1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions,
Leadership & Advocacy
Since 1875

Cristeena G. Naser
Senior Counsel,
Center for Securities,
Trust & Investments
Phone: 202-663-5332
Fax: 202-828-4548
Email:
cnaser@aba.com

May 22, 2006

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

Attention: Comments/Legal ESS

Re: Interim Rule Revising Deposit Insurance Regulations
70 *Federal Register* 14629, March 23, 2006

Dear Mr. Feldman:

The American Bankers Association ("ABA") is responding to the interim rule issued by the Federal Deposit Insurance Corporation ("FDIC") to implement changes to its deposit insurance regulations required by the Federal Deposit Insurance Reform Act of 2005 ("FDIRA").[1] The ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

Among other things, FDIRA increased the maximum deposit insurance coverage for certain retirement accounts to $250,000 from $100,000, and de-linked deposit insurance coverage of employee benefit plan deposits and bank capital requirements, eliminating the capital disclosure when such funds are deposited. ABA commends FDIC for moving so quickly to put these provisions into effect. The timing of the retirement account coverage increase was most beneficial given that many people focused on contributing to tax-advantaged retirement accounts around the April 17, 2006 tax filing deadline. Additionally, bankers are always appreciative when a required disclosure is eliminated.

[1] Public Law 109-171 (February 8, 2006).

ABA strongly supports the changes in the interim rule. However, as discussed below, we believe some clarifying examples concerning the retirement coverage increase are necessary.

Discussion

Although the interim rule incorporates the legal description of retirement accounts from FDIC's current deposit insurance rules at 12 C.F.R. 330.14, bankers, especially those who are involved in offering retirement investment options, want to be sure that their descriptions of the types of accounts that are eligible for the increased coverage are accurate. This is particularly the case as an aging population views the investment of retirement funds in bank deposits as an increasingly important component of retirement planning. Part of bankers' concern, we believe, is a result of confusion about matching the names commonly used in the retirement industry for various types of retirement accounts with the legal descriptions. In addition, there is uncertainty about scope of the term "self-directed."

Retirement account nomenclature. Bankers generally recognize that individual account plans and defined contribution plans covered by section 3(34) of the Employee Retirement Income Security Act ("ERISA") include 401(k) plans, Savings Incentive Match Plans for Employees ("SIMPLE") IRAs and SIMPLE 401(k) accounts. However, questions have come up concerning insurance coverage of some types of ERISA defined contribution plans that are often provided to small businesses—specifically, money purchase plans and profit-sharing plans. A money purchase plan is simply a type of defined contribution plan that is designated as a money purchase plan under section 401(a)(27) of the Internal Revenue Code of 1986 ("IRC"). Similarly, a profit-sharing plan is a type of defined contribution plan that is designated as a profit-sharing plan under IRC section 401(a)(27).

Another critical issue that necessitates a clear understanding by bankers offering the types of retirement accounts that are eligible for increased deposit insurance is the need to report uninsured deposits on Schedule RC-O of the Call Report. FDIC, the Federal Reserve Board and the Office of the Comptroller of the Currency issued a notice on May 8, 2006, requesting banks to report separately the amounts and numbers of retirements accounts eligible for $250,000 in deposit insurance.[2] The industry confusion about how to match the names commonly used for the various types of ERISA plans and individual accounts to the legal descriptions of the eligible retirement accounts in Part 330 could lead to inaccurate Call Report calculations. For this reason, in our comment letter on these Call Report changes (copy attached), which are to become effective with the June 2006 report, we have asked the agencies to delay the changes until after FDIC provides needed clarification through finalizing this interim rule implementing the increased insurance for certain retirement accounts.

Accordingly, ABA strongly urges FDIC to clarify through the use of examples the types of deposit accounts that are and are not eligible for the increased insurance. We suggest the following examples:

---

[2] 71 *Federal Register* 26809 (May 8, 2006).

Any individual retirement account under IRC section 408(a) is eligible for up to deposit insurance coverage of $250,000. Accounts covered under this provision include traditional IRAs, Roth IRAs, SIMPLE IRAs and SEP IRAs. SIMPLE and SEP IRAs are similar to traditional IRAs except that the employer makes contributions into its employees' accounts.

Deferred compensation plans under IRC section 457 are also eligible for up to $250,000 in coverage. These plans generally include state and local government retirement plans.

All individual account/defined contribution plans under ERISA section 3(34) are eligible for up to $250,000 in coverage so long as the individual plan participant may choose the vehicle in which his/her funds are invested. These ERISA plans include 401(k) and SIMPLE 401(k) plans, money purchase plans and profit sharing plans. SIMPLE 401(k) plans are 401(k) plans with fewer employer qualification requirements.

Keogh or H.R. 10 plans described in IRC section 401(d) are eligible for up to $250,000 in coverage so long as the individual plan participant may choose the vehicle in which his/her funds are invested. Keogh or H.R 10 plans are designed for self-employed persons.

While it might be beneficial if more tax-advantaged deposit accounts were eligible for the increased insurance coverage, it is our understanding that IRC section 403(b) accounts, Coverdell education savings accounts (formerly education IRAs), health savings accounts, and medical savings accounts do not qualify for this additional coverage.

"Self-directed" issues. Concerns have also been raised about whether plan participants will be deemed to direct the investment of their funds when 1) a plan sponsor has selected a menu of investment options for the plan or 2) where there is only a "brokerage window" that permits participants to select investments (that would include a deposit account) without restriction. We would appreciate confirmation from FDIC that plan participants will be deemed to have directed their investments so long as they choose the vehicle in which their funds will be invested, regardless of whether a menu of investment options exists.

In addition, many plan menus include as an option that if the employee does not make any other selection, he/she will be deemed to have chosen to invest funds in a deposit account. We urge FDIC to interpret the term "self-directed" to include this situation. Failure to do so would mean that some funds in a single plan would be insured up to $250,000 while others would be eligible only for $100,000. The end result would be a recordkeeping nightmare not only for internal bank records but also with respect to the determination of the amount of uninsured deposits for Call Report purposes.

Conclusion

In conclusion, ABA strongly supports the interim rule. We believe, however, that it is critical that FDIC provide additional clarification concerning the types of retirement accounts eligible for the increased insurance coverage so that the banking industry can ensure that customers are given accurate information and so that the amount of uninsured deposits can be properly calculated.

If you have any questions, please feel free to contact the undersigned.

Sincerely,

Cristeena G. Naser

Cristeena G. Naser