STATEMENT OF

DOUGLAS H. JONES
ACTING GENERAL COUNSEL
FEDERAL DEPOSIT INSURANCE CORPORATION

on

Financial Services Regulatory Relief

before the

COMMITTEE ON BANKING, HOUSING,
AND URBAN AFFAIRS
UNITED STATES SENATE

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Chairman Shelby, Ranking Member Sarbanes, and members of the Committee, I appreciate the opportunity to present the views of the Federal Deposit Insurance Corporation (FDIC) on proposed legislative initiatives to provide regulatory burden relief to the financial services industry while insuring appropriate safety and soundness and consumer protections are retained. The FDIC shares the Committee's continuing commitment to eliminate unnecessary burden and to streamline and modernize laws and regulations as the financial industry evolves. Also, we would like to thank Senator Crapo and his staff as well as the Committee staff who have worked with us to review the proposals. In addition, the inclusion of consumer groups in reviewing and commenting on the many burden relief proposals has provided a wider range of perspectives and beneficial analysis.

The Federal financial institution regulatory agencies ("regulatory agencies") have been working together over the last few years to identify regulatory requirements that are outdated, unnecessary or unduly burdensome, in accordance with the requirements of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). The agencies have identified numerous proposals to reduce regulatory burden. We continue to work with the other agencies in an effort to achieve greater consensus and, as required by law, we will submit a final report to Congress with legislative recommendations later this year.

In my testimony today, I will briefly describe a few examples of burden reduction and operational efficiencies undertaken by the FDIC, or implemented as interagency initiatives, which are expected to relieve regulatory burden, clarify regulatory requirements or assist financial institutions to improve their operations. Next, I will identify a number of legislative burden relief proposals that are supported by all of the Federal regulatory agencies. Finally, I will address specific legislative provisions that the FDIC has proposed to improve our performance.

RECENT INTERAGENCY AND FDIC ACTIONS

The FDIC and the other regulatory agencies are committed to improving the quality and efficiency of financial institution regulation and to reducing administratively unnecessary regulatory burden where it is identified and where changes to current practices do not diminish public protections. We are also examining and revising our regulations, procedures and industry guidance to improve how we relate to the industry and its customers. Included among the changes we have made recently are the following items.

Hurricane Recovery

The regulatory agencies worked cooperatively with state regulatory agencies and other organizations to determine the status of financial institutions located in the areas affected by Hurricanes Katrina, Rita and Wilma. The agencies established a taskforce to address policy issues that arose due to the severity of these natural disasters. The agencies quickly released regulatory relief guidance to help rebuild areas affected by the hurricane and encouraged bankers to work with consumers and business owners experiencing difficulties due to the storms. Exercising their authority under Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA), the agencies made exceptions to statutory and regulatory requirements when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness.

Call Report Modernization

The FDIC, Federal Reserve Board and Office of the Comptroller of the Currency implemented the Central Data Repository (CDR) designed to modernize and streamline how the agencies collect, process, and distribute bank financial data. The CDR system took effect beginning with the third quarter 2005 Call Report Data. Under this new system, institutions file their Call Report data via the internet using software that contains edits by the Federal Financial Institutions Examination Council (FFIEC) for validating Call Report data before submission.

Call Report Revisions

In September, the FDIC, Office of the Comptroller of the Currency and Federal Reserve Board requested comments on proposed revisions to the Call Report, representing the first set of revisions to the content since March 2002. The proposed changes would affect banks of all sizes and would take effect as the March 31, 2006 report date. The proposed revisions would enhance the agencies' on- and off-site supervision activities, which should alleviate some overall regulatory burden on banks.

FDIC*connect*

FDIC*connect* is a secure website that allows FDIC-insured institutions to conduct business and exchange information with the FDIC. FDIC*connect* supports examination file exchange and electronic distribution of Special Alerts. FDIC*connect* reduces regulatory burden by providing a more efficient means for insured institutions to interact with the FDIC and various states. This is accomplished by improving processes to enable more efficient and effective communication and customer support. For example, institutions may obtain quarterly certified statement invoices for deposit insurance assessments online, thus reducing burden on institutions by eliminating the requirement that institutions sign and return corrected invoices. In 2005, the number of electronic bank applications that can be filed was expanded from three to six. There are now 20 business transactions available through FDIC*connect*.

Relationship Manager Program

On September 30, 2005, the Corporation implemented the Relationship Manager Program for all FDIC-supervised institutions. The Program, which was piloted in 390 institutions during 2004, is designed to strengthen communication between bankers and the FDIC, as well as improve the coordination, continuity, and effectiveness of regulatory supervision. Each FDIC-supervised institution is assigned a relationship manager who will serve as a local point of contact over an extended period, and will often participate in or lead examinations for their assigned institution.

EGRPRA Interagency Consensus Items

Through the interagency EGRPRA effort led by former FDIC Vice Chairman John Reich, now Director of the Office of Thrift Supervision, consensus among all of the Federal regulatory agencies was reached on twelve regulatory burden relief proposals. One of these proposals addressing possible reforms to the flood insurance program has been overtaken by the devastation and aftermath of Hurricane Katrina. Clearly, the need for comprehensive flood insurance reform is apparent and is being addressed through separate legislative efforts. We withdraw our earlier proposal regarding flood insurance and stand ready to assist the Committee in their review of the program.

The FDIC joins with the other Federal regulatory agencies in supporting inclusion of the remaining eleven interagency consensus proposals for regulatory burden relief:

1. Repeal Certain Reporting Requirements Relating to Insider Lending

These amendments repeal certain reporting requirements related to insider lending imposed on banks and savings associations, their executive officers, and their principal shareholders. The reports recommended for elimination are: (1) reports by executive officers to the board of directors whenever an executive officer obtains a loan from another bank in an amount more than he or she could obtain from his or her own bank; (2) quarterly reports from banks regarding any loans the bank has made to its executive officers; and (3) annual reports from bank executive officers and principal shareholders to the bank's board of directors regarding their outstanding loans from a correspondent bank.

The Federal regulatory agencies have found that these particular reports do not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. Identifying insider lending is part of the normal examination and supervision process. The proposed amendments would not alter the restrictions on insider loans or limit the authority of the Federal regulatory agencies to take enforcement action against a bank or its insiders for violations of those restrictions.

2. Streamline Depository Institution Merger Application Requirements

This proposal streamlines merger application requirements by eliminating the requirement that each Federal regulatory agency must request a competitive factors report from the other three Federal regulatory agencies, in addition to requesting a report from the Attorney General. Instead, the agency reviewing the application would be required to request a report only from the Attorney General and give notice to the FDIC as insurer.

3. <u>Improve Information Sharing with Foreign Supervisors</u>

This proposal amends Section 15 of the International Banking Act of 1978 to add a provision to ensure that the Federal Reserve, OCC, FDIC, and OTS cannot be compelled to disclose information obtained from a foreign supervisor in certain circumstances. Disclosure could not be compelled if public disclosure of the information would be a violation of the applicable foreign law and the U.S. regulatory agency obtained the information under an information sharing arrangement or other procedure established to administer and enforce the financial institution laws. This amendment would reassure foreign supervisors that may otherwise be reluctant to enter into information sharing agreements with U.S. regulatory agencies because of concerns that those agencies could not keep the information confidential and public disclosure could subject the foreign supervisor to a violation of its home country law. It also would facilitate information sharing necessary to supervise institutions operating internationally, lessening duplicative data collection by individual national regulators. The regulatory agency, however, cannot use this provision as a basis to withhold information from Congress or to refuse to comply with a valid court order in an action brought by the U.S. or the agency.

4. <u>Provide an Inflation Adjustment for the Small Depository Institution Exception under the Depository Institution Management Interlocks Act</u>

This proposal increases the threshold for the small depository institution exception under the Depository Institution Management Interlocks Act. Under current law, a management official generally may not serve as a management official for another nonaffiliated depository institution or depository institution holding company if their offices are located, or they have an affiliate located, in the same metropolitan statistical area (MSA). For institutions with less than $20 million in assets, this MSA restriction does not apply. The proposal would increase the MSA threshold, which dates back to 1978, to $100 million.

5. Call Report Streamlining

This proposal requires the Federal regulatory agencies to review information and schedules required to be filed in Reports of Condition (Call Reports) every five years to determine if some of the required information and schedules can be eliminated. Currently, banks must report substantial amounts of financial and statistical information with their Call Report schedules that appear to many bankers to be unnecessary to assessing the financial health of the institution and determining the amount of insured deposits it holds. This amendment would require the agencies to review their real need for information routinely so as to reduce that burden.

6. Enhance Examination Flexibility

Currently, the FDI Act requires the regulatory agencies to conduct a full-scale, on-site examination of the insured depository institutions under their jurisdiction at least once every twelve months. The FDI Act provides an exception for small institutions—that is institutions with total assets of less than $250 million—that are well-capitalized and well-managed, and meet other criteria. Examinations of these qualifying smaller institutions are required at least once every eighteen months. This interagency proposal raises the total assets ceiling for small institutions to qualify for an 18-month examination cycle from $250 million to $500 million, thus potentially permitting more institutions to qualify for less frequent examinations. This would reduce regulatory burden on low-risk, smaller institutions and permit the regulatory agencies to focus their resources where the great majority of the industry's assets and deposits are.

7. <u>Shorten Post-Approval Waiting Period on Bank Mergers and Acquisitions Where There Are No Adverse Effects on Competition</u>

This proposal would amend the Bank Holding Company Act and the FDI Act to shorten the current 15-day minimum post-approval waiting period for certain bank acquisitions and mergers when the appropriate Federal regulatory agency and the Attorney General agree that the transaction would not have significant adverse effects on competition. Under those circumstances, the waiting period could be shortened to five days. However, these amendments would not shorten the time period for private parties to comment on the transaction prior to approval under the public notice requirements.

8. <u>Exempt Merger Transactions Between an Insured Depository Institution and One or More of its Affiliates from Competitive Factors Review and Post-Approval Waiting Periods</u>

This proposal amends the Bank Merger Act (12 U.S.C. 1828(c)) to exempt certain merger transactions from both the competitive factors review and post-approval waiting periods. It applies only to merger transactions between an insured depository institution and one or more of its affiliates, as this type of merger is generally considered to have no affect on competition.

9. Authorize the Federal Reserve to Pay Interest on Reserves

This proposal would give the Federal Reserve Board express authority to pay interest on balances that depository institutions are required to maintain at the Federal Reserve Banks. By law, depository institutions are required to hold funds against transaction accounts held by customers of those institutions. These funds must be held in cash or on reserve at Federal Reserve Banks. Over the years, institutions have tried to minimize their reserve requirements. Allowing the Federal Reserve Banks to pay interest on those reserves should put an end to economically wasteful efforts by banks to circumvent the reserve requirements. Moreover, it could be helpful in ensuring that the Federal Reserve will be able to continue to implement monetary policy with its existing procedures.

10. Increase Flexibility for the Federal Reserve Board to Establish Reserve Requirements

This proposal gives the Federal Reserve Board greater discretion in setting reserve requirements for transaction accounts below the ranges established in the Monetary Control Act of 1980. The provision would eliminate current statutory minimum reserve requirements for transaction accounts, thereby allowing the Board to set lower reserve requirements, to the extent such action is consistent with the effective implementation of monetary policy.

11. Authorize Member Banks to Use Pass-Through Reserve Accounts

This proposal allows banks that are members of the Federal Reserve System to count as reserves their deposits in affiliated or correspondent banks that are in turn "passed through" by those banks to the Federal Reserve Banks as required reserve balances. It extends to these member banks a privilege that was granted to nonmember institutions at the time of the Depository Institutions Deregulation and Monetary Control Act of 1980.

PROVISIONS TO INCREASE FDIC EFFICIENCY

The FDIC has also developed several proposals that will help the FDIC become more efficient and effective in its regulation of insured institutions as described below.

Judicial Review of Conservatorship and Receivership Appointments

This proposal specifies the time period during which the appointment, in certain circumstances, of the FDIC as conservator or receiver of a failed insured depository institution could be challenged. Moreover, this provision provides greater certainty to the receiver's activities and to those doing business with the receiver.

Currently, some provisions of Federal law specify a 30-day period for challenges after appointment of a receiver. In contrast, other provisions of the FDI Act that govern appointment of a conservator or receiver by the appropriate Federal regulatory agencies for a State-chartered institution under prompt corrective action provisions and the FDIC's appointment of itself as conservator or receiver for an insured depository institution are silent on the limitations period for challenges to those appointments. At least one court has previously held that the Administrative Procedure Act applied because the National Bank Receivership Act was silent regarding the time period for challenging such an appointment. The court held that the national bank had six years from the date of appointment to challenge the action. The proposed legislation remedies the silence in the National Bank Receivership Act and in the FDI Act consistent with the parallel provisions in Section 5 of the Home Owners' Loan Act and another appointments provision of the FDI Act.

Enforcement of Agreements and Conditions

This proposal enhances the safety and soundness of insured depository institutions and protects the deposit insurance funds from unnecessary losses. The proposed amendment provides that the Federal regulatory agencies may enforce (i) conditions imposed in writing, and (ii) written agreements in which an institution-affiliated party agreed to provide capital to the institution. The proposal similarly would clarify existing authority of the FDIC as receiver or conservator to enforce written conditions or agreements entered into between insured depository institutions and institution-affiliated parties and controlling shareholders.

In addition, the proposal eliminates the requirement that an insured depository institution be undercapitalized at the time of a transfer of assets from an affiliate or controlling shareholder to the insured institution in order to prevent a claim against a Federal regulatory agency for the return of assets under bankruptcy law. Under Section 18(u) of the FDI Act, protection against a claim for the return of assets would still require that, at the time of transfer, the institution must have been subject to written direction from a Federal regulatory agency to increase its capital and, for that portion of the transfer made by a broker, dealer, or insurance firm, the Federal regulatory agency must have followed applicable procedures for those functionally regulated entities.

Amendment Clarifying FDIC's Cross Guarantee Authority

This proposal will correct a gap in current law regarding cross guarantee liability. As part of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of

1989 (FIRREA), Congress established a system that permits the FDIC to assess liability for FDIC losses caused by the default of an insured depository institution. Cross guarantee liability, however, is currently limited to commonly controlled insured depository institutions as defined in the statute. Because the statutory definition does not include certain types of financial institutions such as credit card banks that are controlled by nonbank holding companies, liability may not attach to insured institutions that are owned by the same nonbank holding company.

Over the years, a growing number of companies have acquired, either directly or through an affiliate, one or more credit card banks, trust companies, industrial loan companies, or some combination of those types of institutions. Because these companies do not fall within the scope of depository institution holding companies for common control purposes, in the event of default, the FDIC may not be able to assess cross guarantee liability as envisioned in the statute. The proposal corrects language to strengthen the FDIC's efforts to protect the deposit insurance funds when it is determining whether and to what extent to exercise its discretionary authority to assess cross guarantee liability. The assessment of liability would continue to be only against the insured depository institution under common control with the defaulting institution.

Amendment Clarifying the FDIC's Golden Parachute Authority

This proposal amends Section 18(k) of the FDIC Act to clarify that the FDIC could prohibit or limit a nonbank holding company's golden parachute payment or indemnification payment. In 1990, Congress added this section to the FDI Act and authorized the FDIC to prohibit or limit prepayment of salaries or any liabilities or legal expenses of an institution-affiliated party by an insured depository institution or depository institution holding company. Such payments are prohibited if they are made in contemplation of the insolvency of such institution or holding company or if they prevent the proper application of assets to creditors or create a preference for creditors of the institution. Due to the statutory definition of depository institution holding company, it is not clear that the FDIC is authorized to prohibit these types of payments made by nonbank holding companies. Some examples are companies that own only credit card banks, trust companies, or industrial loan companies.

The lack of clear authority for the FDIC to prohibit payments made by nonbank holding companies to institution-affiliated parties frustrates the purpose of the legislation by allowing nonbank holding companies to make golden parachute payments when an institution is insolvent or is in imminent danger of becoming insolvent to the detriment of the institution, the insurance funds, and the institution's creditors. The proposed amendment strengthens the FDIC's efforts to protect the insurance funds and ensure that an insured institution does not make these payments to the detriment of the institution.

Change in Bank Control Act Amendments

This proposal amends the Change in Bank Control Act to address an issue that arises when a "stripped charter" institution is the subject of a change-in-control notice. A stripped charter is essentially a bank charter with insurance, but without any significant ongoing business operations. Such "stripped charters" can result after a purchase and assumption transaction where the assets and liabilities of an institution are transferred to an acquiring institution, but the charter remains and may have value attached to it.

The Change in Bank Control Act provides the appropriate Federal regulatory agency with authority to disapprove a change-in-control notice within a set period of time. The availability of stripped charters for purchase in the establishment of new financial institution operations is sometimes used as an alternative to de novo charter and deposit insurance applications. Change-in-control notices are subject to strict time periods for disapproval and extensions of time beyond the 45 days for review. These time frames place significant pressures on the agencies when they are required to analyze novel or significant issues or complex or controversial business proposals. For example, issues presented by change-in-control notices proposing control by non-resident foreign nationals, or issues presented where third parties are proposed to have significant participation in the financial institution's operations, generally require additional scrutiny to satisfy safety and soundness concerns. This proposal clarifies the bases for which such notices may be disapproved and expand the bases for extensions of time for consideration of certain notices raising novel or significant issues. The provision is a safety and soundness measure that would greatly increase the agencies' ability to adequately consider the risks inherent in a proposed business plan and to use that information in determining whether to disapprove a notice of change-in-control.

Recordkeeping Amendment

This proposal modifies the requirement for retention of old records of a failed insured depository institution at the time a receiver is appointed. Currently, the statute requires the FDIC to preserve all records of a failed institution for six years from the date of its appointment as receiver, regardless of the age of the records at the time of the failure. After the end of six years, the FDIC can destroy any records that it determines to be unnecessary, unless directed not to do so by a court or a government agency or prohibited by law. Consequently, the FDIC must preserve for six years very old records that have no value to the FDIC, the public interest, or to any pending litigation.

The proposed provision allows the FDIC to destroy records that are 10 or more years old at the time of its appointment as receiver that are not relevant to any pending or reasonably probable future litigation, unless directed not to do so by a court or a government agency or prohibited by law. This change benefits the FDIC and/or acquirers of failed institutions by reducing the storage costs for these outdated records.

Preservation of Records by Optical Imaging and Other Means

This proposal permits the FDIC to rely on records preserved electronically, such as optically imaged or computer scanned images, as well as the "preservation of records by photography" currently provided by the statute.

Under present law, the FDIC is permitted to use "permanent photographic records" in place of original records for all purposes, including introduction of documents into evidence in State and Federal court. The substance of the statute has been unchanged since 1950. Because of the advent of electronic information systems and imaging technologies that do not have any photographic basis, this amendment would significantly aid the FDIC in preservation of documents by newer methods. In addition, it can be expected that the technology in this area will continue to develop. This amendment is intended to provide the FDIC with the flexibility to rely on appropriate new technology, while retaining the requirement that our Board of Directors prescribe the manner of the preservation of records to ensure their reliability, regardless of the technology used.

Clarification of Section 8(g) Prohibition Authority

Section 8(g) of the FDI Act provides the appropriate Federal regulatory agency with the authority to suspend or prohibit individuals charged with certain crimes from participation in the affairs of the depository institution with which they are affiliated. This proposal clarifies that the agency may suspend or prohibit those individuals from participation in the affairs of any depository institution and not solely the insured depository institution with which the institution affiliated party is or was associated. The provision will make clear that a Federal regulatory agency may use the Section 8(g) remedy even where the institution that the individuals were associated with ceases to exist.

Authority to Enforce Conditions on the Approval of Deposit Insurance

This proposal amends Section 8 of the FDI Act to provide each of the other three appropriate Federal regulatory agencies with express statutory authority to take enforcement action against the financial institutions they supervise based upon a violation of a condition imposed by the FDIC in writing in connection with the approval of an institution's application for deposit insurance.

The FDIC frequently imposes written conditions when approving deposit insurance to a de novo bank or thrift pursuant to Section 5 of the FDI Act (application for deposit insurance). Because of a drafting anomaly under current law, the other three appropriate Federal regulatory agencies cannot enforce violations of deposit insurance conditions by their supervised institutions. Currently, our only recourse—for institutions that we do not serve as primary regulator—is to commence deposit insurance termination proceedings. This provision would provide express enforcement authority for the involved institution's appropriate Federal regulatory agency.

Clarification of Section 8 Enforcement Authority that Change-in-Control Conditions are Enforceable

The FDIC recommends language that clarifies the appropriate Federal regulatory agencies' authority to take enforcement action against the banks they supervise based on a violation of a condition imposed in writing in connection with any action by the agency on an application, notice, or other request by an insured depository institution or institution-affiliated party. The agencies frequently provide conditions on applications, notices, or other requests, and the proposed change to Section 8 of the FDI Act would expressly provide that this enforcement authority applies equally to conditions imposed in connection with notices and to applications, notices, or other requests by an institution-affiliated party.

Deposit Insurance Related to the Optional Conversion of Federal Savings Associations

Under a provision adopted in the Gramm-Leach-Bliley Act (Section 739), Section 5(i)(5) of the Home Owners' Loan Act permits Federal savings associations with branches in one or more states to undergo a conversion into one or more national or state banks. Such conversions require the approval of the OCC and/or the appropriate state authorities. However, Section 739 does not specifically mention either deposit insurance or the FDIC.

The FDIC supports an amendment to Section 739 clarifying that conversions under that section, which result in more than one bank, would continue to require deposit insurance applications from the resulting institutions, as well as review and approval by the appropriate Federal regulatory agency. A one-to-one conversion does not change the risk to the deposit insurance funds because it involves one institution simply changing charters. However, a “breakup conversion” presents a potential increase in risk to the insurance funds because two or more institutions are created with risk profiles that are likely to differ from the original institution.

Bank Merger Act and Bank Holding Company Act – Consideration of Potential Effects on Deposit Insurance Fund

The FDIC supports amendments to the Bank Merger Act and Bank Holding Company Act to require consideration of the potentially adverse effects on the deposit insurance fund of any proposed bank merger transaction or holding company formation/ acquisition. As presently written, these laws do not require that any specific consideration be given to a transaction’s possible impact on the deposit insurance fund. The omission is noteworthy and potentially damaging to the financial viability of the fund.

Language specifying consideration of risks to the deposit insurance fund already exists for consideration of other transactions. For example, regarding change in control of insured financial institutions, the FDI Act provides authority to the appropriate Federal regulatory agency to disapprove any proposed acquisition if the agency determines that the proposed transaction would result in an adverse effect on the deposit insurance fund.

In addition, Section 207 of FIRREA amended Section 6 of the FDI Act to include a new factor—“the risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund”—that must be considered in granting deposit insurance. Additional parallels can also be found in Sections 24 and 28 of the FDI Act.

Given the potential insurance risks inherent in transactions involving large diversified financial services organizations, the addition of an "adverse effect on the deposit insurance fund" assessment factor as a requirement under the Bank Merger Act and Bank Holding Company Act would seem warranted. As with the other factors, each of the agencies would be required to make a separate "adverse effect on the deposit insurance fund" evaluation during its review of the proposed transaction. The intent would be to ensure that the financial integrity of the deposit insurance fund is a prime consideration in any proposed combination. As indicated, there is precedent in other financial institution application reviews and we believe a compelling case can be made for its inclusion in both the Bank Merger Act and the Bank Holding Company Act.

Receiver's or Conservator's Consent Requirement

This proposal would require the consent of the receiver or conservator before a party to a contract to which the depository institution is a party could exercise any right or power to terminate, accelerate, or declare a default under any contract, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution. Currently a conservator or receiver has the power to seek a 45- or 90-day stay of legal actions following appointment of the receiver, which must be granted, by any court with jurisdiction of such action or proceeding. However, parties to contracts with the depository institution are able to take unilateral action based on contractual rights without the foreknowledge of the receiver or conservator. The proposal would require the consent of the receiver or conservator before a party could exercise such contract provisions.

The FDIC also suggests including language that will:

1) provide for the FDIC in its role as receiver of failing institutions to gain access to individual FICO scores to improve the FDIC's ability to evaluate assets and recommend transaction structures for failing banks;

2) clarify the provision of the FDI Act relating to the resolution of deposit insurance disputes in the case of failed insured depository institutions;

3) clarify that the FDIC is a "covered agency" for purposes of sharing confidential information among the Federal regulatory agencies and other "covered agencies" without losing the work-product, attorney-client, or other privileges recognized under Federal or State law.

CONCLUSION

Thank you for the opportunity to present the FDIC's views on these issues. The FDIC supports the Committee's continued efforts to reduce unnecessary burden on insured depository institutions without compromising safety and soundness or consumer protection. We continually strive for more efficiency in the regulatory process and are pleased to work with the Committee in accomplishing this goal.

APPENDIX

LEGISLATIVE LANGUAGE FOR FDIC RECOMMENDATIONS

30-Day Statute of Limitations for Judicial Review of Receivership Appointments

Sec. ___. JUDICIAL REVIEW OF RECEIVERSHIP APPOINTMENTS.

(a) NATIONAL BANKS.—Section 2 of the National Bank Receivership Act (12 U.S.C. 191) is amended—

(1) by striking "SECTION 2. The Comptroller of the Currency" and inserting the following:

"SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL BANK.

"(a) IN GENERAL.—The Comptroller of the Currency"; and

(2) by adding at the end the following new subsection:

"(b) JUDICIAL REVIEW—If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.".

(b) INSURED DEPOSITORY INSTITUTIONS.—Section 11(c) (7) of the Federal Deposit Insurance Act (12 U.S.C. 1821 (c) (7)) is amended to read as follows:

"(7) JUDICIAL REVIEW—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10) the depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.".

Enforcement of Agreements and Conditions

Sec. ___. ENHANCING THE SAFETY AND SOUNDNESS OF INSURED DEPOSITORY INSTITUTUTIONS.

(a) CLARIFICATION RELATING TO THE ENFORCEABILITY OF AGREEMENTS AND CONDITIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 49. ENFORCEMENT OF AGREEMENTS.

"(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b) (6) (A) or section 38(e) (2) (E) (i), an appropriate Federal banking agency may enforce, under section 8, the terms of—

"(1) any condition imposed in writing by the agency on a depository institution or an institution-affiliated party (including a bank holding company) in connection with any action on any application, notice, or other request concerning a depository institution; or

"(2) any written agreement entered into between the agency and an institution-affiliated party (including a bank holding company).

"(b) RECEIVERSHIPS AND CONSERVATORSHIPS.— After the appointment of the Corporation as the receiver or conservator for any insured depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) involving such institution or any institution-affiliated party (including a bank holding company), through an action brought in an appropriate United States district court.".

(b) PROTECTION OF CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—Paragraph (1) of section 18(u) of the Federal Deposit Insurance Act (12 U.S.C. 1828(u)) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

Amendment Clarifying FDIC's Cross Guarantee Authority

Sec. ___. CROSS GUARANTEE AUTHORITY.

Subparagraph (A) of section 5(e) (9) of the Federal Deposit Insurance Act (12 U.S.C. 18l5(e) (9) (A)) is amended to read as follows:

"(A) such institutions are controlled by the same company; or".

Amendment Clarifying FDIC's Golden Parachute Authority

Sec. ___. GOLDEN PARACHUTE AUTHORITY AND NONBANK HOLDING COMPANIES.

Subsection (k) of section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)) is amended—

(1) in paragraph (2) (A), by striking "or depository institution holding company" and inserting "or covered company";

(2) by striking subparagraph (B) of paragraph (2) and inserting the following new subparagraph:

"(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

"(i) the insolvency of the depository institution or covered company;

"(ii) the appointment of a conservator or receiver for the depository institution; or

"(iii) the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 32(f)).";

(3) in paragraph (2) (F), by striking "depository institution holding company" an inserting "covered company,";

(4) in paragraph (3) in the matter preceding subparagraph (A), by striking "depository institution holding company" and inserting "covered company";

(5) in paragraph (3) (A), by striking "holding company" and inserting "covered company";

(6) in paragraph (4) (A) —

(A) by striking "depository institution holding company" each place such term appears and inserting "covered company"; and

(B) by striking "holding company" each place such term appears (other than in connection with the term referred to in subparagraph (A)) and inserting "covered company";

(7) in paragraph (5) (A), by striking "depository institution holding company" and inserting "covered company";

(8) in paragraph (5), by adding at the end the following new subparagraph:

"(D) COVERED COMPANY.—The term "covered company" means any depository institution holding company (including any company required to file a report under section 4 (f) (6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution."; and

(9) in paragraph (6)—

(A) by striking "depository institution holding company" and inserting "covered company,"; and

(B) by striking "or holding company" and inserting "or covered company".

Change in Bank Control Act Amendments

Sec. ___. AMENDMENT TO CHANGE IN BANK CONTROL ACT.

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) in paragraph (1) (D)—

(A) by striking “is needed to investigate” and inserting “is needed—

“(i) to investigate”;

(B) by striking “United States Code.” and inserting “United States Code; or”; and

(C) by adding at the end the following new clause:

“(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6) (E) or the future prospects of the institution.”; and

(2) in paragraph (7) (C), by striking “the financial condition of any acquiring person” and inserting “either the financial condition of any acquiring person or the future prospects of the institution”.

Recordkeeping Amendment

Sec. ___. RECORDKEEPING.

Section 11(d) (15) (D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d) (15) (D)) is amended—

(1) by striking “RECORDKEEPING REQUIREMENT.—After the end of the 6-year period” and inserting

“RECORDKEEPING REQUIREMENT.—

“(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period”; and

(2) by adding at the end the following new clause:

“(ii) OLD RECORDS—In the case of records of an insured depository institution which are at least 10 years old as of the date the Corporation is appointed as the receiver of such depository institution, the Corporation may destroy such records in accordance with clause (i) any time after such appointment is final without regard to the 6-year period of limitation contained in such clause.”.

Preservation of Records by Optical Imaging and Other Means

Sec. ___. PRESERVATION OF RECORDS.

Subsection (f) of section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820(f)) is amended to read as follows:

“(f) PRESERVATION OF AGENCY RECORDS.—

“(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

“(A) photographed or microphotographed or otherwise reproduced upon film; or

“(B) preserved in any electronic medium or format which is capable of—

“(i) being read or scanned by computer; and

“(ii) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

“(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1) (A) or reproduction of electronically stored data described in paragraph (1) (B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

“(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1) (A) or reproduction of electronically stored data described in paragraph (1) (B) shall be preserved in such manner as the Federal banking agency shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.”.

Clarification of Section 8(g) Prohibition Authority

Sec. ___. AMENDMENT TO CLARIFY PROHIBITION AUTHORITY.

(a) Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended—

(1) in subparagraph (A), by striking “the depository” each place such term appears and inserting “any depository”;

(2) in subparagraph (B)(i), by inserting “of which the subject of the order is an institution-affiliated party” before the period at the end;

(3) in subparagraph (C), by striking “the depository” each place such term appears and inserting “any depository”;

(4) in subparagraph (D) (i), by inserting “of which the subject of the order is an institution-affiliated party” after “upon the depository institution”; and

(5) by adding at the end the following new subparagraph:

“(E) CONTINUATION OF AUTHORITY.—A Federal banking agency may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a depository institution at the time of an offense described in subparagraph (A) without regard to—

"(i) whether such individual is an institution-affiliated party at any depository institution at the time the order is considered or issued by the agency; or

"(ii) whether the depository institution at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the agency.".

(b) CLERICAL AMENDMENT—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended by striking "(g)" and inserting the following new subsection heading:

"(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—".

(c) Section (8)(e)(7)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(7)) is amended by striking "or subsection (g)" and inserting "or a notice or order issued under subsection (g)".

<u>Authority to Enforce Conditions on the Approval of Deposit Insurance</u>

Sec. ___. FEDERAL BANKING AGENCY AUTHORITY TO ENFORCE DEPOSIT INSURANCE CONDITIONS.

(a) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. § 1818) is amended –

(1) in subsection (b)(1) in the first sentence, by striking "any condition imposed in writing by the agency" and inserting "any condition imposed in writing by a Federal banking agency";

(2) in subsection (e)(1)(A)(i)(III), by striking "any condition imposed in writing by the appropriate Federal banking agency" and inserting "any condition imposed in writing by a Federal banking agency"; and

(3) in subsection (i)(2)(A)(iii), by striking "any condition imposed in writing by the appropriate Federal banking agency" and inserting "any condition imposed in writing by a Federal banking agency".

<u>Clarification of Section 8 Enforcement Authority that Change-In-Control Conditions are Enforceable</u>

Sec. __. CLARIFICATION OF ENFORCEMENT AUTHORITY.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended –

(a) in subsection (b) (1), in the first sentence, by striking "the granting of any application or other request by the depository institution" and inserting "any action on any application, notice, or other request by the depository institution or institution-affiliated party,”;

(b) in subsection (e)(1)(A)(i)(III), striking “the grant of any application or other request by such depository institution” and inserting “any action on any application, notice, or request by such depository institution or institution-affiliated party”; and

(c) in subsection (i)(2)(A)(iii), by striking “the grant of any application or other request by such depository institution” and inserting “any action on any application, notice, or other request by the depository institution or institution-affiliated party”.

<u>Clarification of Certain Application Requirements for Optional Conversion of Federal Savings Associations</u>

Sec. ___. CLARIFICATION OF APPLICATION REQUIREMENTS FOR OPTIONAL CONVERSION FOR FEDERAL SAVINGS ASSOCIATIONS.

(a) Paragraph 5 of section (5)(i) of the Home Owners’ Loan Act (12 U.S.C. 1464(i)(5)) is amended to read as follows –

“(5) CONVERSION TO NATIONAL OR STATE BANK. –

(A) IN GENERAL. – Any Federal savings association chartered and in operation before the date of the enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each resulting national or State bank –

(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank, and

(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act.

No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this subparagraph.

(B) DEFINITIONS. – For purposes of this paragraph, the terms “State bank” and “State bank supervisor” have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.”.

(b) Section 4(c) of the Federal Deposit Insurance Act (12 U.S.C. § 1814(c)) is amended –

(1) after "Subject to section 5(d)", by inserting "of this Act and section 5(i)(5) of the Home Owners' Loan Act"; and

(2) in paragraph (2), after "insured State" by inserting "or Federal".

<u>Bank Merger Act and Bank Holding Company Act – Consideration of Potential Effects on Deposit Insurance Fund</u>

Sec. ___. AMENDMENT TO BANK MERGER ACT AMENDMENT AND BANK HOLDING COMPANY ACT AMENDMENT

<u>(a)</u> Paragraph (5) of subsection (c) of section 18 of the FDI Act (12 U.S.C. § 1828(c) (5)) is amended -

in the last sentence of paragraph (5), by inserting ", the potential risk of loss to the Bank Insurance Fund or Savings Association Insurance Fund" before ", and".

(b) Paragraph (2) of subsection (c) of section 3 of the Bank Holding Company Act (12 U.S.C. § 1842(c) (2)) is amended -

by inserting ", the potential risk of loss to the Bank Insurance Fund or Savings Association Insurance Fund" before ", and".

<u>Receiver's or Conservator's Consent Requirement</u>

Sec. ___. RECEIVER'S OR CONSERVATOR'S CONSENT REQUIREMENT.

Section 11(e)(12) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)) is amended by adding the following new subparagraph --

"(C) Consent Requirement. --

(i) In general. --

Except as otherwise provided by this section or section 15, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, for a period of 45 days from the date of the appointment of the conservator, or for a period of 90 days from the date of the appointment of the receiver.

(ii) Certain exceptions. --

No provision of this subparagraph shall apply to a director's or officer's liability insurance contract or a depository institution bond, or to the rights of parties to certain qualified financial contracts pursuant to subsection (e)(8), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of Construction. --

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11 of the United States Code.".

Acquisition of FICO Scores

Sec. ___. ACQUISITION OF FICO SCORES

Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended by adding a new paragraph after paragraph (5) as follows:

"(6) To the Federal Deposit Insurance Corporation as part of its preparation for its appointment or as part of its exercise of powers as conservator or receiver for an insured depository institution under the Federal Deposit Insurance Act or other applicable Federal or State law or in connection with the resolution or liquidation of a failed or failing insured depository institution .".

Resolution of Deposit Insurance Disputes

Sec. ___. RESOLUTION OF DEPOSIT INSURANCE DISPUTES.

Paragraphs (3), (4), and (5) of section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(f)(3)) are amended to read as follows:

"(3) RESOLUTION OF DISPUTES. -- The Corporation's determination regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) REVIEW OF CORPORATION'S DETERMINATION. -- A final determination made by the Corporation shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by

the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) STATUTE OF LIMITATIONS. – Any request for review of a final determination by the Corporation shall be filed with the appropriate United States district court not later than 60 days after such determination is issued.”.

<u>Technical Amendments to Information Sharing Provision in the Federal Deposit Insurance Act</u>

Section 11(t) of the Federal Deposit Insurance Act (12 U.S.C. § 1821(t) is amended –

(a) in paragraph (1), by inserting “, in any capacity, ” after “A covered agency”;

(b) in paragraph (2)(A)(i), by striking “appropriate”; and

(c) in paragraph (2)(A), by striking clause (ii) and redesignating clauses (iii) through (vi) as clauses (ii) through (v), respectively.