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

Attention: Comments

RE: Notice of Proposed Rulemaking to Amend 12 CFR §327.11 and §327.33, RIN 3064–AF16[1]

Dear Mr. Feldman:

The American Bankers Association[2] is pleased to respond to the Notice of Proposed Rulemaking (NPR) from the Federal Deposit Insurance Corporation (FDIC) regarding revisions to 12 CFR §§327.11 and 12 CFR §327.33, which govern the use of assessment credits.

Some 5,212 banks, 98.3 percent of the industry, were due assessment credits totaling $764.4 million as of mid-year 2019.[3] These balances were allocated last September per 12 CFR §327.11 (§327.11 credits). Two banks had credits amounting to $300,000 that were allocated in 2006 per 12 CFR §327.33 (§327.33 credits).[4]

ABA supports the intent of the NPR, to make application of credits against quarterly assessments more predictable while maintaining the reserve ratio of the Deposit Insurance Fund (DIF) no lower than the statutory minimum of 1.35 percent.[5] However, we recommend that the FDIC return the credit funds as expeditiously as is feasible to those banks to which they are due. The credits will serve a better purpose when disbursed to these banks where these funds can support the institutions' lending and liquidity. Accordingly, we believe that the objectives of the NPR can be better achieved with certain refinements:

- §327.11 credits should be applied against assessments when the DIF is at least 1.35 percent of insured deposits (as proposed).
- §327.11 credits remaining after they have been applied for four quarters should be remitted in the next quarter that the DIF reserve ratio is at least 1.35 percent.

[1] FDIC, Notice of Proposed Rulemaking: Assessments (12 CFR §327.11), 84 *Federal Register* 45443, August 29, 2019 (www.govinfo.gov/content/pkg/FR-2019-08-29/pdf/2019-18257.pdf).
[2] The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than two million people, safeguard over $14 trillion in deposits, and extend more than $10 trillion in loans.
[3] NPR, page 45444.
[4] NPR, page 45445.
[5] NPR, page 45444.

- The amount of §327.11 credits applied against a prior quarter's assessments should be recalculated to correspond with adjustments to the Call Report (as proposed).
- §327.33 credits should be refunded without delay.

Following 12 CFR §327.11(c)(i), the FDIC commenced allocating §327.11 credits against assessments when the DIF reserve ratio rose above 1.38 percent to 1.40 percent in second quarter 2019 (from 1.36 percent in the first quarter). Bankers appreciate the promptness of the FDIC in applying credits last month against second quarter assessments, demonstrating responsiveness to the value of these funds for the banks.

Discussion of the above recommendations and analysis of the NPR follow. ABA recommends that the proposed changes go into effect immediately (as proposed).

§327.11 credits should be applied against assessments when the DIF is at least 1.35 percent of insured deposits.

Under the current rule, application of credits against assessments would be suspended if the reserve ratio were to decline below 1.38 percent. As proposed, the suspension level would be reduced to 1.35 percent. ABA supports this change.

While we feel that the credit funds would be put to better purpose if they are applied without limit against assessments, we respect the FDIC's statutory obligation to maintain the DIF reserve ratio no lower than 1.35 percent.[6] The FDIC has evaluated that this change "would not materially impair the ability of the FDIC to maintain the required minimum reserve ratio of 1.35 percent."[7] Therefore, it is appropriate to revise "1.38 percent" in 12 CFR 327.11(c)(11)(i) to "1.35 percent."

§327.11 credits remaining after they have been applied for four quarters should be remitted in the next quarter that the DIF reserve ratio is at least 1.35 percent.

As proposed, any §327.11 credits left after such credits have been applied for eight quarters would be remitted to their owners in the next quarter in which the DIF reserve ratio is at least 1.35 percent. ABA recommends that the period be reduced in 12 CFR §327.11(c)(13) to four quarters. In this case, residual §327.11 credits would be refunded in July 2020, after first quarter 2020 assessments (net of credits) are paid at the end of June 2020, provided the DIF's reserve ratio remains no less than 1.35 percent through that time.

According to the NPR, the FDIC rejected a plan to remit residual credits after four quarters to minimize volatility of the DIF.[8] However, there is no statutory mandate to keep the DIF reserve

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[6] The Dodd-Frank Wall Street Reform and Consumer Protection Act specifies that "[t]he reserve ratio [of the DIF] designated by the [FDIC] Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits …" (P.L. 111–203 §334(a))

[7] NPR, page 45445.

[8] NPR, page 45447.

ratio stable, only to maintain it at or above 1.35 percent. Therefore, when the credit funds are not needed to maintain 1.35 percent, they should be distributed to the banks.

Approximately $451 million of §327.11 credits remain after they were applied against second quarter 2019 assessments.[9] The FDIC estimates that approximately $1.75 million would be left if these credits apply for the next seven quarters.[10] Accordingly and conservatively, by straight-line extrapolation there will be less than $260 million of credits outstanding after three more quarters. Ignoring insured deposit growth, disbursing this amount in the succeeding quarter would reduce the DIF reserve ratio by no more than ⅓ of a basis point. Short of a dramatic turnaround, which the FDIC does not foresee,[11] the DIF reserve ratio would remain comfortably above 1.35 percent. Therefore, the FDIC can safely prepare to remit residual credits next July.

The amount of §327.11 credits applied against a prior quarter's assessments should be recalculated to correspond with adjustments to the Call Report.

Under current 12 CFR §327.11(c)(11)(iii), recalculation of the amount of §327.11 credits applied for a prior quarter's assessment resulting from subsequent amendments to a bank's quarterly regulatory reports is impermissible. ABA supports the NPR's proposal to delete this paragraph.

With this change, revision of a prior Call Report that calls for a higher assessment would be offset by more credit applied, neutralizing the effect on an institution with a credit balance. A revision that lowers an earlier assessment would similarly be offset by less credit applied. In sum, for banks with credit balances this amendment would mitigate the impact on assessments due from Call Report revisions, limiting the impact on bank earnings.

§327.33 credits should be refunded without delay.

The FDIC has had the remaining §327.33 credits for over 13 years. If the $300,000 had been paid out to its owners last June, the DIF reserve ratio would be 0.0004 basis points lower – truly an immaterial amount for the DIF. There is no clear justification for the FDIC to hold onto these funds for two more years. It is long past time that these funds be remitted to the two banks, and 12 CFR §327.35 should be amended accordingly.

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Thank you for considering our suggestions. If there are any questions, please do not hesitate to contact the undersigned.

[redacted]

Robert W. Strand

[9] According to the NPR, page 45445, approximately 41 percent of the $764.4 million pool of credits were applied against second quarter 2019 assessments.

[10] NPR, page 45446.

[11] NPR, page 45445.