AMERICAN BANKERS ASSOCIATION ®

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May 22, 2006

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Comments@FDIC.gov

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Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551
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Re: Effect of FDIRA on Call Reports
70 *Federal Register* 26809, May 8, 2006

Ladies and Gentlemen:

The American Bankers Association ("ABA") is responding to the notice issued by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (the "Agencies") to revise the estimate of uninsured deposits in the Consolidated Reports of Condition and Income ("Call Reports") beginning in June 2006 to reflect the increased deposit insurance coverage for certain retirement accounts pursuant to 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.

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

ABA appreciates the fact that the Agencies have given banks the option of providing a "reasonable estimate" of uninsured deposits for the June 2006 Call Report. This option is necessitated by the fact that the information necessary to report with any degree of accuracy is not now widely available in bank information systems. However, as discussed more fully below, we believe that bankers do not have sufficient information to make even a "reasonable estimate" of their uninsured deposits related to retirement accounts. Because banks have not had to differentiate among the types of retirement accounts based on deposit insurance coverage, bank systems would not currently reflect this differentiation.

In addition, there is at present uncertainty about exactly which retirement accounts are eligible for the increased coverage due largely to confusion about matching the names commonly used in the retirement industry for various types of retirement accounts to the legal descriptions used in FDIC's interim rule implementing the increase.[2] Accordingly, ABA strongly urges the Agencies to delay this change to the Call Report until such time as 1) FDIC finalizes its deposit insurance interim rule and provides guidance about the scope of the increased coverage, and 2) banks are given sufficient time properly to code, test and validate their systems to reflect the changes in insurance coverage made in FDIRA.

## Background

At the present time, all banks report the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000 on Call Report Schedule RC-O. This information provides the basis for calculating "simple estimates" of the amount of insured and uninsured deposits and is the only information reported by individual banks with less than $1 billion in total assets pertaining to their estimated uninsured deposits. In response to the increase in deposit insurance coverage for certain retirement accounts from $100,000 to $250,000, the Agencies are adding new reporting items to reflect these changes effective with the June Call Report. Specifically, banks will now be required to report the following items:

- The amount and number of deposit accounts (excluding retirement accounts) of $100,000 or less;
- The amount and number of deposit (excluding retirement accounts) of more than $100,000;
- The amount and number of retirement deposit accounts of $250,000 or less; and;
- The amount and number of retirement deposit accounts of more than $250,000.

## Discussion

[2] See 12 C.F.R. 330.14(c)(2) and FDIC proposal to amend these regulations to implement FDIRA published at 71 *Federal Register* 14629 (March 23, 2006).

Although banks with $1 billion or more in assets currently are required to report under Schedule RC-O, Memoranda Item 2, estimated uninsured deposits including retirement accounts, they have not had to differentiate among those accounts based on the level of deposit insurance coverage. With the increased deposit insurance for "certain" retirement accounts enacted in FDIRA, significant system changes will be required to make that distinction. For banks that have a large portfolio of retirement accounts, this will require a substantial amount of time and effort to determine the system changes that will be necessary to provide this information, including re-coding the various types of retirement accounts, and testing and validating the new systems. There may also be changes to reflect the fact that FDIRA de-linked the eligibility of employee benefit plan deposits for pass-through coverage from the bank's capital status. In addition, the period to prepare the information is shorter than usual.

This situation is further exacerbated by uncertainty in the industry as to exactly which retirement accounts are eligible for $250,000 of insurance. As the Agencies' notice stated, the types of retirement accounts that are eligible for the increased insurance levels are:

- Individual retirement accounts described in section 408(a) of the Internal Revenue Code of 1986 ("IRC");
- Eligible deferred compensation plans described in section 457 of the IRC;
- Any self-directed individual account plan described in section 3(34) of the Employee Retirement Income Security Act ("ERISA"); and
- Any self-directed plan described in section 401(d) of the IRC.

Unfortunately, these legal descriptions are not the terms used by bankers and their customers to describe the various retirement accounts. We know from discussions with bankers in connection with FDIC's proposed revisions to Part 330 of its regulations to implement FDIRA,[3] that there is confusion about matching the names commonly used in the retirement industry for various types of retirement accounts to the above legal descriptions. In addition, there is uncertainty about scope of the term "self-directed."

Bankers generally recognize that individual account plans covered by section 3(34) of ERISA include 401(k) and Simple 401(k) accounts. However, questions have arisen concerning insurance coverage of money purchase plans and some profit-sharing plans that are also defined contribution plans under section 3(34). These plans are often used by small businesses. Moreover, commonly used retirement accounts, such as those described by section 403(b) of the IRC, are not eligible for the increased coverage.

In our comment letter to FDIC on its deposit insurance changes (copy attached), ABA has suggested language tying the legal descriptions to industry terminology. We believe that these two changes should proceed in tandem. Specifically, we strongly believe that the changes to the Call Report to reflect the increased coverage should be delayed until FDIC clarifies these definitions. Moreover, following those clarifications, banks should have sufficient time to make the necessary systems changes.

[3] *Id.*

An additional complicating factor is the requirement, effective with the September 2006 Call Report, that the report be signed by the chief financial officer ("CFO") attesting "that the reports have been prepared in conformance with the instructions and are true and correct to the best of the officer's knowledge and belief."[4] Given this increased emphasis on accuracy and accountability, we have been informed that CFOs may well be reluctant to sign a report containing an estimate of uninsured deposits which may, in fact, *not* be a reasonable estimate given the state of the underlying data.

Finally, although we understand the Agencies' need for this information, we believe the Agencies would not be well-served to rely on data which the industry itself does not believe is a "reasonable estimate." To do so risks the possibility that the Agencies will conclude that it is necessary to restate data once systems are improved and that any calculations based on the data may need to be revised.

**Conclusion**

Given these challenges—lack of data to provide the estimates and confusion about the accounts that are eligible for increased deposit insurance—it is likely that any estimates provided by banks, no matter how well intentioned, are likely to be significantly different from the data reported once systems are adjusted to accommodate the rule changes. Not only does this call into question the utility of the estimates and raise the issue of whether restatements will be required, it also puts many banks in the position of having to attest to the accuracy of statements without the systems necessary to support the certifications. The ABA believes that it would be better to avoid such potential problems by waiting until FDIC clarifies in its final rules precisely which retirement accounts are covered and then coordinating the effective date of call report changes to permit a sufficient time to allow banks to adjust their reporting systems.

In conclusion, ABA strongly urges the Agencies to delay reporting uninsured deposits in the Call Report until 1) FDIC has finalized its deposit insurance interim rule and provided guidance about which types of retirement accounts are eligible for $250,000 in deposit insurance, and 2) banks are given a reasonable amount of time to make the system changes necessary to provide this information.

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

Sincerely,

Cristeena G. Naser

Cristeena G. Naser

cc: Joseph DiNuzzo, Counsel

[4] FDIC Financial Institution Letter 7-2006 (January 27, 2006).

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