



CYNTHIA L. BLANKENSHIP
Chairman
R. MICHAEL MENZIES
Chairman-Elect
JAMES D. MACPHEE
Vice Chairman
LARRY W. WINUM
Treasurer
WILLIAM C. ROSACKER
Secretary
TERRY J. JORDE
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

September 15, 2008

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Processing of Deposit Accounts in the Event of an Insured Depository Institution
Failure: RIN 3064-AD26

Dear Mr. Feldman:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to offer comments in connection with the FDIC's interim rule establishing the FDIC's practices for determining deposit and other liability account balances at a failed insured depository institution. Specifically, ICBA is commenting on whether insured depository institutions should be required to disclose to sweep account customers the status of their swept funds if the institution were to fail.

ICBA's Position

As part of its interim rule establishing the FDIC's practices for determining deposit and other liability account balances at a failed insured depository institution, the FDIC is proposing that, beginning July 1, 2009, banks prominently disclose in their sweep account contracts and account statements (1) whether swept funds are deposits within the

¹*The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. 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 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

meaning of 12 U.S.C. 1813 and (2) if the funds are not deposits, the status such funds would have if the institution failed—for example, general creditor status or secured creditor status. Under the proposal, such disclosures would have to be consistent with how the bank reports such funds on its Call Reports or Thrift Financial Reports.

ICBA supports the FDIC’s proposal since it would clarify to sweep account customers the status of their funds if the institution were to fail. However, to minimize the regulatory burden, ICBA recommends that the disclosure be made only one time—at the time the sweep account contract is entered into. ICBA believes that it would be costly for a bank to make the disclosure whenever an account statement is delivered to the customer. Such a requirement would require extensive changes to sweep account statement software programs and would significantly increase the costs of preparing the account statement. We believe that most sweep customers would also find the additional disclosure to be repetitious and unnecessary.

Many community banks use repurchase agreements as their sweep arrangement. The FDIC’s interim rule confirms that if the repo sweep customer is the legal owner of identified securities subject to a repurchase agreement, the FDIC will acknowledge that ownership interest if the institution fails. ICBA believes that most repo customers understand what happens when their deposits are swept-- that their funds are no longer deposits but instead reflect an ownership interest in securities. Nevertheless, we believe it would be beneficial to have the proposed disclosure as long as it is only required at the time the account contract is entered into.

ICBA appreciates the opportunity to offer comments in connection with the FDIC’s proposed disclosure requirements concerning sweep accounts. If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,

/s/ Christopher Cole

Senior Regulatory Counsel