AMERICAN BANKERS ASSOCIATION

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Information Collection Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington, DC 20552

Re: Revisions—September 2006, OMB No. 1550–0023
71 *Federal Register* 25282, April 28, 2006

Dear Sir or Madam:

The American Bankers Association ("ABA") is responding to the notice issued by the Office of Thrift Supervision (the "OTS") to revise the estimate of uninsured deposits in the Thrift Financial Reports ("TFRs") beginning in September 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 notice would also eliminate reporting of so-called "Oakar" deposits which are no longer necessary since the bank and thrift deposit insurance funds have been merged. 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.

ABA appreciates that fact that OTS has responded promptly upon the merger of the funds to eliminate reporting of "Oakar" deposits which are now obsolete. ABA also appreciates the fact that the OTS is requesting comment on whether the information necessary to report separately insured and uninsured deposits related to retirement accounts based on the new FDIRA insurance limits is widely available in savings institutions' information systems.

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

As discussed more fully below, because savings institutions have not had to differentiate among the types of retirement accounts based on deposit insurance coverage, their systems do not currently reflect this differentiation; nor are they likely to be able to make the required systems changes by the proposed September 2006 reporting date.

We note elsewhere that the federal banking agencies understand the need for adequate time to make these changes. For example, we understand that the federal banking agencies are currently considering a delay in reporting the same information in the Consolidated Reports of Condition and Income ("Call Reports") until the March 2007 filing to allow for necessary system changes. The ABA strongly believes that all of the depository institution regulators should adopt requirements for filing this data that are uniform with regard to standards and timetable for adequate implementation.

In addition, there is 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 Federal Deposit Insurance Corporation's ("FDIC") interim rule implementing the increase.[2] Accordingly, ABA strongly urges the OTS to delay this change to the TFR until such time as 1) FDIC finalizes its deposit insurance interim rule and provides guidance about the scope of the increased coverage, and 2) savings institutions 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 savings institutions report the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000 on TFR Schedule DI—Consolidated Deposit Information. This information provides the basis for calculating "simple estimates" of the amount of insured and uninsured deposits and is the only information pertaining to estimated uninsured deposits reported by individual savings institutions with less than $1 billion in total assets.

In response to the increase in deposit insurance coverage for certain retirement accounts from $100,000 to $250,000, the OTS is proposing to add new reporting items to reflect these changes effective with the September TFR.

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[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).

Specifically, savings institutions would 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.

<u>Discussion</u>

Although savings institutions with $1 billion or more in assets currently are required to report under Schedule DI—Consolidated Deposit Information, 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 savings institutions 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.

This situation is further exacerbated by uncertainty in the industry as to exactly which retirement accounts are eligible for $250,000 of insurance. Under the Federal Deposit Insurance Act and FDIC's implementing rules, 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 savings institutions and their customers to describe the various retirement accounts. We know from discussions with savings institutions 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."

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[3] *Id.*

Savings institutions 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 TFR to reflect the increased coverage should be delayed until FDIC clarifies these definitions. Moreover, following those clarifications, savings institutions should have sufficient time to make the necessary systems changes.

Although we understand the OTS' need for this information, we believe the OTS would not be well-served to use data which the industry itself does not believe is reliable. To do so risks the possibility that the OTS 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.

Finally, ABA has raised these same concerns with the banking agencies in response to their notice requiring reporting of this same data for the June 2006 Call Report.[4] We understand that they are now considering a transition period requiring "reasonable estimates" of the differentiated retirement account data for the December 2006 Call Report with the accurate estimates effective with the March 2007 Call Report. In the interest of uniformity, we strongly urge OTS to adopt the same transition reporting requirements for savings institutions. In addition to the uncertainty about the accuracy of the data, it serves no purpose to have the industry data computed on different bases during this short time period.

Conclusion

Given these challenges—lack of data to provide the information and confusion about the accounts that are eligible for increased deposit insurance—it is likely that any information provided by savings institutions, no matter how well intentioned, will be different from the data reported once systems are adjusted and fully tested 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 savings institutions 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 TFR changes to permit a sufficient time to allow savings institutions to adjust their reporting systems.

[4] See our comment letter dated May 22, 2006, copy attached.

In conclusion, ABA strongly urges the OTS to delay reporting uninsured deposits in the TFR 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) savings institutions are given a reasonable amount of time to make the system changes necessary to provide this information accurately.

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

Sincerely,

Cristeena G. Naser

Cristeena G. Naser

cc: Joseph DiNuzzo, Counsel
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Federal Deposit Insurance Corporation
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