former Institution would be the depository institution that was a corporate successor by merger. While adoption of such a definition of successor may be appealing in that it would be easier for the FDIC to determine what extant financial institutions are the successors of Former Institutions, another result would be that many institutions who are in fact the owners of the deposits of the Former Institutions would not receive the benefit of the Assessment Credit attributable to such deposits.

Most of the comment letters urging the FDIC to adopt a more realistic definition of "successor" have discussed successor institutions through a purchase and sale agreement, and those arguments are compelling. However, there are other situations whereby the *de facto* successor of a Former Institution may not be the true corporate successor by merger. A case in point involves a fairly common "strip charter" transaction as described below.

Sterling Bank has been a party to several acquisitions that involve two mergers. In the first step of these strip charter transactions, the first acquiring bank and the acquired bank are merged. Following the merger, substantially all of the assets and deposits of the acquired bank are owned by the first acquiring bank, but both entities remain in existence after the first merger. The second step of the transaction, which occurs some time after the first transaction, involves the merger of the acquired bank into the buyer (the second acquiring bank) of the charter of such acquired bank.

The result of the above reorganization is that the assets of the acquired bank, including substantially all of the deposits, are owned by the first acquiring bank. For all practical purposes, the first acquiring bank is the successor of the acquired bank; its customers are now the first acquiring bank's customers, and its deposits are the deposits of the first acquiring bank. However, if the final rule includes the proposed definition of "successor," the entity that purchased the acquired bank's charter in the second merger transaction, the buyer and "second acquiring bank", will reap the benefit of the acquired bank's Assessment Credit although it is not a true continuation of the acquired bank's business.

By adopting a definition of successor that recognizes the effective successor of a Former Institution's business, including the deposit base, the FDIC would be effectuating the real intent of the Reform Act by awarding the Assessment Credit to the institutions that paid deposit insurance premiums on the acquired deposits. The award of the Assessment Credit to a successor by merger that continued none of the business of the Former Institution would result in an inequitable result not intended by the drafters of Reform Act.

Sterling Bank is confident that this and other comments will receive the serious attention of the FDIC and appreciates the opportunity to make this statement.

Very truly yours,

James W. Goolsby, Jr.

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