American Bankers Association
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April 12, 2011

***By electronic delivery to:***
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Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Amendments to Deposit Insurance Regulations, 12 CFR Part 330 – Deposit Insurance Education; RIN #3064-AD37

Ladies and Gentlemen:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) notice of proposed rulemaking to improve consumer awareness of deposit insurance coverage.[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

**Summary of Comment**

ABA supports the FDIC's on-going efforts to increase public awareness of federal deposit insurance and the steps depositors can take to determine whether their deposits are protected in full. Our members understand the importance of maintaining public confidence in the FDIC guarantee; many currently have information available for customers about deposit insurance in their branches and on their websites and provide appropriate staff with training on the fundamentals of FDIC insurance.

ABA applauded the FDIC's 75th anniversary initiative to promote public confidence in the nation's banking system and the fact that "in the history of the FDIC, no customer has ever lost a penny."[2] This is the pledge for which the FDIC emblem stands. Despite the underlying intricacies of FDIC insurance coverage, the Corporation has invested in the simple message of trusting the FDIC emblem. This is sound policy as is evident

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[1] 76 Fed. Reg. 7740 (February 11, 2011).
[2] *See* http://www.fdic.gov/consumers/banking/confidence/symbol.html.

from the FDIC's own data that only .039% of accounts are over the $250,000 limit,[3] and an even more infinitesimal percentage are at risk of loss due to bank failure. In these circumstances, to focus the attention of every customer opening a new account on the issue of the safety of their aggregate deposits and their protection against bank failure is to sow doubt not only about the adequacy of coverage, but the financial soundness of their bank.

Mandating an inquiry at account opening into whether the combined balances of all the accounts at the bank in which the customer has an ownership interest exceed the standard maximum deposit insurance amount (SMDIA) and requiring employees to attend two-hour annual training is to generate unnecessary costs and anxiety and to waste millions of hours of time. The vast majority of bank customers have no loss exposure, and for the truly *de minimis* minority who do, their theoretical loss exposure could be mitigated by taking advantage of existing information sources. The obvious costs of this proposal to the many who are otherwise unaffected by the issue far outweigh the remote and speculative benefits to a few. Moreover, the FDIC has failed to establish a record demonstrating that there is a threat to system confidence that warrants the obligations imposed by the proposal. In fact, FDIC's protection of depositors during the recent deep and prolonged recession has been nothing short of remarkable. That experience should serve as the sternest of tests: what proportion of bank depositors suffered any deposit losses from bank failures over the past three years? The answer is truly a very small number. What would lead us to think that depositors' experiences would be materially worse going forward?

Consequently, ABA believes that the proposed requirements would impose burdensome new compliance obligations that will complicate an otherwise simple public message of assurance and erode public confidence in the safety of their deposits without materially reducing experienced financial losses to depositors.

**The proposed rule**

The FDIC has proposed the addition of a new section to its insurance regulations to "promote public confidence in Federal deposit insurance by providing depositors with improved access to accurate information about FDIC insurance coverage of their accounts at insured depository institutions."[4] This new section seeks to accomplish this goal in three ways. First, it would require any employee "with authority to open deposit accounts and/or to respond to customer questions about FDIC insurance coverage" to complete annually a two-hour, FDIC-provided, computer-based training program on the fundamentals of federal deposit insurance coverage. The proposal would require all new employees to complete the course within 30-days of employment; existing

[3] FDIC Statistics on Depository Institutions Report as of December 2010, *available at* http://www2.fdic.gov/SDI/SOB/.
[4] *Id.*

employees would be required to complete the course within 60-days of the effective date of the final rule.[5]

Second, the proposed rule would require insured depository institutions to require any employee who opens a new deposit account to ask the customer if he or she has an ownership interest in any other account at the institution, and if so, whether the customer's aggregate ownership interest in the deposit accounts, including the new account, exceeds the standard maximum deposit insurance amount. If the customer responds affirmatively, the proposed rule would require the employee to provide that customer with a copy of the FDIC's publication, *Deposit Insurance Summary*.[6] This requirement would apply to any new deposit account, including new accounts opened by telephone, mail, the internet, or "other technology." In the case of accounts opened by mail, the internet, or other technology, the inquiry may be included in the paper or electronic application form, with a link to the *Deposit Insurance Summary* publication provided on the form.[7]

Finally, the FDIC would require insured depository institutions to provide a link to the FDIC's Electronic Deposit Insurance Estimator (EDIE) on any website the institution maintains for use by deposit customers.[8]

**ABA Comment**

Although ABA supports the FDIC's goal of promoting public confidence in federal deposit insurance and avoiding unnecessary financial losses by depositors in the event of a bank failure, we do not believe that the proposed requirements will advance this goal. Further, we believe that the FDIC has failed to develop a record sufficient to support the proposal or one that compellingly demonstrates how customer confidence will be improved by raising the specter of bank failure at the time of account opening.

**The rule-making record is not sufficient to support the premise for the proposal.**

The supplementary information suggests two predicates for the proposal. First, that FDIC receives "tens of thousands" of calls and other contacts seeking information on deposit coverage that supposedly reveal many depositors and some bank employees

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[5] 12 CFR Part 330.17(a)-(c).
[6] *See* FDIC *Deposit Insurance Summary, available at* http://www.fdic.gov/deposit/deposits/dis/index.html.
[7] 12 CFR Part 330.17(2).
[8] Although the supplemental materials discuss this third requirement (*see* 76 Fed. Reg., *supra at* 7741), the proposed text of the regulation does not include any reference to this requirement.

"are unfamiliar with the scope of deposit insurance coverage."[9] ABA questions the probative value of this observation; the FDIC rules on scope of coverage are so intricate that even within FDIC they call for a specialist to comprehend fully. FDIC specialists undergo extensive training (and we presume persistent quality control testing) to hone that expertise. Bank employees are wisely cautioned against advising depositors on the particular insurance coverage of a depositor's aggregate holdings lest inappropriate reliance on such advice be inferred. Instead, bank staff is generally instructed to direct customers with deposit insurance questions to the FDIC's extensive deposit insurance resources – its deposit insurance FAQs, guides, videos, EDIE, and the FDIC's toll free number. Pursuit of these recommended FDIC resources may explain the "tens of thousands" of depositor contacts.

Furthermore, during the last two and one-half years, there have been frequent and significant changes in the law and regulations affecting deposit insurance coverage.[10] In the midst of the turmoil caused by the financial crisis, these changes – many of which were temporary – would have engendered a significant number of calls from depositors seeking to understand which accounts had been granted increased coverage, the duration of that coverage, and how these changes would affect their insured status.

Moreover, we note that despite the fact that the FDIC has data that about these inquiries, it does not provide any information about how depositors found the FDIC's contact information; the nature of the inquiries, including any measure of their complexity; or any measure of how the number of inquiries compares to the total number of covered account holders. These data are presumably within the control of the FDIC, but none are marshaled to support the FDIC's conclusory assertions about the need for the regulatory changes.

The second predicate expressed by the FDIC as the basis for the proposal is that it "regularly receives complaints" by depositors asserting that "their banks were unable to answer their deposit insurance questions, or in *some* cases, *may* have provided inaccurate information" (emphasis added).[11] Despite the fact that this assertion is derived from FDIC complaint data, there is a paucity of data analysis or detail substantiating this statement, and there is no elaboration elsewhere in the supplementary information. As we have noted above, not knowing an answer but referring someone to the acknowledged FDIC authority can hardly be viewed as grounds for a complaint. It is a favor not to presume to advise a depositor on a matter implicating the expertise of a superior authority—even if the customer feels like he has

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[9] 76 Fed. Reg.*supra at* 7741.

[10] These changes include both temporary and permanent increases in the SMDIA; the establishment and subsequent extensions of the Transaction Account Guarantee Program providing unlimited insurance for non-interest bearing transaction accounts, IOLTA accounts and NOW accounts; 343 of the Dodd-Frank Act and a final rule implementing that section to include noninterest-bearing transaction accounts as a new temporary deposit insurance category; and finally, an amendment of section 343 to include IOLTAs within the definition of a "noninterest-bearing transaction account."

[11] 76 Fed. Reg., *supra at* 7741.

been passed along the line and feels that such a referral merits a complaint. Indeed, the FDIC concedes that it "would not require an IDI to provide counsel or advice to the customer regarding how to structure multiple deposit accounts to maximize deposit insurance coverage."[12]

Furthermore, the deficiency of the record supporting this second predicate is inexplicable. The FDIC presumably has, but does not include in the record:

- The number complaints over a defined time-period that constitutes "regularly;"
- The number of so-called complaints that were determined to be true complaints and the number that were simply requests for information that the FDIC answered authoritatively;
- The number of instances in which depositors alleged that the bank provided inaccurate guidance and the number of those instances that ultimately were found to be inaccurate;
- The number of complaints that resulted in deposit insurance coverage being inadequate and of those, the number that suffered a loss;
- Any measure of the complexity of the underlying insurance coverage question;
- The number of complaints, qua inquiries, that implicated complex coverage issues or required more information than the depositor provided in the initial complaint in order to be sure the answer was complete and not misleading; or
- Whether subsequent quality control demonstrated that FDIC response to the question in the complaint was fully accurate and complete.

Without this information – which is totally within the FDIC's control – it would be hard to make a fully informed comment about the validity of the FDIC's assertion that the proposed new requirements address a real problem and are warranted. Despite the absence of data analysis or record evidence, the FDIC proceeds to claim that it is "concerned" that these unsubstantiated predicates "*could* cause financial harm…and have the *potential* to undermine customer confidence in IDIs and the deposit insurance system." These conclusory statements are not linked to any quantification of the likelihood of harm or the risk of erosion of confidence. At best they are untested hypotheses.[13]

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[12] *Id.*

[13] Because the concerns are based on existing FDIC complaint information the hypotheses could be tested to determine whether the complaining depositors were in fact harmed and whether this resulted in measurable loss of overall depositor confidence in the FDIC insurance.

**The proposed requirements will undermine confidence in the safety of deposits and require a level of expertise that is not reasonably attainable by a vast population of bank employees.**

Whenever a customer opens a new deposit account at an insured depository institution, the proposed rule requires *the banker to ask the customer* whether the customer has an ownership interest in other deposit accounts at the institution and "whether the combined balances of all the accounts exceed the SMDIA." It is only after *the customer answers* this second question in the affirmative that the banker is to present the customer with the FDIC publication, *Deposit Insurance Summary*. First, asking these questions – which are likely to seem intrusive and intimidating to an individual new to the banking system – may discourage that customer from proceeding with the account opening process. Second, how many customers know the current account balances of all accounts in which they have an ownership interest and how many of those could make the on-the-spot calculation required to determine that they will exceed their SMDIA by opening the new account? Third, considering the fact that only .039% of all accounts exceed SMDIA limits, how many even need to know their account balances in order to avoid risk of loss at the bank in question? Given the very small risk faced by the millions of accountholders who will be asked these questions, ABA disputes the wisdom of a policy that gratuitously raises for customers the specter of their bank failing and their resultant exposure to loss. These conversations will undermine the very confidence the FDIC seeks to build.

Having raised these fears, the only way to reassure a customer of the safety of his or her deposits is for the employee to explain to the customer how deposits are insured by the FDIC and for those customers with deposits approaching SMDIA limits to advise the customer about account structuring to maximize deposit insurance coverage. To do so, however, assumes that frontline employees have unusually in-depth knowledge of the complexities of federal deposit insurance and account ownership categories for very large depositors *and* should be authorized to counsel customers on these matters. Indeed, questions about deposit insurance coverage rarely involve "only" basic deposit insurance coverage considerations; they often implicate estate plan and asset protection strategies as well as obligations the customer may have under contractual agreements. Even the FDIC recognizes that these employees should not be offering this kind of advice to customers as to do so could be to engage in the unauthorized practice of law.[14] Nevertheless, the FDIC has proposed a requirement that will all too easily place customers and employees in this untenable situation. ABA opposes a rule that mandates the initiation of conversations with customers that cannot, and should not, satisfactorily address the many complex questions likely to be raised. Such conversations will only generate unnecessary worry and may result in decisions not to

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[14] 76 Fed.Reg., *supra at* 7741 ("The rule would not require an IDI to provide counsel or advice to the customer regarding how to structure multiple deposit accounts to maximize deposit insurance coverage.").

open new deposit accounts, driving customers to what may be less protected financial instruments outside of the bank environment.

The mandatory training proposed by the FDIC will not prepare bank employees to advise customers on steps to take to maximize deposit insurance coverage, nor should it. The course proposed by the FDIC will provide only "an *introduction* to FDIC deposit insurance coverage, with specific focus on the general principles of insurance coverage and the rules and requirements for account ownership categories."(emphasis added)[15] Even a two-hour course cannot begin to prepare employees to answer any but the basic questions about deposit insurance. The FDIC and its legal staff, however, have the resources and expertise to counsel individuals on specific coverage questions. ABA believes that the FDIC, the agency charged with resolution of failed banks, should be the entity responsible for answering deposit insurance questions that would arise in the case of a bank failure. The agency should not seek to deputize bank employees to perform this critical task.[16]

Moreover, most bank customers do not have bank deposits approaching the $250,000 limit. Therefore, the vast majority of customers need only to know that their deposits are fully ensured – a fact clearly conveyed by the FDIC official signage posted at each location where deposits are accepted and the FDIC logo placed on all bank websites and marketing materials. Those customers who do have deposits approaching the deposit insurance limits tend to be businesses or wealthy customers that are advised by an array of attorneys, accountants, and financial planners. These customers do not want or need unsolicited inquiries or advice from frontline bank staff. If they do have questions, they are fully capable of initiating the conversation with either a bank employee in whom they have confidence, generally their personal banker or a senior member of bank management, or the FDIC, the ultimate arbiter of deposit insurance issues.

ABA urges the FDIC not to impose a requirement for annual FDIC insurance training or a mandatory inquiry at account opening. We do not believe that either requirement will advance the FDIC's goal of promoting public confidence in federal deposit insurance and avoiding unnecessary financial losses by depositors in the event of a bank failure.

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[15] *Id.*

[16] As noted above, the FDIC states that it "receives tens of thousands of telephone calls, emails and correspondence annually" from depositors and employees seeking information and advice about FDIC deposit insurance coverage and it "regularly receives complaints from IDI customers, asserting that their banks were unable to answer their deposit insurance questions or, in some cases, may have provided inaccurate deposit insurance guidance." *Id.* ABA believes that the FDIC should not complain about receiving these inquiries as it is ultimately responsible for advising depositors. Moreover, by assuming this responsibility, the FDIC could reduce – if not end – to its full satisfaction complaints from consumers about receiving inaccurate deposit insurance guidance from bank employees.

**The proposed new requirements will impose massive and complex regulatory burdens.**

The FDIC characterizes the proposed rule as "circumscribed and modest in its requirements."[17] This assertion reflects the FDIC's failure to appreciate the breadth of employees potentially affected by the new requirements and the significant compliance burdens imposed. ABA believes that the proposed requirements will impose significant regulatory costs and burdens on the banking industry.

The mandatory inquiry would apply whenever a "customer" opens a "new deposit account." The potential reach of this requirement is exceedingly broad. The term "new account" is defined as "*any* deposit account to which the insured depository institution assigns a unique identifier" (emphasis added).[18] In addition, the term "customer" is not defined, suggesting that the requirement is not limited to new consumer accounts but also is intended to apply to new commercial deposit accounts, including those opened within the wholesale division of a bank.[19] Thus, banks will be required to implement procedures to ensure compliance with the requirement within retail *and* wholesale offices, and they will also have to implement procedures to ensure compliance within call centers that open deposit accounts over the phone. The requirement will reach not only frontline personnel – tellers, new account clerks, customer service representatives, call service employees, and branch management – but also bank employees who only occasionally open deposit accounts for customers as an incidental service, including retail and commercial lenders, private bankers, trust officers, and broker-dealers. In essence, any bank employee who may open a new deposit account for any customer is subject to the new requirement.

The FDIC's assertion that implementation of the rule would not impose a significant regulatory burden on the industry ignores the steps required to implement any new compliance requirement, steps complicated by the fact that the requirement affects so many different categories of employees across all divisions of a bank. Institutions must draft procedures and establish systems to document compliance for each of the different categories of employees and account opening scenarios. In some cases, this will require institutions to modify contracts with affiliates. For example, one institution notes that a large number of employees authorized to open deposit accounts for the bank are actually dual employees of the bank and an affiliated broker-dealer. Ensuring compliance for these employees may require the bank to add provisions to its contract with the broker-dealer establishing responsibility for drafting procedures, conducting training, and monitoring ongoing compliance.

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[17] *Id.*

[18] 76 Fed. Reg. *supra at* 7743.

[19] As discussed previously, wholesale bank customers tend to be corporate customers (or other banks) who are represented by an array of professional advisors; if they have questions about deposit insurance, they have a variety of professionals – including the FDIC – to contact for advice.

Moreover, our members note the difficulty of documenting and monitoring compliance with the requirement. Will employees be required to document each conversation with a customer opening a new account? How will the bank monitor compliance? How will the FDIC? For accounts opened in person, how will the bank demonstrate that it provided a copy of the *Deposit Insurance Summary*? For accounts opened over the telephone, what is the required time in which the bank must send a copy of the *Deposit Insurance Summary*? Finally, institutions must establish their own training programs to ensure that employees understand the new procedures, and they must monitor and audit compliance.

ABA also believes that the FDIC vastly underestimates the compliance burden that will be imposed by the requirement for annual deposit insurance training. The fact that the FDIC will provide the computer-based module at no cost to a bank does not appreciably mitigate compliance burden; the real burden flows from the cost of administering and documenting the annual training. The training requirement applies to any employee "with authority to open deposit accounts and/or to respond to customer questions about FDIC insurance coverage." Like the definition of a mortgage loan originator with which banks continue to struggle, this definition is strikingly open-ended and therefore, subject to individual interpretation – and regulatory second-guessing. As a result, our members report that they are likely to impose the training requirement on virtually everyone employed by the bank rather than try to parse job descriptions and ascertain which employees "have authority" to open deposit accounts or to respond to customer inquiries about deposit insurance.

Administering and documenting the required training for such a large number of employees across virtually the entire bank will impose significant compliance challenges and costs. The FDIC estimates that the course will require two-hours to complete. For frontline, administrative, and call center employees, scheduling time to complete the course (whether in one sitting or several) will require the scheduling of other employees to cover for them – scheduling that is expensive and challenging considering the limited staffing at many bank branches. Our members report that scheduling limitations would preclude the completion of initial training for existing employees within the 60-day period the FDIC proposes. In addition, most institutions develop and assign employee training programs a year in advance. By doing so, they can create training plans that impose the least disruption to bank operations and employee work schedules. In addition, these plans are designed to ensure that employees receive an appropriate mix of training about their job responsibilities, bank procedures, and compliance. There are already six statutorily-required areas of compliance training for frontline employees,[20] the introduction of another mandatory course that must be repeated annually will require significant short-term and long-term adjustments and substitutions to these carefully designed employee training programs. Moreover, our members are concerned about the precedent this rule would set – will other proposed regulations also include a

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[20]Statutorily required instruction for frontline employees includes: BSA/AML, CIP, physical bank security, information security, funds availability, and identity theft/red flag training.

mandatory training requirement, eventually supplanting employer discretion in this area?

ABA also questions the reasonableness of imposing a requirement that new employees complete deposit insurance training within the first thirty days of employment. Many new employees are filling entry-level positions and have no prior banking experience. As such, they are already being asked to assimilate a great deal of information about their job responsibilities and bank policies and procedures as well as information about relevant compliance and bank secrecy act obligations. To expect these entry-level employees also to master complex legal concepts about federal deposit insurance and account ownership categories within the first thirty days is neither reasonable nor efficient. It will encourage “cramming,” with increased risks that much of the information will be little understood or retained.

Other compliance burdens arise from the fact that the FDIC deposit insurance training course will not be built into a bank’s existing training platform, and the course lacks an assessment. As a result, confirming and documenting completion will be a challenge. To do so manually would be impossible for all but the smallest institutions, requiring the establishment of a separate system to administer the training and document completion each year.

**ABA supports providing a link to EDIE on bank websites.**

The proposed rule would require an insured depository institution to provide a link to EDIE on its website or alternatively, to Brandable EDIE, permitting customers to access EDIE from the bank’s own website. ABA supports this requirement. As previously explained, we believe that the FDIC is ultimately responsible for advising depositors about federal deposit insurance coverage. Providing a link to EDIE and the many resources and experts the FDIC has available is an appropriate and efficient means to ensure that customers can confirm their deposit insurance coverage.

However, we would not support a related requirement for institutions to maintain in all retail offices a dedicated terminal offering access to the EDIE application. Our members believe it is unlikely that customers will use EDIE from a bank retail office, preferring instead to access it from their own computer when they have adequate time to devote to the process and access to necessary deposit account records. In addition, our members believe that privacy and identity theft concerns counsel against in branch use of EDIE; customers using the program may inadvertently expose personal account information. Finally, space limitations at many branches preclude the addition of a desk and dedicated terminal, and some of our small community bank members have a limited number of computer terminals connected to the internet at a branch and do not have the luxury of dedicating one to EDIE access.

Finally, our members are willing to make the *Deposit Insurance Summary,* or other FDIC-authored information about deposit insurance, available at all retail branch lobbies.

**Conclusion**

ABA appreciates the opportunity to comment on this proposal. The banking industry shares the FDIC's goal of increasing public confidence in deposit insurance and preventing uninsured losses and would like to work with the FDIC to advance these goals. ABA urges the FDIC to meet with the ABA and interested bankers to discuss less burdensome steps the FDIC and the industry can take to achieve these worthy goals.

If you have any questions about these comments, or would like to arrange a meeting with bankers to discuss alternatives, please contact the undersigned at (202) 663-5073 or via e-mail at voneill@aba.com.

Sincerely,

Virginia O'Neill
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ABA Center for Regulatory Compliance