

October 15, 2010

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

Re: RIN 3064-AD37; Unlimited FDIC Insurance Coverage for Noninterest-bearing Transaction Accounts for 2011-2012; 12 CFR Part 330; 75 Federal Register 60341, September 30, 2010

Mr. Feldman:

The American Bankers Association (ABA) welcomes the opportunity to comment on the proposal from the Federal Deposit Insurance Corporation (FDIC) to provide unlimited deposit insurance for noninterest-bearing transaction accounts for December 31, 2010, through December 31, 2012.<sup>1</sup> ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

ABA generally supports the rule as proposed. However, we request that the final rule clarify the definition of "noninterest-bearing transaction account," and we suggest clearer, more concise language for the notice provided in bank branches. Moreover, we recommend that the FDIC weigh the value of a permanent, self-supporting, and optional insurance program for interest-bearing deposit accounts, based on its experience with the Transaction Account Guarantee Program (TAGP).

### **Clarification of "Noninterest-bearing Transaction Account"**

As in the TAGP, the proposal explicitly provides that the waiving of fees would not, in and of itself, be treated as the payment of interest. This would, for example, allow a bank to include noninterest-bearing checking accounts in rewards programs that enable customers to earn fee-reducing credits. It does not, however, address the question of whether banks may include these checking accounts in the type of rewards programs commonly offered today, where customers earn loyalty points that can be redeemed for third-party services such as travel awards. ***We ask the FDIC to clarify that noninterest-bearing checking accounts be considered to the same extent as other deposit products in a bank's rewards program, even if the rewards program affords consumer benefits in addition to fee waivers.***

In addition, ***we ask that the FDIC clarify that it will look only to the absence of a contract interest rate to determine whether a checking account qualifies for unlimited FDIC***

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<sup>1</sup> This proposal implements section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

*insurance*, and not to any ancillary benefits such as one-time bonuses or premiums in cash or merchandise, even those which relate to the amount and duration of the deposit. This interpretation finds precedent in the FDIC's rule that, in a bank failure, deposit balances for insurance coverage are determined considering the contract interest rate and not any ancillary benefits.<sup>2</sup>

Finally, *we ask the FDIC to confirm that interest-bearing accounts may be converted to noninterest-bearing checking accounts after December 30, 2010, and still obtain the benefits of unlimited FDIC insurance.* This would seem to be the case, since new noninterest-bearing checking accounts opened after that date will receive such benefits, but it merits removing any doubt.

### Clear, Concise Notice in Branches

The proposed notice that branches will be required to provide to customers, notifying them of the rule change, is longer and more complicated than necessary and can be confusing. ***We recommend that the notice be more concise and clearer.*** The standard FDIC notice in use today is a model of brevity and clarity, even though the underlying FDIC rules about deposit insurance coverage are extremely complex. We suggest that the proposed notice could be rewritten in the following manner to provide additional clarity:

#### NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in noninterest-bearing transaction accounts are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking or demand deposit account on which the insured depository institution pays no interest. It does not include other accounts, such as traditional checking or demand deposit accounts that earn interest, NOW accounts, money-market deposit accounts, and Interest on Lawyers Trust Accounts ("IOLTAs").

For more information about FDIC insurance coverage, visit [www.fdic.gov](http://www.fdic.gov).

Please note that we recommend dropping the proposed phrase "even if checks may be drawn on the account" after "... ("IOLTAs")." We do not believe that this phrase adds clarity and it may confuse deposit customers.

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<sup>2</sup> 12 C.F.R. 330.3(i) states "Determination of the amount of a deposit. (1) GENERAL RULE. The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period."

### **Consideration of Permanent, Self-supporting, and Optional Insurance for Interest-bearing Accounts**

The proposal states that the FDIC will not continue the TAGP beyond 2010. As a consequence, starting January 1, 2011, balances above \$250,000 in low-interest NOW accounts and IOLTAs will no longer have FDIC coverage for banks participating in the TAGP. We note that 5,765 banks – comprising almost 75 percent of the industry – have demonstrated support for this coverage and have been willing to pay to receive it. Some of these banks have indicated to ABA that they would prefer that this coverage continue. These banks believe that the program helps them retain deposits, particularly IOLTAs, that may otherwise shift to larger institutions. Moreover, the full coverage of NOW accounts has allowed them to satisfy state-mandated protection for interest-bearing municipal accounts without cumbersome collateralization of the deposits that ties up bank resources. In sum, these banks believe that the TAGP coverage of low-interest NOW accounts and IOLTAs has helped them retain local deposits so that the funds can be used to finance credit in their local communities.

The proposal points out that the FDIC adopted the TAGP in October 2008 based on a specific and limited provision in statute. In accord with 12 U.S.C. 1823(c)(4)(G), following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by the FDIC and Federal Reserve Governors, the FDIC instituted the TAGP to avoid or mitigate serious adverse effects on economic conditions or financial stability. In terminating the TAGP at yearend, the FDIC has determined that these conditions no longer prevail, so its statutory authority to continue the program will have ceased. Considering the interest expressed by some bankers, ***ABA suggests that the FDIC undertake a study of the benefits and costs of a permanent, self-supporting, and optional insurance program for qualifying accounts above the standard insurance limit.*** The two-plus years experience with the TAGP can provide useful input, recognizing that the TAGP operated in a period of financial instability. The ABA stands ready to assist with such a study. If the study concludes that a federal program, or one that utilizes private insurers, may be desirable, this could support a request to Congress for whatever additional authority the FDIC would need to implement such a program.

ABA appreciates the opportunity to comment on the FDIC's proposed regulations, and we thank you for your consideration of our comments.

Sincerely,



Senior Economist