NYBA

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

RE: RIN 3064-AD09

Dear Mr. Feldman:

In response to the notice of proposed rule making published in the July 24, 2006 Federal Register, the New York Bankers Association is submitting these comments on the risk differentiation frameworks and the base assessment rate schedule proposed under the Federal Deposit Insurance Reform Act of 2005, P.L. 109-171. The proposal would collapse the current system of nine categories of risk-based institutions to four (including one with two components), revise the system for determining into which category an individual institution belongs, and set minimum and maximum base assessment rates for each of the categories. Our Association has comments on several aspects of the proposal. The New York Bankers Association is comprised of the money center, regional and community commercial banks and thrift institutions doing business in New York State. Our members' aggregate assets exceed $4 trillion and they have more that 340,000 New York employees.

## *VOLATILE LIABILITIES*

### Federal Home Loan Bank Advances

One of the questions raised in the proposal is whether Federal Home Loan Bank advances should be included in the definition of volatile liabilities, or, alternatively, whether higher assessment rates should be charged institutions that have significant amounts of secured liabilities. Our Association would answer “no” to both questions.

The Federal Home Loan Bank system was established by Congress during the 1930’s as a means to provide additional funding for housing and to stabilize institutions whose primary mission was home mortgage lending. The foremost method to implement this goal was through advances of varying maturity designed to match the actual maturity of an institution’s mortgage portfolio. These advances have well-understood terms and conditions and interest rates, based on the creditworthiness of the Home Loan Bank system, rather than individual Home Loan Banks, that are very attractive as compared to rates for other borrowings of comparable maturities. The system served its goals so well that Congress, in the Financial Institution Reform, Recovery and Enforcement Act (FIRREA), expanded eligibility for Home Loan Bank advances to commercial banks. Most recently, in the Gramm-Leach-Bliley Act, Congress further expanded access for smaller commercial banks to the Federal Home Loan Bank system, reaffirming its intention that these advances undergird the strength of the housing market.

Today, more than 8,200 savings institutions and commercial banks are members of the Federal Home Loan Bank system. Most of these institutions use advances from the Home Loan Bank of which they are members to fund mortgage and other appropriate obligations. Advances have proven to be stable liabilities, providing a liquid and reliable source of funding for bank mortgage lending obligations. In many markets, including areas of New York State, slow deposit growth would have severely restricted bank lending if Home Loan Bank advances were not available. Because the maturity, rates and terms of Home Loan Bank advances are well understood, they form a basic portion of many bank funding plans. In times of volatile interest rates, moreover, they can provide a more reliable and predictable source of funding than shorter-term deposits. FHLB advances should not be considered volatile liabilities in the FDIC’s new premium structure, but rather should be used as a source of stability.

In addition, the absence of such Federal Home Loan Bank advances would also have severely impeded the growth of the mortgage market. During several economic downturns in New York, including the most recent spike in unemployment that accompanied the stock market retreat and World Trade Center attack, housing remained one of the few bright spots in the New York economy. Imposing a significant disincentive on the use of Home Loan Bank advances could have severe consequences in a future recession.

For these reasons, the New York Bankers Association urges that the Corporation not regard advances from the Federal Home Loan Bank System as volatile liabilities or charge higher assessment rates for institutions that hold significant amount of such liabilities.

*Time Deposits Over $100,000*

*The proposal also asks whether time deposits in excess of $100,000 should be treated as volatile liabilities, subject to higher assessments. Our Association believes that time deposits in excess of $100,000 can add stability and liquidity to a bank's deposit portfolio and should not be treated as volatile liabilities or be subject to a higher risk classification or higher assessments unless there is evidence that the institution holding the deposits is paying interest rates for the deposits significantly in excess of the applicable market rates. This is particularly true with regard to municipal deposits in states such as New York where only banks can hold municipal deposits. Under New York law, 100% of the amount of the deposit in excess of the deposit insurance limit must be secured by collateral with a market value at least equal to the amount of the uninsured deposit. Studies by our Association and by Cornell University have shown that municipal deposits are core deposits in the vast majority of banks in New York State. Public deposits in banks in the State currently aggregate between $15 and $20 billion and are subject to only minor seasonal fluctuations. Because the seasonal fluctuations are predictable, banks are able to use these municipal deposits as part of their asset-liability planning, increasing the predictability of their earnings and the liquidity of their deposit portfolios. Our Association therefore urges that the Corporation not treat deposits in excess of $100,000, other than "hot money" for which excessive deposit interest rates are paid, as volatile deposits. We most strongly oppose any effort to impose higher deposit insurance premiums as a result of a bank holding fully secured municipal deposits.*

## RISK FACTORS

### The Treatment of Commercial Real Estate as a Risk Factor

A second concern shared by many banks is the FDIC definition of risk. The recent proposal by the federal regulators to subject banks with significant concentrations in commercial real estate to higher levels of supervisory scrutiny and potentially higher capital requirements has given rise to a concern that concentrations, even in such high-performing types of commercial real estate loans as multi-family housing mortgages, could cause an increase in a bank's risk profile, leading to higher deposit insurance premiums. New York bankers believe that the experience of individual banks in managing risks in their portfolios, rather than arbitrary classifications of types of loans, should govern the determination of a bank's risk profile. In particular, the Association is concerned that charging higher deposit insurance premiums for institutions that specialize in multi-family lending could have a severely detrimental impact on the lending that supports much of the urban housing stock in New York State. Such lending is already subject to increased management scrutiny. We urge that the Corporation not chill this vital market by inappropriately targeting relatively low-risk multi-family loans for higher deposit insurance premiums.

Use of the Bond Rating Agencies

Third, there is growing concern among some larger institutions that bond rating agencies are not an appropriate vehicle to determine a major portion of a bank's risk profile for the purpose of imposing deposit insurance premiums. Because of accounting and reporting fraud in recent years, there is a belief that many rating agencies have become unduly conservative in their recommendations with regard to the weighting of subordinated debt and other types of publicly traded debt instruments issued by the institutions they assess. In spite of the outstanding record of the banking industry in building capital, avoiding uncompensated risk and diversifying sources of earnings in recent years, the rating agencies continue to restrict bank ratings.

Acquisition of New Institutions

We understand the need for a higher assessment rate on newly established institutions. However, the proposal also raises the question of the appropriate treatment of new institutions that merge with, acquire or are acquired by established depository institutions. Our Association believes that the Corporation should judge an individual institution based on the specific risk profile that it presents to the deposit insurance fund. Generally, a new institution that merges with, acquires or is acquired by an existing depository institution will immediately exhibit certain risk characteristics, such as market penetration, strength of management, amount of capital and experience of the officers and employees of the resulting institution, that will allow the primary federal supervisor of the resulting institution to make a determination whether it most appropriately should be characterized in accordance with the risk profile of the new institution or the established one. To choose two extreme examples, a new institution, that acquires an existing institution of similar size but retains all of the management structure, board policies, loan and investment guidelines and market characteristics of the new institution might reasonably be characterized by its primary regulator as a new institution, allowing the FDIC to charge premiums accordingly. On the other hand, in a more likely scenario, a multi-billion dollar institution with many years of banking experience that acquires a new institution while retaining all of the existing institution's management, policies and procedures, and market characteristics, should, except in very unusual circumstances, be characterized by its principal federal regulator as an established institution.

Assessment Rates

We would urge that the ultimate base assessment schedule result in a somewhat flexible premium program that ensures adequate FDIC resources while minimizing the financial burden and disruption borne by financial institutions. In this regard, we would urge that the assessment schedule reflect the reality that many of the newer institutions (which have never paid assessments before because they were chartered after the reserve ratios of BIF and SAIF reached 1.25 percent), may, because of the rapid growth or disproportionate size of their deposit base, put undue pressure on the reserve ratio. We recognize that both Congress and the FDIC have already taken steps to address this issue, but are concerned that the measures may be inadequate to fully compensate those institutions that recapitalized the FDIC Insurance fund in the early 1990s.

We appreciate the opportunity the Corporation has provided to comment on this proposal.

Sincerely,

Michael P. Smith