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VIA ELECTRONIC DELIVERY OF PDF AND U.S. FIRST-CLASS MAIL

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Re: Part 330 – Deposit Insurance Education: RIN 3064-AD37

Dear Mr. Feldman:

This letter is submitted on behalf of Wells Fargo & Company and its subsidiary insured depository institutions, including Wells Fargo Bank, N.A., (collectively, "Wells Fargo"),¹ in response to the Notice of Proposed Rulemaking (the "Proposal" or "NPR") issued by the Federal Deposit Insurance Corporation (the "FDIC") 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 (IDIs).

Wells Fargo agrees with the ultimate goal of the Proposal – IDI depositors should have improved access to accurate information about FDIC deposit insurance coverage on their accounts.

The focus of the Proposal on the new deposit account opening process will not achieve the goal of improving access of accurate information about FDIC deposit insurance coverage to IDI depositors. Instead, as currently structured, the Proposal will (a) only affect IDI depositors who wish to open a new deposit account as opposed to all current IDI depositors, (b) increase (rather than decrease) the number of unanswered questions about FDIC deposit insurance coverage when depositors open new accounts, and (c) result in the FDIC *Deposit Insurance Summary* publication being distributed to a limited number of IDI depositors. Further, the Proposal as presently structured will create negative customer experiences, which may very well lead to more calls to the FDIC.

Wells Fargo believes the FDIC should adopt alternative methods to improve IDI depositors' access to current and accurate information about FDIC deposit insurance coverage on their deposit accounts. Wells Fargo offers suggested alternative approaches herein that will provide accurate information on deposit insurance coverage to all IDI depositors (not just those who seek to open a new account).

Executive Summary

- FDIC should make a deposit insurance coverage education program for depositors available on its website rather than developing a training program for IDI personnel.
- Depositors will have negative customer experiences if the proposal is adopted as presently structured.

¹ Wells Fargo is a diversified financial services company with \$1.3 trillion in assets as of December 31, 2010, and provides banking, insurance, investments, mortgage, and consumer and commercial financing through more than 9,000 stores, 12,000 ATMs, the internet (wellsfargo.com and wachovia.com) and other distribution channels across North America and internationally.

- A mandatory inquiry when customers open a new deposit account as to whether their aggregate ownership interest in deposit accounts, including the new account, exceeds the SMDIA should not be required.
- Answering deposit insurance coverage questions often requires providing legal advice.
- Depositors should receive a standard disclosure notice about deposit insurance coverage in lieu of the mandatory SMDIA inquiry at the opening of new accounts.
- Any mandatory SMDIA inquiry at the opening of new accounts should adopt limitations and exceptions
- IDIs should provide a link to the FDIC's Electronic Deposit Insurance Estimator on one main Web site maintained by IDIs for its deposit customers

Discussion

I. FDIC Should Make a Deposit Insurance Coverage Educational Program for Depositors Available on its Website Rather than Developing a Training Program for IDI Personnel

Wells Fargo believes a more effective approach the FDIC should adopt to improve and expand access to information about deposit insurance coverage for all IDI depositors (as opposed to just those depositors opening a new account) is for the FDIC to develop and make available on its website, an educational program about the fundamentals of deposit insurance coverage. In this fashion, the FDIC can provide this valuable information directly to the public – rather than the proposed indirect approach envisioned under the Proposal.

The Proposal would have the FDIC develop a training program for designated IDI personnel (those employees who open new accounts or answer questions about deposit insurance coverage). Under the Proposal, these IDI employees should be in a better position, after taking the training program, to answer basic questions about FDIC deposit insurance coverage at the time a depositor opens a new account. This approach will not benefit or otherwise reach depositors who have no need to open a new account.

Further, depositors who do open new accounts will receive the benefit of the IDI employee taking the FDIC training program *only to the extent* the depositor asks questions about deposit insurance coverage. Under the Proposal, depositors do not receive any direct benefit of the FDIC deposit insurance educational program – instead depositors only receive some benefit of the program to the extent they open a new account and then ask questions about deposit insurance coverage.

Wells Fargo believes that if the FDIC wants to improve the access that depositors have to information about deposit insurance coverage, then the FDIC should place a deposit insurance educational program on its website and directly make such information available to all depositors. In this fashion, *any and all* IDI depositors – including those depositors who have no need to open a new account - can obtain, through the FDIC website, information on the basics of deposit insurance coverage.

This alternative approach will permit the FDIC to exercise appropriate quality control of deposit insurance coverage information provided to depositors by placing such information in a uniform manner at a location on the FDIC Web site.

The benefits of this alternative approach include:

- More depositors would obtain information about deposit insurance coverage fundamentals since the information would be available to all depositors (not just those depositors who open a new account).
- An FDIC educational program provides a direct manner in which the FDIC can provide information about deposit insurance to depositors.
- Depositors can review the FDIC educational program at their leisure (and repeatedly).
- The FDIC can inform depositors in the education program about other resources available on the FDIC website, including FDIC publications about deposit insurance.
- The FDIC can provide the information about deposit insurance to depositors in a more consistent and focused manner than would be possible using thousands of IDI employees across the country who open new accounts.
- The FDIC can easily update the educational program to reflect any current trends the FDIC sees in the questions depositors asks of it.
- The FDIC can more quickly update the education program when the laws and/or regulations affecting deposit insurance coverage are changed.

Structure of a Required Training Program

Should the FDIC decide that it will move forward with a training program for designated IDI personnel, then Wells Fargo believes such training program should reflect the information that depositors typically seek when they open new accounts and the banking industry should have input on what information is included in the training program. Wells Fargo believes the FDIC should reach out to the banking industry and seek input on what questions depositors normally ask about deposit insurance coverage when opening new accounts so the training program can be more meaningful to the IDI personnel who will be required to take the training. Wells Fargo requests that the FDIC provide the banking industry with a proposed copy of the training program before it is finalized in order to seek comments on the proposed content in the training program.

The Proposal states the training program will be an "introductory" training program on deposit insurance coverage. Wells Fargo believes any required introductory deposit insurance training program should be between 30 and 60 minutes in duration. A two hour deposit insurance training program seems excessive for an "introductory" training program. The proposed two hour training program will create logistical burdens on IDIs to plan for the orderly scheduling of its personnel to take the training without adversely impacting its business operations. The personnel that will be required to take the mandatory training are employees who deal directly with customers, and they can't do so if they are in a training program. Further, multiple individuals working at the same location (e.g., a branch or a calling center) will have to take the required training and IDIs will need to insure that sufficient personnel can remain on the job to interact with customers while other employees are taking the training over a 2 hour period. To reduce any possible scheduling problems, Wells Fargo requests any ultimate training program be divided into modules of 30 minutes so that the designated IDI personnel can take the required training in stages.

Wells Fargo believes that the designated IDI personnel should have six months, rather than 60 days, after the effective date of the ultimate rule or the creation of the training program, whichever is later, to complete the required training program if the program will be between 30 and 60 minutes in duration. Should the FDIC proceed with a mandatory 2 hour training program, then Wells Fargo believes the designated IDI personnel should have up to 1 year, after the effective date of the ultimate rule or the creation of the training program, whichever is later, to complete the required training program.

The banking industry is already seeing the start of regulatory changes as a result of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act of 2010 (e.g., changes to Regulation CC) and can expect to see many more in the upcoming months (e.g., the elimination of the prohibition against paying interest on demand deposit accounts effective July 21, 2011 and the proposed elimination of Regulation Q). The banking industry will have to provide training to its employees on all of these changes. The imposition of a mandatory 2 hour training program within a 60 day period on all employees who open deposit accounts or have the authority to answer questions concerning deposit insurance in the middle of other significant regulatory banking changes will impose significant burdens on IDIs. For these reasons, Wells Fargo believes a one year phase in period for the designated IDI personnel to complete any required training will be more reasonable and better serve the banking industry.

II. Depositors Will Have Negative Customer Experiences if the Proposal is Adopted as Presently Structured

Customers who seek to open new deposit accounts at an IDI can be divided between two groups of customers – those customers who have a pre-existing deposit relationship with the IDI and those customers who do not (and are “new” customers).

The Proposal requires an IDI to ask, without exception, each and every time a depositor seeks to open a new account whether the depositor’s aggregated account balance (including the new account) exceeds the SMDIA.

For new customers, there is no need to ask the mandatory inquiry as the banker will be able to tell from the amount of the opening deposit if the customer’s aggregated balance will exceed the SMDIA or not. New customers will probably not understand why their new bank is asking a question when the answer is literally before the banker’s eyes. The banker will likely respond by saying “we are required by the FDIC to ask this question”. Undoubtedly, many customers will contact the FDIC and ask why it is requiring banks to ask this question to new customers.

For pre-existing customers, customers are likely to expect that the bank should already know the amount such customers already have on deposit. If a pre-existing customer wants to open another deposit account, such customer will most likely be surprised that their bank is asking if the funds deposited into the new account taken together with funds already on deposit at such institution exceed the SMDIA. It is to be expected that pre-existing customers will respond by saying “Don’t you know?” Some pre-existing customers may be concerned that their financial institution is asking the mandatory inquiry as it might suggest to them that there are problems with their financial institution’s computer systems (or worse that their funds are “missing”). Again, the banker will likely tell its pre-existing customers that it is required by the FDIC to ask the question. Many of these customers can be expected to contact the FDIC to ask why it is requiring its bank to ask the question when the bank already knew the answer.

The mandatory inquiry will create additional negative customer experiences, as explained in more detail below. The mandatory inquiry will naturally flow into discussions about strategies that depositors should take to maximize their deposit insurance. These questions often require legal advice to be given in order to provide a complete answer – and bank personnel cannot provide legal advice to its depositors. Although the Proposal indicates that bank personnel will not be required to give advice to customers about how to maximize their deposit insurance, it is doubtful that depositors will understand or appreciate that after a banker started the discussion by asking a question on deposit insurance, the banker can’t answer the depositor’s follow up questions. When the depositor asks why the banker can’t answer their question, any answer that the banker

might give is likely to be unsatisfactory. The FDIC can expect to receive more calls from depositors following such exchanges.

The Proposal indicates that one of its main objectives is to significantly reduce the number of calls made by depositors to the FDIC. The Proposal fails to explain the nature of the calls, the timing of the calls and/or the subject matter of such calls. It should be remembered that during the last two and one-half years, there have been substantial changes in the law and regulations affecting deposit insurance coverage.

For example, IDIs have had to tell their customers that the SMDIA went (a) from \$100,000 to \$250,000 for non-retirement accounts through December 31, 2009 and then (b) \$250,000 from December 31, 2009 to December 31, 2013 and then (c) \$250,000 on a permanent basis retroactive to January 1, 2008. IDIs have had to also tell their depositors (a) if their non-interest bearing transaction accounts, IOLTA accounts and designed NOW accounts were fully guaranteed or not by the Transaction Account Guarantee Program (TAG Program) through December 31, 2009 and then (b) not fully guaranteed if their IDI opted out of the TAG Program effective January 1, 2010 or July 1, 2010 and then (c) only their non-interest bearing transactions accounts were fully guaranteed starting December 31, 2010 through December 31, 2012 and then (d) their non-interest bearing transactions accounts and IOLTA accounts being fully guaranteed from December 31, 2010 through December 31, 2012.

These are just two basic examples of how the law on deposit insurance coverage has changed repeatedly since the summer of 2008. Undoubtedly many of the calls the FDIC receives from customers must relate to the ever changing rules affecting deposit insurance coverage. It should be expected that adopting and implementing the Proposal so soon after the laws affecting deposit insurance coverage have changed yet again may cause more depositors to complain to the FDIC as customers will experience more change on deposit insurance coverage. Still other calls to the FDIC have undoubtedly arisen from the uncertainty created by the recent financial crisis. As confidence in the financial system continues to rebuild, the number of calls are likely to fall in any event.

Wells Fargo believes that if FDIC should elect to proceed with adopting and implementing the Proposal, the Proposal needs to be revised as suggested below so as not to create more negative customer experiences on deposit insurance coverage.

III. A Mandatory Inquiry When Customers Open a New Deposit Account as to Whether Their Aggregate Ownership Interest in Deposit Accounts, Including the New Account, Exceeds the SMDIA Should Not be Required

If adopted, the Proposal will require an IDI which opens a new deposit account for a customer, regardless of how the customer opens the account, to ask the customer as to the existence of other deposit accounts at the same IDI and whether the aggregated account balance (including the new account) exceeds the SMDIA. If the customer replies in the affirmative, the IDI would then be required to provide the customer with a copy of the FDIC's *Deposit Insurance Summary*.

Based on the December 2010 FDIC Statistics on Depository Institutions Report (see: <http://www2.fdic.gov/SDI/SOB/>), approximately only 4% of accounts in IDIs have balances in excess of \$250,000. While it cannot be determined precisely the number of depositors who have aggregated deposits in excess of \$250,000, it is reasonable to assume that less than 5% of all depositors have aggregated deposits in excess of \$250,000 and will be given a copy of the *Deposit Insurance Summary*.

The Proposal further provides how the inquiry should be made if a customer opens the new account by mail, via the Internet or by means of other technology; and that the IDI would not be required to provide counsel or advice to the customer regarding how to structure multiple deposit accounts to maximize deposit insurance coverage.

Requiring IDI employees who open a new account to have a discussion about whether a customer's aggregate balances exceeds the SMDIA will invite the customer to ask questions about deposit insurance. Meaningful discussions about deposit insurance coverage will necessarily require a discussion about the depositor's strategies for estate planning (for individuals), asset protection and/or contractual obligations.

While it is helpful that the Proposal provides that IDI employees are not required to provide counsel or advice to a customer on how to structure their accounts to maximize deposit insurance coverage, Wells Fargo believes the required inquiry element of the Proposal will result in depositors asking IDI employees deposit insurance questions that will require legal advice be given in order to provide customers with sufficient information to understand the consequences of actions they might take to obtain additional deposit insurance coverage.

To illustrate Wells Fargo's concern, let us examine two different scenarios: (1) a widow with 3 adult children (who all have 2 children) asks an IDI employee, after receiving a copy of *Deposit Insurance Summary*, if her deposit insurance coverage could be up to \$1 million if she adds all 3 of her children as joint tenants on her bank account as opposed to up to \$750,000 if she names her 3 children as POD beneficiaries on her bank account; and (2) a corporation which has a secured loan from an IDI asks an IDI employee, after receiving a copy of *Deposit Insurance Summary*, if it and an affiliated corporation could each have up to \$250,000 in deposit insurance coverage if the corporation transferred \$250,000 to its affiliate.

Under each scenario, the simple answer to the customers' question is "YES". The proposed actions that the widow and corporation may take to obtain additional deposit insurance coverage will have significant consequences to the widow's estate plan, their respective asset protection strategies and the corporation's loan contractual obligations.

Widow Scenario

If an IDI employee is presented with the widow's question, a simple "YES" answer will fail to provide the widow with the following important information:

The Children Being Co-owners of vs. Beneficiaries on the Bank Account

If the widow adds her 3 adult children as joint tenants on her bank account, she will give each and every of her children the right to withdraw her money from what had been her individual account without needing their mother's prior consent. Further, the joint account would become subject to the claims of the children's creditors since the children would then be co-owners of the account.

In contrast, if the widow elects to add her 3 children as either her POD beneficiaries (on an informal revocable trust account) or her beneficiaries under a living trust agreement (on a formal revocable trust account), her children would not be able to withdraw any funds from their mother's account and her funds would not become subject to the claims of the children's creditor as the children would not have any ownership interest in the revocable trust account.

Isn't it important for the widow to understand the above consequences should she elect to obtain an additional \$250,000 in deposit insurance coverage by selecting the joint account option instead of the revocable trust option?

Impact on Deposit Insurance Coverage if any Child Predeceases the Widow

If the widow selects the joint account or the informal revocable trust option, then if any child should predecease the widow, the widow's deposit insurance coverage will *decrease* by \$250,000 (6 months after the child's death in the joint account option per FDIC Regulation 330.3(j)) as the decedent's 2 surviving children will split their deceased sibling's share of the account (because there will be one less co-owner in the joint account option and one less POD beneficiary in the informal revocable trust option). The widow will have her deposit insurance coverage *decrease* by another \$250,000 as any other child predeceases her.

In contrast, if the widow selects the formal revocable trust option and creates a written living trust agreement which names her 3 children as her beneficiaries with right of representation, then if any child should predecease the widow, the widow's deposit insurance will *increase* by \$250,000 as the 2 children of the deceased child will succeed to their parent's share of the trust (and then there would be 4 beneficiaries instead of 3 beneficiaries). The widow will have her deposit insurance coverage *increase* by another \$250,000 as any other child predeceases her.

Isn't it important for the widow to understand the above consequences should she want to have more rather than less deposit insurance coverage if any of her children should predecease her?

Corporation Scenario

If an IDI employee is presented with the corporation's question, a simple "YES" answer will fail to provide the corporation with the following important information:

Asset Transfer Restrictions Which Might Exist Under the IDI Loan Agreement

It is typical for loan agreements to contain covenants which require the borrower not to transfer its assets without the lender's prior consent or to maintain certain specified ratios in relation to the borrower's assets and debts. In this scenario the corporate customer merely seeks to transfer \$250,000 to an affiliated corporation in order to have more funds within the corporate family covered by deposit insurance. However, the corporation could violate one or more of its covenants under the loan agreement by transferring such a substantial amount of funds to another (albeit related) entity, and risk a default being declared.

Isn't it important for the corporation to understand the above consequences before it decides to transfer \$250,000 to an affiliated corporation?

Possible Fraudulent Conveyance or Bankruptcy Preferential Transfer Considerations

If the corporation elects to transfer its funds to an affiliated corporation for the sole purpose of obtaining additional deposit insurance coverage and the corporation doesn't receive any reasonably equivalent value in exchange from its affiliated corporation, then the transfer could be considered a fraudulent conveyance by the corporation's creditors (even if the transfer doesn't violate any loan agreement covenant). Such a transfer could result in one or more of the corporation's creditors taking legal action against the corporation to nullify the transfer.

Further, if the corporation should file a bankruptcy petition within the specified bankruptcy preferential transfer period, the transfer could be treated as a preferential transfer subject to recovery (which could have an impact on the affiliated corporation).

Isn't it important for the corporation to understand the above consequences before it decides to transfer \$250,000 to an affiliated corporation?

Answering Deposit Insurance Coverage Questions Often Require Providing Legal Advice

Wells Fargo believes that in these two scenarios it would be important for the widow and the corporation to understand the above respective consequences before they make decisions which might seem to only involve "basic" deposit insurance coverage considerations.

When customers ask IDI employees questions about deposit insurance coverage, their questions rarely involve "only" basic deposit insurance coverage considerations. Changes that customers make to their deposit accounts in order to obtain more deposit insurance coverage can easily (and often do) impact estate plan and asset protection strategies, obligations the customer may have under contractual agreements, or their relationship with creditors.

Meaningful discussions of deposit insurance coverage questions often involve some element of legal advice. IDI employees who open new accounts are typically not licensed to provide legal advice and would violate state law (and expose the IDI to claims) if they arguably provide legal advice while discussing different deposit insurance coverage scenarios.

Due to these reasons, it is typical that IDIs will instruct employees who open new accounts not to answer customers' deposit insurance questions if to do so would require a discussion of legal and/or financial issues.

Wells Fargo respectfully suggests that what the FDIC may perceive to be an unwillingness or inability of bank personnel to answer customers' deposit insurance coverage questions, is really a reflection that many customer questions about FDIC deposit insurance require IDI personnel to provide legal advice in order to properly address all relevant issues associated with the customers' questions.

A simple inquiry about the customers aggregated balances in relation to the SMDIA can (and will) easily result in depositors asking "what if", "can I" and/or "does that mean" type of questions that involve significant legal and/or financial issues that must be addressed to the customers' legal advisors, and not to IDI personnel (or the FDIC).

IDIs will continue to instruct their employees not to answer questions that call for legal (or financial) advice in order to provide the customer with a complete and meaningful answer to their deposit insurance questions. This outcome, which will arise if IDI personnel must make the mandatory inquiry about whether the customer has deposits that exceed the SMDIA, will not resolve the perceived problem giving rise to this part of the Proposal – depositors having their IDI not answer questions about deposit insurance coverage.

Depositors Should Receive a Standard Disclosure Notice About Deposit Insurance Coverage in lieu of the Mandatory SMDIA Inquiry at the Opening of New Accounts

Wells Fargo believes no mandatory inquiry about whether a depositor has aggregate balances that exceed the SMDIA should be made whenever a customer opens a new account. For the reasons explained above, the mandatory inquiry will not eliminate the perceived problem of IDI personnel not answering depositors' questions about deposit insurance coverage and will only result in more depositors' questions (which seek legal advice) about deposit insurance coverage not being answered.

The structure of the Proposal will only result in approximately 5% of all depositors receiving a copy of the *Deposit Insurance Summary*. If the FDIC believes depositors need more information about deposit insurance coverage fundamentals (and how they access more information at the FDIC website), then Wells Fargo believes an alternative approach the FDIC should follow is to

require that a standard disclosure notice about deposit insurance coverage be automatically provided to customers when they open new accounts (similar to how IDIs provide Regulation CC, DD, EE and/or P disclosures at account opening).

A suggested mandatory disclosure notice to be given to depositors at account opening is:

The FDIC provides at least \$250,000 in deposit insurance coverage per depositor, per insured bank, for each account ownership category. The FDIC provides separate insurance coverage for funds depositors may have in different categories of legal ownership. The FDIC refers to these different categories as "ownership categories." This means that a bank customer who has multiple deposits may qualify for more than \$250,000 in insurance coverage if the customer's accounts are deposited in different ownership categories and the requirements for each ownership category are met.

FDIC insurance covers all types of deposits received at an insured bank, including deposits in a checking account, negotiable order of withdrawal (NOW) account, savings account, money market deposit account (MMDA) or time deposit such as a certificate of deposit (CD). The FDIC insures deposits that a person holds in one insured bank separately from any deposits that the person owns in another separately chartered insured bank.

The FDIC does not insure money invested in stocks, bonds, mutual funds, life insurance policies, annuities or municipal securities, even if these investments are purchased at an insured bank. The FDIC does not insure safe deposit boxes or their contents. The FDIC does not insure U.S. Treasury bills, bonds or notes, but these investments are backed by the full faith and credit of the United States government.

If you are considering making changes to your existing accounts to increase your deposit insurance coverage by satisfying the requirements for different ownership categories, you should visit www.fdic.gov/deposit/deposits/index.html to learn more about each ownership category. You can also review the FDIC publications *Deposit Insurance Summary* and *Your Insured Deposits* to learn more about deposit insurance coverage.

You should direct your questions about how to maximize your deposit insurance coverage without creating any adverse or unintended consequences to your estate plan and/or asset protection strategies to your legal or financial advisor. Employees of insured institutions cannot provide you with legal advice on how to maximize your deposit insurance coverage and/or how changes you make to your accounts to obtain additional deposit insurance might impact your estate plan and asset protections strategies.

If IDIs were required to give such a required deposit insurance disclosure at account opening, then IDIs could provide customers with information about (a) basic deposit insurance coverage, (b) how and where customers can obtain additional information from the FDIC on deposit insurance coverage, (c) the need to consult with their legal and/or financial advisors before taking actions which might create adverse consequences and (d) how IDI personnel cannot provide them with legal advice or how any changes they make to their account will impact their estate plan and asset protection strategies.

Wells Fargo believes this alternative approach will better achieve the stated goal of the Proposal – provide more accurate information and better access to depositors about deposit insurance coverage – without the problems associated with the current Proposal.

Any Mandatory SMDIA Inquiry at the Opening of New Accounts Should Adopt the Following Limitations and Exceptions

The Proposal requires IDI employees who open new deposit accounts for customers to ask *each and every time* a customer seeks to open a new deposit account whether the customer's aggregated account balance exceeds the SMDIA. The rule does not provide for any limitation on or exception to this required inquiry if (i) the customer constantly has aggregated balances that exceed the SMDIA, (ii) the IDI recently made the required inquiry to the customer because the customer opened a different deposit account shortly before the opening of the current deposit account, (iii) the customer is a new customer and/or (iv) the amount of the customer's initial deposit in the new deposit account exceeds the SMDIA.

Customers Who Generally Maintain Balances that Exceed the SMDIA

Every IDI will have some customers who generally maintain balances that exceed the SMDIA (e.g., significant commercial depositors, high-net worth individuals and/or customers with large retirement savings accounts). If and when IDI employees open a new account for these customers, the answer to the required inquiry would always be the same (YES). There appears to be little reason why IDIs should have to repeatedly ask these customers the required inquiry every time they seek to open a new deposit account since their answer will not change. More likely than not, customers who generally maintain balances that exceed the SMDIA will not understand (or appreciate) why their IDI is always making the required inquiry when the IDI knows their balances exceed the SMDIA.

If the FDIC should ultimately decide to adopt a final rule that mandates IDIs to make the required inquiry when customers open new deposit accounts, Wells Fargo believes an appropriate exception should be made to the rule for customers who generally maintain balances that exceed the SMDIA.

Customers Who Open Multiple Deposit Accounts Within a Close Period of Time

Further, the Proposal doesn't provide any exception to having to make the required inquiry when customers open multiple deposit accounts within a close period of time. If a customer opens two or more accounts within a short time of each other (e.g., 90 days), there appears no compelling reason why the IDI should have to make the same required inquiry to the customer when it had just done so.

If the FDIC should decide to adopt a final rule that mandates IDIs to make the required inquiry when customers open new deposit accounts, Wells Fargo believes the rule should not require IDIs to make the required inquiry if it is readily known to the IDI or the new account officer that the customer opened an account within the previous 90 days, or such longer period of time the FDIC deems appropriate.

Customers Who Are New Customers

The Proposal doesn't provide any exception to having to make the required inquiry when an IDI is opening a deposit account for a new customer. If the customer has no pre-existing deposit

accounts with the IDI, then the IDI will know whether the customer's aggregate balances exceed the SMDIA by the amount the customer deposits at the time the banking relationship is established. The customer's opening deposit will either be less than \$250,000, or equal to or greater than \$250,000. In such a situation, why should the IDI be required to ask the customer if their funds on deposit will exceed the SMDIA? The answer to the required inquiry will be self-evident. Consequently, Wells Fargo believes the rule should not require IDIs to make the required inquiry when a new customer first establishes a deposit account relationship with an IDI.

Customer's Initial Deposit in the New Deposit Account Exceeds the SMDIA

In some cases, the customer's initial deposit in a new deposit account may exceed the SMDIA. For example, an individual might open a rollover IRA account after receiving a distribution in excess of \$250,000 from a former employer's retirement plan, or a significant commercial (e.g., a Fortune 500 company) or governmental entity might open an account with an initial deposit of more than \$250,000. If the opening deposit exceeds the SMDIA, there should be no need for the

new account officer to ask the customer if their aggregated account balances, including the new account, exceeds the SMDIA.

If the FDIC should decide to adopt a final rule that mandates IDIs to make the required inquiry when customers open new deposit accounts, Wells Fargo believes the rule should not require IDIs to make the required inquiry if the initial deposit in the new deposit account exceeds the SMDIA.

IV. IDIs Should Provide a Link to the FDIC's Electronic Deposit Insurance Estimator on One Main Web Site Maintained by IDIs for its Deposit Customers

The Proposal sets forth multiple inconsistent explanations on the proposed required link on an IDI's Web site to the FDIC's Electronic Deposit Insurance Estimator ("EDIE").

Inconsistent Statements on the Type of Customer to Whom an EDIE Link Should be Provided

Under the Summary section, the Proposal provides: "the rule would require IDIs to provide a link to the FDIC's . . . EDIE on *any* Web site the IDI maintains for use by deposit customers".

Under the Supplementary Information section, the Proposal provides: "the proposed rule would require an IDI to provide a link to EDIE on *any* Web site it maintains for use by customers".

Under the Regulatory Burden on Insured Depository Institutions section, the Proposal provides: "the rule would require an IDI to maintain a link to EDIE on *its* Web site".

The first statement indicates the EDIE link should be for "deposit customers". The second statement indicates the EDIE link should be for "customers" (which suggests the link should also be for non-deposit customers). The third statement does not limit the requirement to sites used by customers, deposit or otherwise (including sites that offer non-FDIC insured products).

Wells Fargo believes that any required EDIE link should be solely for the benefit of "deposit customers". There is no reason why an EDIE link should appear on any Web site which is maintained for non-deposit customers since their non-deposit products and/or services are not insured by the FDIC.

Inconsistent Statements on the Type of Web site on Which the EDIE Link Should Appear

The statements in the Summary and Supplementary Information Sections state an IDI should maintain the required EDIE link on “any Web site” it maintains.

The statement in the Regulatory Burden section states an IDI should maintain the required EDIE link on “its Web site”.

Wells Fargo believes a requirement that an IDI must maintain a required EDIE link on “any Web site” it maintains would impose a great burden with regard to web governance. For example, the “any Web site” requirement would mean an IDI would not only have to provide the required EDIE link on its predominant site for use by deposit customers, but also on any and all ancillary sites that deposit customer might visit – whether they are “traditional”, mobile, blog and/or co-marketing web sites.

A requirement that the EDIE link appear on “any Web site” maintained by an IDI means the EDIE link will appear on Web site pages that are used, either exclusively or in part, by non-deposit customers (raising potential unfair or deceptive business practices claims if such web pages have a link to EDIE when the page contains explicit statements that the non-deposit products are not insured by the FDIC). Imposing an EDIE link on “any Web site” maintained by an IDI will not achieve the goal of making deposit insurance information reasonably available to *deposit customers*.

Wells Fargo believes any required EDIE link should appear on the one main or predominant Web site maintained by an IDI for use by deposit customers. Wells Fargo further believes the required EDIE link should not be located on an IDI’s home page. Since IDIs are already permitted to have a link on their home page to another web page that contains the required disclosure language about non-interest bearing transaction and IOLTA accounts having unlimited deposit insurance coverage through December 31, 2012 (“Unlimited Coverage Disclosure”), Wells Fargo believes it would be appropriate that the EDIE link be on the same web page with Unlimited Coverage Disclosure.

No EDIE Link Language in Proposed Regulation Section 330.17

The FDIC provides in the Proposal a copy of the proposed new regulation section 330.17 that sets forth the requirements IDIs would have to satisfy with respect to the subject matter of the Proposal. However, there is no language in proposed regulation section 330.17 which relates to the required EDIE link. Wells Fargo cannot provide any additional comments on this part of the Proposal without seeing the specific language that would appear in section 330.17. Wells Fargo requests the FDIC republish the Proposal with the proposed EDIE link requirement language in proposed section 330.17 so IDIs can more comprehensively respond to this part of the Proposal.

IV. Comments to Specific Questions

A. Does the proposed rule strike the right balance between meeting depositors’ need for accurate deposit insurance information and the potential cost to and regulatory burden on IDIs?

Respectfully, Wells Fargo does not believe the Proposal strikes the right balance between meeting depositors’ need for accurate deposit insurance information and the potential costs, regulatory burdens on and risks to IDIs. Based on the data which appears on the FDIC web site, the Proposal seeks to benefit approximately only 5% of all depositors (and to the extent these depositors have already adopted appropriate strategies to maximize their deposit insurance

coverage consistent with the estate planning and asset protection strategies, the Proposal will benefit very few depositors). The burdens imposed on IDIs will far outweigh the potential benefits to a very small group of depositors.

The Proposal seeks to establish the new account opening process as the prime method by which depositors can obtain information about deposit insurance coverage. IDI personnel who open new accounts (and employees who answer deposit insurance coverage questions) would be required to take an FDIC prepared computer training program in theory to better answer depositors' questions about deposit insurance.

This approach fails to recognize, as explained above, that discussions about depositors' deposit insurance coverage involve a discussion of the depositors' estate plan and asset protection strategies – which in turn involve significant legal issues. As IDI personnel who open new accounts are not licensed to provide legal advice, the process created under the Proposal will most likely exacerbate the perceived existing problem – depositors' deposit insurance questions not being answered by IDI personnel. Further, the proposed training will not ensure that IDI personnel will provide the information obtained from the training in a consistent manner across the country.

Wells Fargo believes it would be better for the FDIC to directly provide deposit insurance coverage information to depositors by placing an educational deposit insurance program directly on the FDIC web site and have IDIs provide a standard deposit insurance disclosure notice to depositors when they open new accounts. In this fashion, the FDIC can reach a broader audience of depositors and have depositors of all institutions receive the same critical deposit insurance coverage.

This alternative approach will better achieve the stated goals of the Proposal and avoid IDIs from having to deal with the burdens (and costs) associated with taking employees out of the workplace to take mandatory training that will not properly address the perceived needs for the Proposal.

B. Is the scope of the proposed rule appropriate? In its present form, the rule would require training for all IDI employees with authority to open accounts and/or respond to customers' inquiries on deposit insurance coverage. Should the training extend to all IDI employees who work in bank retail offices, not just the employees with these specific responsibilities?

Wells Fargo does not believe that any required training about deposit insurance coverage should be extended to all IDI employees who work in bank retail offices. This question assumes that all IDI employees who work in a bank retail office work on deposit accounts and deal with deposit insurance coverage matters. Such is not the case.

IDIs may employ many persons who work in retail offices that have no involvement with deposit accounts or FDIC deposit insurance coverage. For example, employees who do not have any customer-facing responsibilities (e.g., a Human Resources, Property Management or Accounting officer) may be stationed in a retail office. IDI employees who will not work on issues involving deposit insurance coverage should not be made to take any training about deposit insurance coverage. Requiring such employees to take the required training will only take these employees away from their required (and important) duties and do nothing to provide more accurate deposit insurance coverage information to customers.

Should the FDIC decide to extend the required training to additional employees, then the FDIC should focus on whether the employees' duties involve interactions with customers on deposit insurance coverage questions rather than on where such employees are located.

- C. The rule would require IDI employees to inquire whether the customer has an ownership interest in any other deposit accounts at the IDI and, if so, whether the customer's total ownership interest in deposit accounts, including the new account, exceeds the Standard Maximum Deposit Insurance Amount. Should the inquiry only apply to aggregated deposits that exceed the SMDIA of \$250,000 or to aggregated deposits that may approach the SMDIA? And if so, what dollar amount or percentage of the SMDIA should trigger the obligation to provide depositors with the FDIC's Deposit Insurance Summary publication?**

As stated above, Wells Fargo does not believe there should be any mandatory inquiry about whether the customer's aggregate deposits exceed the SMDIA. If the FDIC is concerned about customers who have aggregated deposits that is "close" to the SMDIA, then the FDIC could more properly address that concern in an annual notice sent to depositors about the fundamentals of deposit insurance coverage (as suggested above).

Should the FDIC keep the mandatory SMDIA inquiry requirement, then Wells Fargo believes the mandatory inquiry should only apply to aggregated deposits that exceed the SMDIA.

Adopting a "close to SMDIA" standard, whether in terms of a percentage of the SMDIA or specific dollar amount, will confuse depositors and IDI employees. To date, all of the information about deposit insurance coverage on the FDIC website or in its publications, the FDIC official sign and the required disclosures that IDIs already make refer to \$250,000. If an IDI is forced to ask depositors whether they have aggregate deposit that exceed a lesser amount, and then give the depositor information about a different amount (the SMDIA amount), depositors may easily be confused on why the IDI is using different numbers for different purposes (and that might result in more calls to the FDIC).

Wells Fargo believes that since one goal of the Proposal is to provide more accurate information to depositors about deposit insurance coverage and deposit insurance coverage evolves around the SMDIA, it does not make sense to ask depositors questions about a non-SMDIA amount.

- D. In addition to requiring IDIs to make EDIE available on their Web sites, should the FDIC require IDIs to maintain, in their retail office lobbies, a dedicated computer terminal containing the EDIE application, which all customers could use on their own, or with assistance from IDI employees, to generate reports on the customer's deposit insurance coverage?**

Wells Fargo assumes that by "retail office lobbies" the FDIC means licensed branches at which an IDI may legally accept a deposit from its customers. To the extent, "retail office lobbies" also include non-licensed branch locations, then Wells Fargo does not support any requirement that IDIs place dedicated computer terminals containing the EDIE application in such locations. To the extent, IDIs are required to place such computer terminals in non-licensed branch locations, then depositors may think they can make deposits at such locations. Either depositors will have a negative customer experience when they are told that their bank cannot accept their deposit notwithstanding the presence of the dedicated computer terminal, or IDI personnel may improperly take possession of customer deposits at non-licensed locations.

Wells Fargo believes that IDIs should not be required to maintain, in their retail office lobbies, a dedicated computer terminal containing the EDIE application. Further, Wells Fargo believes that

if the FDIC should require IDIs to maintain a dedicated computer terminal in appropriate retail office lobbies containing the EDIE application, IDI employees should not be required to assist its customers when they use the computer terminal.

1. The proposed requirement that IDIs maintain a dedicated computer terminal containing the EDIE application in its retail office lobbies appears to assume that all such retail office lobbies are in a traditional “brick and mortar” location controlled by the IDI. Some IDIs, such as Wells Fargo, maintain licensed branches in business locations that are owned and operated by third parties (such as supermarkets). In such a case, the IDI may not have the necessary space available (or contractual right) to install such a required dedicated computer terminal. Further, since for these types of branches, the IDI does not have control of the entire premises where the branch is located, it may not be possible for the IDI to install any such required dedicated computer terminal in a location that would provide appropriate privacy for its customers who wish to use the terminal.

Further, many IDIs obtain mobile branch licenses from its regulator to operate temporary branches at designated events or to conduct licensed branch activities at customers’ residences or place of business. If this proposed rule is adopted, would the IDI be required to bring such a dedicated computer terminal to the temporary branch location? Would an IDI employee operating under a mobile branch license who visits a customer at their residence or place of business be required to bring such a dedicated computer terminal to the customer’s residence or place of business? If yes, what if the owner of the premises at which the temporary branch will be located or the customer does not have the proper facilities which permit the required computer terminal to be installed?

The installation of a dedicated computer terminal with the EDIE application in a branch raises concerns about how to adequately protect customer’s privacy and how to prevent customers from becoming victims of identity theft or financial elder abuse. If the FDIC adopts this requirement, then in due time identity thieves will know that customers will be using a dedicated terminal in a public location to enter information relating to their bank accounts and the amount of funds they have in those accounts. It can be expected that some customers will bring statements (which will have account number information) with them when using the terminal in order to have the appropriate information in front of them when using the EDIE application. It is to be expected that identity thieves will look for opportunities to obtain the customer’s account information. The same concerns hold true for potential financial elder abuse if a so-called “good Samaritan” offers to help a confused elder with the EDIE application. Wells Fargo believes customer should access the EDIE application from the security of the customer’s residence or place of business – and not in a public location such as a branch location.

The installation of a dedicated computer terminal with the EDIE application in a branch will require IDIs to incur significant costs to purchase the terminals, potentially reconfigure the layout of some branches, establish the necessary telecommunications/networking connections and deal with potential bandwidth limitations associated with the existing network in the branches. IDIs should not be made to incur such expenses just so depositors can access the EDIE in a branch instead of their residence or place of business.

2. If the FDIC should require IDIs to maintain a dedicated computer terminal with the EDIE application only in traditional “brick and mortar” branch locations, then Wells Fargo requests the FDIC answer the following questions and provide appropriate guidance for the issues raised by these questions:

- Will the IDI have the right to limit the amount of time any one customer can use the dedicated computer terminal if multiple customers are waiting to use the terminal?
- Will the IDI be permitted to limit the number of customers who can wait to use the terminal?
- Will the IDI be permitted to restrict how close waiting customers can stand to the customer who is then currently using the terminal for privacy reasons?
- Will IDIs be able to restrict who may be with the customer at the terminal when the IDI has concerns about potential financial elder abuse and/or identity theft?
- To what extent will the IDI be permitted to place any restrictions on the use of the terminal? Can the IDI restrict the use of the terminal to only its customers?
- Will the IDI be permitted to turn off the terminal at a certain time before the location would close (e.g., 30 minutes before closing time) in order to make sure all customers will leave the branch at closing time?
- If the IDI is unable to obtain any required permit from local authorities and/or a landlord to install the terminal at a particular branch, will the IDI be exempted to provide the terminal at such branch?
- Will the IDI be required to locate the terminal in any particular location of the branch to maximize the customer's privacy and, if so, what if the current configuration of the branch does not permit the terminal to be located in the suggested location?

3. If the FDIC should require IDIs to maintain a dedicated computer terminal with the EDIE application then Wells Fargo believes IDI employees should not be required to assist its customers when they use the terminal.

As noted above, discussions about deposit insurance can easily lead to questions that require legal advice in order to obtain a complete answer about and understanding of the consequences of the customer's intended actions. Since IDI personnel cannot provide legal advice to customers, they should not be required to assist customers using any dedicated computer terminal with the EDIE application.

E. In addition to requiring IDIs to provide the FDIC's Deposit Insurance Summary publication to depositors whose combined deposits at the IDI exceed the SMDIA, should IDIs be required to make this publication available in their retail office lobbies so all depositors have access to this important information?

Again, Wells Fargo proceeds under the assumption that "retail office lobbies" means licensed branches at which deposits can be accepted. To the extent the term "retail office lobbies" includes non-licensed branch locations, then Wells Fargo incorporates its comments from the previous section.

Wells Fargo has no objection to a requirement that IDIs make the Deposit Insurance Summary publication available to all depositors in licensed branch locations (with the exception of locations operating under a mobile branch license). Wells Fargo requests that should the FDIC adopt this requirement, then its effective date be at least six (6) months after the adoption of the final rule so IDIs have sufficient time to obtain an appropriate number of copies of the publication and ship them to their licensed branch locations.

F. Should the CBI software program include a feature that would allow IDIs to confirm that training has been completed by covered employees?

Wells Fargo believes that should the FDIC adopt a final rule that requires designated IDI personnel to take FDIC provided training on deposit insurance coverage, then the software



program should include a feature that will allow IDIs to confirm that the training has been completed by such employees.

CONCLUSION

For the reasons explained above, Wells Fargo supports that stated goals of the Proposal (improving and expanding access to accurate information about deposit insurance to depositors), but not the Proposal. Wells Fargo believes the Proposal will not achieve its stated goals.

The Proposal will create unnecessary burdens on IDIs, benefit few depositors and result in negative customer experiences.

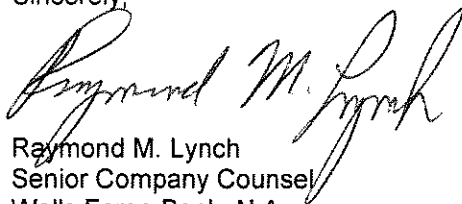
Wells Fargo believes it would be better if the FDIC withdrew the Proposal and worked with the banking industry to adopt less burdensome and more effective methods to improve and expand access to accurate information about deposit insurance for depositors.

Should the FDIC decide not to withdraw the Proposal, then Wells Fargo requests the FDIC adopt the alternative actions Wells Fargo suggested above as such actions will benefit all (instead of just a few) depositors without creating unnecessary burdens on IDIs.

If the FDIC does not agree with Wells Fargo's alternative actions, then Wells Fargo requests the FDIC to revise its Proposal as suggested above in order to adopt an ultimate rule that will better achieve the Proposal's stated goals, be less burdensome on IDIs and more beneficial to depositors.

In closing, we want to again express our appreciation to the FDIC for this opportunity to comment on the Proposal. Should you have any questions or desire to further discuss the matters raised in this letter, please contact me at (704) 383-1329.

Sincerely,



Raymond M. Lynch
Senior Company Counsel
Wells Fargo Bank, N.A.