America's Community Bankers Shaping Our Future

August 16, 2006

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

Re: One-Time Assessment Credit
RIN 3064-AD08
71 FR 28809 (May 18, 2006)

Dear Mr. Feldman:

America's Community Bankers (ACB)[1] is pleased to comment on the Federal Deposit Insurance Corporation's (FDIC) proposal concerning assessment credits for certain eligible institutions.[2] This is one of several proposals recently issued by the FDIC to implement the Deposit Insurance Reform Act of 2005 (Reform Act).[3] The proposed rule specifies which institutions are eligible for an assessment credit, establishes a methodology for calculating each eligible institution's credit, creates procedures governing the application of the credit, and provides a mechanism for an institution to challenge administratively the amount of the credit.

ACB appreciates the swift, thoughtful, and transparent process the FDIC has used to implement the changes mandated by the Reform Act.

ACB Position

ACB believes that the FDIC's proposed allocation of the aggregate assessment credit among eligible institutions is fair and logical. We generally support the FDIC's proposed definition of the term "successor." The proposed definition is consistent with general principles of corporate law and provides a reasonable way to determine which financial institutions will receive specific credit amounts. However, contractual provisions regarding credit transference between institutions should be upheld by the FDIC, and any purchase and assumption transactions that are functionally equivalent to traditional mergers or consolidations should be treated in the same manner when determining an eligible institution for assessment credit allocation purposes.

[1] America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit *www.AmericasCommunityBankers.com*.
[2] 71 Fed. Reg. 28809 (May 18, 2006).
[3] The Reform Act was included as Title II, Subtitle B of the Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 9 (February 8, 2006).

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In addition, ACB believes that the language of the Reform Act permits institutions to utilize their individual assessment credit over a reasonable time period and does not require credits to be fully exhausted prior to making premium payments into the new Deposit Insurance Fund (DIF). Therefore, we urge the FDIC to include specific language in the final rulemaking that specifically allows institutions to elect whether to utilize their credit during the first assessment period or over a reasonable time frame. We understand that it will be necessary for each eligible institution to inform that FDIC of its election to allow the FDIC to accurately account for premiums that will be collected.

The assessment credits will certainly offset a portion of the financial burden eligible institutions will inevitably face when paying insurance premiums after a period of zero premiums. However, we urge the FDIC keep in mind that these credits will not cushion the future payment shock for depository institutions once such credits are exhausted. ACB believes that the FDIC should draw upon the flexibility provided under the Reform Act to assess premiums in an even and balanced way and to build up the DIF across an appropriate period of time in order to allow institutions enough time to prepare for this new, significant expenditure.

Background

Deposit Insurance Reform Act. The Reform Act mandates the following key changes:

- Merges the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF) into a new fund, the DIF.
- Increases the coverage for retirement accounts to $250,000 and indexes the coverage limits for these accounts to inflation.
- Grants an assessment credit to each eligible depository institution based on the institution's assessment base as of December 31, 1996.
- Allows the FDIC to price deposit insurance according to risk for all insured institutions at all times.
- Enables the FDIC Board of Directors to establish a Designated Reserve Ratio (DRR) between 1.15 percent and 1.50 percent and allows the FDIC to manage the pace at which the reserve ratio varies within this range.
- Allows the FDIC to update other operational policies concerning deposit insurance for assessment collections, dividend payments and advertising for insured accounts.

The Reform Act was signed into law by President Bush on February 8, 2006. The Act mandates a 270 day implementation deadline, giving the FDIC until November 5, 2006 to put the principles of the Reform Act into practice for all insured depository institutions.

Assessment Credit. The Reform Act requires the FDIC to provide an assessment credit to each eligible depository institution based on the institution's assessment base as of December 31, 1996. The aggregate amount of the assessment credit for all eligible institutions will be approximately $4.7 billion and recognizes these institutions' past contributions to the BIF and the SAIF.[4]

An institution would be eligible for the assessment credit if it: 1) was in existence on December 31, 1996, and paid a federal deposit insurance assessment prior to that date; or 2) is a "successor" to any such insured depository institution. Under the proposal, a "successor" would be the resulting institution in a merger or consolidation and would receive the assessment credit that would otherwise be allocated to an institution that it has merged with or acquired since December 31, 1996.

Assessment Credit Application

ACB agrees with the FDIC's proposed approach for determining which institutions are eligible to receive an assessment credit. We believe the term "successor" is correctly defined in the proposed rule and is consistent with both well-established principles of corporate law and general industry expectations.

In a corporate merger or acquisition, the rights and privileges of an acquired company are transferred to the resulting entity. Therefore, a financial institution steps into the shoes of a bank or savings association that it merges with or acquires. The resulting institution receives all of the rights, powers, duties, and liabilities of the terminated institution. We believe that it is reasonable and appropriate to apply this principle to the allocation of deposit insurance assessment credits. A depository institution that merges with or acquires another institution should receive the deposit insurance assessment credit that would have been allocated to the purchased institution if it were still in existence.

Furthermore, the proposed definition of "successor" will enable the FDIC to use readily available data to determine which institutions are eligible to receive an assessment credit and determine the amount of the credit that each eligible institution will receive. By utilizing past regulatory reports and SEC filings, the FDIC will be able to clearly identify all eligible institutions. Additional data collections will not be necessary, which would inevitably slow the process for credit allotment.

ACB does not support the alternative "follow-the-deposits" rule that is identified in the proposal. Under this approach, the assessment credits would follow the deposits, regardless of whether the deposits were transferred by merger, consolidation, branch sale, or other deposit transfer. We believe the follow-the-deposits method would provide a windfall to institutions that simply purchased deposits from another institution after December 31, 1996. Neither the purchasing institution nor any of its predecessor organizations paid insurance premiums on the purchased deposits. An agreement to purchase deposits should not be interpreted to imply that the purchaser is entitled to any future deposit assessment credit resulting from previous deposit insurance premiums paid on those deposits.

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[4] The aggregate amount was calculated by applying an assessment rate of 10.5 basis points to the combined assessment base of the BIF and SAIF as of December 31, 2001. Each eligible institution would have its individual assessment base compared to the aggregate assessment to determine its individual credit amount.

However, the FDIC should recognize any contractual provisions that explicitly transfer any assessment credit rights to the purchasing institution. In addition, if an institution has contractually laid out the transference of assessment credits to another institution without a transference of charter, those agreements should be upheld under contract law.

Finally, with respect to purchase and assumption transactions which produce results that are functionally equivalent to the merger or consolidation rule as laid out in the proposal, ACB believes that the FDIC should treat such transactions in the same manner as traditional mergers or consolidations in determining the eligible successor for assessment credit allocation purposes.

Timeline for the Use of Assessment Credits

ACB believes that the language of the Reform Act permits depository institutions to have the discretion to apply their individual assessment credit over a reasonable time period, and does not require credits to be fully exhausted prior to making premium payments into the DIF. ACB believes that these credits belong to the institutions, and they should have the ability to use them as they see fit, in accordance with the provisions of the Reform Act, just as with any other asset holding.

Many institutions have indicated that they would appreciate the ability to use these credits to budget for future expected expenses. If assessments climb significantly higher than the proposed base rates, institutions may find it more palatable to pay small assessments over time rather than large assessments all at once as credits are completely exhausted.

Therefore, ACB strongly urges the FDIC to include specific language in the final rulemaking that specifically allows institutions to elect whether to utilize their credit during the first assessment period or over a reasonable time frame.

Conclusion

ACB supports the FDIC's proposed rule for assessment credits and appreciates the opportunity to comment on this important issue. If you have any questions about our comments, please do not hesitate to contact the undersigned at (202) 857-3121 or via email at pmilon@acbankers.org, Jodie Goff at (202) 857-3158 or via email at jgoff@acbankers.org, or Krista Shonk at (202) 857-3187 or via email at kshonk@acbankers.org.

Sincerely,

Patricia A. Milon
Chief Legal Officer and Senior Vice President
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